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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 PETZILLA, INC. a Delaware Corporation, d/b/a
5 Petzila

6 Plaintiff,

7 v.

8 ANSER INNOVATION LLC, a Minnesota
9 limited liability company,

10 Defendant.

Case No. 3:14-cv-01354-EMC

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

11
12 WHEREAS, in the course of this litigation disclosure may be sought of information that a
13 party or non-party regards as being of a confidential, trade secret, and/or proprietary nature;

14 WHEREAS, the Parties seek entry of a mutual Protective Order pursuant to Rule 26(c) of
15 the Federal Rules of Civil Procedure, and the Court having approved such order;

16 IT IS HEREBY ORDERED that this Order for the Protection of Confidential Information
17 (“Protective Order”) shall govern the handling of all information, testimony, things or documents
18 filed with the Court or produced or given (either by a party or non-party) as part of discovery in
19 this action (“Covered Matter”).

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
27 use extends only to the limited information or items that are entitled to confidential treatment under
28

1 the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
2 that this Stipulated Protective Order does not entitle them to file confidential information under
3 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
4 will be applied when a party seeks permission from the court to file material under seal.

5 2. DEFINITIONS

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

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

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

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

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

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

25 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
26 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
27 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
28

1 restrictive means.

2 2.8 House Counsel: attorneys who are employees of a party to this action. House
3 Counsel does not include Outside Counsel of Record or any other outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
5 entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
7 action but are retained to represent or advise a party to this action and have appeared in this action
8 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

9 2.11 Party: any party to this action, including all of its officers, directors, employees,
10 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
12 Material in this action.

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

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
19 Producing Party.

20 3. SCOPE

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

1 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
2 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
3 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
4 of Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

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

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

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (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
12 portion, the level of protection being asserted.

13 A Party or Non-Party that makes original documents or materials available for inspection
14 need not designate them for protection until after the inspecting Party has indicated which material
15 it would like copied and produced. During the inspection and before the designation, all of the
16 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 the
26 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
6 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
7 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
8 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY.”

10 During any deposition, hearing, or other proceeding taken in this action at which
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY is disclosed
12 or discussed, any party or non-party may exclude from attendance during such disclosure or
13 discussion any person not authorized under Section 7.2 and Section 7.3, respectively. The use of a
14 document as an exhibit at a deposition shall not in any way affect its designation as
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

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

1 identify the protected portion(s) and specify the level of protection being asserted.

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

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
28 intervention, the Challenging Party shall file and serve a motion to defeat confidentiality under

1 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
2 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
3 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied
4 by a competent declaration affirming that the movant has complied with the meet and confer
5 requirements imposed in the preceding paragraph. Failure by the Challenging Party to make such a
6 motion including the required declaration within 21 days (or 14 days, if applicable) shall
7 automatically waive the right to challenge the confidentiality designation for each challenged
8 designation. In addition, the Designating Party may file a motion to retain a confidentiality
9 designation at any time if there is good cause for doing so, including a challenge to the designation
10 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision
11 must be accompanied by a competent declaration affirming that the movant has complied with the
12 meet and confer requirements imposed by the preceding paragraph.

13 The burden of persuasion in any such challenge proceeding shall be on the Designating
14 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
15 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
16 All parties shall continue to afford the material in question the level of protection to which it is
17 entitled under the Producing Party's designation until the court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
28 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any

1 information or item designated “CONFIDENTIAL” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
3 employees of said Outside Counsel of Record;

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

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

10 (d) the court and its personnel;

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

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

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

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

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
27 employees of said Outside Counsel of Record;

28 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary

1 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been
3 followed;

4 (c) the court and its personnel;

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

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

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

12 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
13 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
14 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
15 to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the
16 full name of the Expert and his/her professional address, (2) attaches a copy of the Expert’s current
17 resume, (3) identifies the Expert’s current employer(s), (4) identifies each person or entity from
18 whom the Expert has received compensation or funding for work in his or her areas of expertise or
19 to whom the expert has provided professional services, including in connection with a litigation, at
20 any time during the preceding five years,¹ and (5) identifies (by name and number of the case,
21 filing date, and location of court) any litigation in connection with which the Expert has offered
22 expert testimony, including through a declaration, report, or testimony at a deposition or trial,
23 during the preceding five years.

24 (b) A Party that makes a request and provides the information specified in the
25 preceding respective paragraphs may disclose the subject Protected Material to the identified

26 _____

27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 Expert unless, within 14 days of delivering the request, the Party receives a written objection from
2 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

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

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

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

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

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

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

28 (c) cooperate with respect to all reasonable procedures sought to be pursued by the

1 Designating Party whose Protected Material may be affected.²

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

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

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

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

- 20 1. promptly notify in writing the Requesting Party and the Non-Party that some
21 or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 22 2. promptly provide the Non-Party with a copy of the Stipulated Protective
23 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
24 the information requested; and
- 25 3. make the information requested available for inspection by the Non-Party.

26
27 ² The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the
28 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or
order issued.

1 (c) If the Non-Party fails to object or seek a protective order from this court
2 within 14 days of receiving the notice and accompanying information, the Receiving Party may
3 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
4 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
5 possession or control that is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court.³ Absent a court order to the contrary, the Non-Party shall bear the
7 burden and expense of seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
17 MATERIAL

18 If information is produced in discovery that is subject to a claim of privilege or of
19 protection as trial-preparation material, the party making the claim may notify any party that
20 received the information of the claim and the basis for it. After being notified, a party must
21 promptly return or destroy the specified information and any copies it has and may not sequester,
22 use or disclose the information until the claim is resolved. This includes a restriction against
23 presenting the information to the court for a determination of the claim. This provision is not
24 intended to modify whatever procedure may be established in an e-discovery order that provides
25 for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),
26 insofar as the parties reach an agreement on the effect of disclosure of a communication or

27
28 ³ 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 interests in this court.

1 information covered by the attorney-client privilege or work product protection, the parties may
2 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 to
5 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 Order
7 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 Party or
12 a court order secured after appropriate notice to all interested persons, a Party may not file in the
13 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
18 to protection under the law. If a Receiving Party's request to file Protected Material under seal
19 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
20 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
21 instructed by the court.

22 12.4 Objections to Discovery Not Covered. This Protective Order is not intended to
23 address discovery objections to produce, answer, or respond on the grounds of attorney-client
24 privilege or work product immunity, or to preclude either party from seeking further relief or
25 protective orders from the Court as may be appropriate under the Federal Rules of Civil Procedure.

26 12.5 Agreement Pending Entry. The Parties agree to be bound by the terms of this
27 Protective Order pending its entry by the Court.
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13. FINAL DISPOSITION

1 Within 90 days after the final disposition of this action and all appeals, as set forth
2 in Section 4, each Receiving Party must return all Protected Material to the Producing Party or
3 destroy such material. As used in this subdivision, “all Protected Material” includes all copies,
4 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
5 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
6 must submit a written certification to the Producing Party (and, if not the same person or entity, to
7 the Designating Party) by the 90-day deadline that (1) identifies (by category, where appropriate)
8 all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
9 has not retained any copies, abstracts, compilations, summaries or any other format reproducing or
10 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
11 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
12 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
13 product, and consultant and expert work product, even if such materials contain Protected Material.
14 Any such archival copies that contain or constitute Protected Material remain subject to this
15 Protective Order as set forth in Section 4 (DURATION).

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 DATED: June 23, 2014

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DATED: June 23, 2014

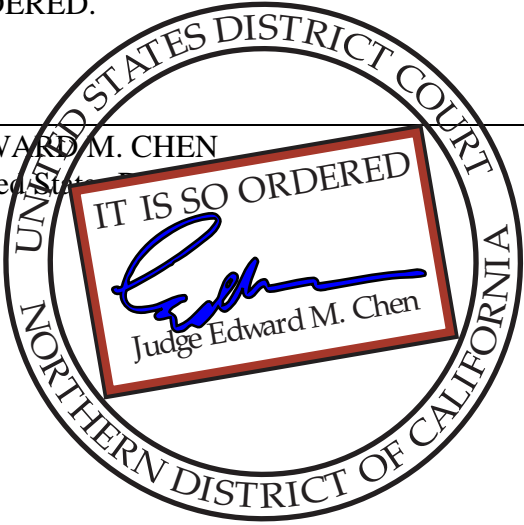
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 6/25/14

EDWARD M. CHEN
United States District Judge



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
3 Petzilla, Inc. v. Anser Innovation LLC
4 U.S. District Court for the Northern District of California
5 Case No. 3:14-cv-01354-EMC

6 I, _____ [print or type full name], of
7 _____ [print or type full address], declare under penalty of perjury that I have read
8 in its entirety and understand the attached Stipulated Protective Order that was issued by the United
9 States District Court for the Northern District of California in the above-captioned matter. I agree
10 to comply with and to be bound by all the terms of this Stipulated Protective Order and I
11 understand and acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
13 any information or item that is subject to this Stipulated Protective Order to any person or entity
14 except in strict compliance with the provisions of this Order.

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

18 Date: _____

19 Printed name: _____
20 [printed name]

21 Signature: _____
22 [signature]

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