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7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 RENE ANGEL, MARCO FLORES, and  
 DAVID MARTINEZ,

11 Plaintiffs,

12 v.

13 NORTH COAST COURIERS, INC., a  
 14 corporation; SULTAN BHATTI, dba  
 15 SS COURIERS; MARIO SORTO, dba  
 16 SORTO'S ENTERPRISES; FH & RG  
 ENTERPRISE LLC, a limited liability  
 17 company; FRANCISCO JAVIER HUATO  
 MENDOZA; RUBEN GONZALEZ;  
 TANWEER AHMED; M.Y. "MIKE"  
 KHALAF,

18 Defendants.  
 19

Case No. Case No. CV 11 1028 JSW

**STIPULATED PROTECTIVE ORDER  
 FOR LITIGATION INVOLVING HIGHLY  
 SENSITIVE CONFIDENTIAL  
 INFORMATION**

20 1. PURPOSES AND LIMITATIONS

21 Disclosure and discovery activity in this action are likely to involve production of  
 22 confidential, proprietary, or private information for which special protection from public disclosure  
 23 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
 24 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
 25 Order. The parties acknowledge that this Order does not confer blanket protections on all  
 26 disclosures or responses to discovery and that the protection it affords from public disclosure and use  
 27 extends only to the limited information or items that are entitled to confidential treatment under the  
 28 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that

1 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
2 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be  
3 applied when a party seeks permission from the court to file material under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
6 information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it  
8 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
9 of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their  
11 support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or items  
13 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

15 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
16 medium or manner in which it is generated, stored, or maintained (including, among other things,  
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
18 responses to discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a matter  
20 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert  
21 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a  
22 Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a  
23 Party or of a Party’s competitor.

24 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information  
25 or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
26 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less  
27 restrictive means.

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1           2.8    Non-Party: any natural person, partnership, corporation, association, or other  
2 legal entity not named as a Party to this action.

3           2.9    Outside Counsel of Record: attorneys who are not employees of a party to  
4 this action but are retained to represent or advise a party to this action and have appeared in this  
5 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that  
6 party.

7           2.10 Party: any party to this action, including all of its officers, directors,  
8 employees, consultants, retained experts, and Outside Counsel of Record (and their support staff).

9           2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
10 Material in this action.

11           2.12 Professional Vendors: persons or entities that provide litigation support  
12 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
13 organizing, storing, or retrieving data in any form or medium) and their employees and  
14 subcontractors.

15           2.13 Protected Material: any Disclosure or Discovery Material that is designated  
16 as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from  
18 a Producing Party.

19           3.    SCOPE

20           The protections conferred by this Stipulation and Order cover not only Protected  
21 Material (as defined above), but also (1) any information copied or extracted from Protected  
22 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
23 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
24 Material. However, the protections conferred by this Stipulation and Order do not cover the  
25 following information: (a) any information that is in the public domain at the time of disclosure to a  
26 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
27 result of publication not involving a violation of this Order, including becoming part of the public  
28 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the

1 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
2 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
3 Protected Material at trial shall be governed by a separate agreement or order.

4 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
14 Party or Non-Party that designates information or items for protection under this Order must take  
15 care to limit any such designation to specific material that qualifies under the appropriate standards.  
16 , the Designating Party must designate for protection only those parts of material, documents, items,  
17 or oral or written communications that qualify – so that other portions of the material, documents,  
18 items, or communications for which protection is not warranted are not swept unjustifiably within  
19 the ambit of this Order.

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

24 If it comes to a Designating Party's attention that information or items that it  
25 designated for protection do not qualify for protection at all or do not qualify for the level of  
26 protection initially asserted, that Designating Party must promptly notify all other parties that it is  
27 withdrawing the mistaken designation.

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1           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
2 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,  
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
4 designated before the material is disclosed or produced.

5           Designation in conformity with this Order requires:

6           (a)    for information in documentary form (e.g., paper or electronic documents, but  
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
8 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY” to each page that contains protected material. If only a portion or portions of the material  
10 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
11 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,  
12 the level of protection being asserted.

13           A Party or Non-Party that makes original documents or materials available for  
14 inspection need not designate them for protection until after the inspecting Party has indicated which  
15 material it would like copied and produced. During the inspection and before the designation, all of  
16 the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
18 copied and produced, the Producing Party must determine which documents, or portions thereof,  
19 qualify for protection under this Order. Then, before producing the specified documents, the  
20 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.  
22 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
23 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
24 margins) and must specify, for each portion, the level of protection being asserted.

25           (b)    for testimony given in deposition or in other pretrial or trial proceedings, that  
26 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
27 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
28 impractical to identify separately each portion of testimony that is entitled to protection and it

1 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
2 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
3 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
4 sought and to specify the level of protection being asserted. Only those portions of the testimony  
5 that are appropriately designated for protection within the 21 days shall be covered by the provisions  
6 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition  
7 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be  
8 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a deposition,  
10 hearing or other proceeding to include Protected Material so that the other parties can ensure that  
11 only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
12 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
13 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY.”

15 Transcripts containing Protected Material shall have an obvious legend on the title  
16 page that the transcript contains Protected Material, and the title page shall be followed by a list of  
17 all pages (including line numbers as appropriate) that have been designated as Protected Material  
18 and the level of protection being asserted by the Designating Party. The Designating Party shall  
19 inform the court reporter of these requirements. Any transcript that is prepared before the expiration  
20 of a 21-day period for designation shall be treated during that period as if it had been designated  
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise  
22 agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

23 (c) for information produced in some form other than documentary and for any  
24 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
25 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of the  
27 information or item warrant protection, the Producing Party, to the extent practicable, shall identify  
28 the protected portion(s) and specify the level of protection being asserted.

1           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
2 to designate qualified information or items does not, standing alone, waive the Designating Party's  
3 right to secure protection under this Order for such material. Upon timely correction of a  
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
5 accordance with the provisions of this Order.

6           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
27 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
28 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the

1 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
2 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
3 competent declaration affirming that the movant has complied with the meet and confer  
4 requirements imposed in the preceding Section 6.2. Failure by the Designating Party to make such a  
5 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
6 automatically waive the confidentiality designation for each challenged designation. In addition, the  
7 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
8 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
9 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
10 competent declaration affirming that the movant has complied with the meet and confer  
11 requirements imposed by the preceding Section 6.2.

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

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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1                   7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated “CONFIDENTIAL” only to:

4                   (a)     the Receiving Party’s Outside Counsel of Record in this action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
7 Bound” that is attached hereto as Exhibit A;

8                   (b)     the officers, directors, and employees of the Receiving Party to whom  
9 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and  
10 Agreement to Be Bound” (Exhibit A);

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

14                   (d)     the court and its personnel;

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

18                   (f)     during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
21 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
22 separately bound by the court reporter and may not be disclosed to anyone except as permitted under  
23 this Stipulated Protective Order; and

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

26                   7.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
27 Information or Items.

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1 Unless otherwise ordered by the court or permitted in writing by the Designating  
2 Party, a Receiving Party may disclose any information or item designated “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
7 Bound” that is attached hereto as Exhibit A;

8 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary  
9 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
10 A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

11 (c) the court and its personnel;

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

15 (e) the author or recipient of a document containing the information or a  
16 custodian or other person who otherwise possessed or knew the information.

17 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information of Items to Experts.

19 (a) Unless otherwise ordered by the court or agreed to in writing by the  
20 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
21 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
22 ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that  
23 (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
24 ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
25 forth the full name of the Expert and the city and state of his or her primary resident, (3) attaches a  
26 copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies  
27 each person or entity from whom the Expert has received compensation or funding for work in his or  
28 her areas of expertise or to whom the expert has provided professional services, including in

1 connection with a litigation, at any time during the preceding five years, and (6) identifies (by name  
2 and number of the case, filing date, and location of court) any litigation in connection with which the  
3 Expert has offered expert testimony, including through a declaration, report, or testimony at a  
4 deposition or trial, during the preceding five years.

5 (b) A Party that makes a request and provides the information specified in the  
6 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert  
7 unless, within 14 days of delivering the request, the Party receives a written objection from the  
8 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the  
10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
11 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
12 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with  
13 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion  
14 must describe in circumstances with specificity, set forth in detail the reasons why the disclosure to  
15 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
16 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
17 must be accompanied by a competent declaration describing the parties' efforts to resolve the matter  
18 by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth  
19 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

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

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation that  
26 compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

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

16 9. A NON-PARTY’S PROTECTED MATERIALS OUGHT TO BE PRODUCED IN  
17 THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-  
19 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
20 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this  
21 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions  
22 should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

4                   3.       make the information requested available for inspection by the Non-  
5 Party.

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

13                   10.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

21                   11.       INADERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
22 MATERIAL

23                   When a Producing Party gives notice to Receiving Parties that certain inadvertently  
24 produced material is subject to a claim of privilege or other protection, the obligations of the  
25 Receiving Parties are those set forth in Federal Rule of Civil Procedure 3 26(b)(5)(B). This  
26 provision is not intended to modify whatever procedure may be established in an e-discovery order  
27 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence  
28 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a

1 communication or information covered by the attorney-client privilege or work product protection,  
2 the parties may incorporate their agreement in the stipulated protective order submitted to the court.

3 12. MISCELLANEOUS

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

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

11 12.3 Filing Protected Material. Without written permission from the Designating  
12 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
13 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
15 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
16 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
17 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
18 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant  
19 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the Protected  
20 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the  
21 court.

22 13. FINAL DISPOSITION

23 Unless otherwise ordered or agreed in writing by the Producing Party, within 60 days  
24 after the final disposition of this action, as defined in Section 4, each Receiving Party must return all  
25 Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all  
26 Protected Material" includes all copies, abstracts, compilations, summaries, and any other format  
27 reproducing or capturing any of the Protected Material. Whether the Protected Material is returned  
28 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if

1 not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
2 category, where appropriate) all the Protected Material that was returned or destroyed and (2)  
3 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or  
4 any other format reproducing or capturing any of the Protected Material. Notwithstanding this  
5 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
6 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
7 expert reports, attorney work product, and consultant and expert work product, even if such  
8 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
9 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 I hereby attest that I have on file all holograph signatures for any signatures indicated  
12 by a "conformed" signature (/s/) within this efiled document.

13 Dated: October 24, 2011

LAW OFFICES OF MARK SCOTT  
THUESEN

14  
15 By: /s/ \_\_\_\_\_  
16 Mark Scott Thuesen

17 Dated: October 24, 2011

LAW OFFICES OF VICTOR C. THUESEN

18  
19 By: /s/ \_\_\_\_\_  
Victor C. Thuesen

20 Attorneys for Plaintiffs RENE ANGEL,  
21 MARCO FLORES, and DAVID MARTINEZ

22 Dated: October 24, 2011

LITTLER MENDELSON

23  
24 By: /s/ \_\_\_\_\_  
Kai-Ching Cha

25 Attorneys for Defendants TANWEER  
26 AHMED and M.Y. "MIKE" KHALAF

PURSUANT TO STIPULATION, IT IS SO ORDERED.

1  
2  
3 Date: October 24, 2011  
4

  
THE HONORABLE JEFFREY S. WHITE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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

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

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

21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_

24 Signature: \_\_\_\_\_

25 Firmwide:104707651.1 051284.1015