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 NIELSEN COMPANY (U.S.) LLC

14 **UNITED STATES DISTRICT COURT**  
 15 **NORTHERN DISTRICT OF CALIFORNIA**  
 16

17 STEVE RULLI, JOSE BUENROSTRO,  
 EDWIN BUMP, and ENRIQUE CRUZ on  
 18 behalf of themselves and -- all others similarly  
 situated,

19 Plaintiffs,  
 20 vs.

21 NIELSEN COMPANY (U.S.) LLC,  
 22 Defendant.

Case No.: 14-01835 VC

CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION

**STIPULATED PROTECTIVE ORDER AND [PROPOSED] ORDER**

1           **1. Purposes and Limitations**

2           Disclosure and discovery activity in this action are likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public disclosure and from use for  
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
7 discovery and that the protection it affords from public disclosure and use extends only to the limited  
8 information or items that are entitled to confidential treatment under the applicable legal principles.  
9 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective  
10 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth  
11 the procedures that must be followed and the standards that will be applied when a party seeks  
12 permission from the court to file material under seal.

13           **2. Definitions**

14           2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
15 information or items under this Order.

16           2.2    “CONFIDENTIAL” Information or Items: information (regardless of how it is  
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil  
18 Procedure 26(c).

19           2.3    Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
20 well as their support staff).

21           2.4    Designating Party: a Party or Non-Party that designates information or items that  
22 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

1           2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to  
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
3 consultant in this action.

4           2.7    House Counsel: attorneys who are employees of a party to this action. House  
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6           2.8    Non-Party: any natural person, partnership, corporation, association, or other legal  
7 entity not named as a Party to this action.

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

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

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

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

18          2.13   Protected Material: any Disclosure or Discovery Material that is designated as  
19 “CONFIDENTIAL.”

20          2.14   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
21 Producing Party.

22           **3.    Scope**

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

27           However, the protections conferred by this Stipulation and Order do not cover the following  
28 information: (a) any information that is in the public domain at the time of disclosure to a Receiving

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

7 **4. Duration**

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

14 **5. Designating Protected Material**

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

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

26 If it comes to a Designating Party's attention that information or items that it designated for  
27 protection do not qualify for protection, then that Designating Party must promptly notify all other  
28 Parties that it is withdrawing the 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, Disclosure or  
3 Discovery Material that qualifies for protection under this Order must be clearly so designated before the  
4 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  
7 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
8 Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If  
9 only a portion or portions of the material on a page qualifies for protection, the Producing Party also  
10 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

21                                 (b)     for testimony given in deposition or in other pretrial or trial proceedings,  
22 that the Designating Party identify on the record, before the close of the deposition, hearing, or other  
23 proceeding, all protected testimony, or notify the other party in writing within 60 days of the portion of  
24 the transcript to be designated as confidential.

25                                 (c)     for information produced in some form other than documentary and for  
26 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
27 container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If  
28

1 only a portion or portions of the information or item warrant protection, the Producing Party, to the  
2 extent practicable, shall identify the protected portion(s).

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

8           **6.       Challenging Confidentiality Designations**

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

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

1           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court  
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
3 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial  
4 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not  
5 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent  
6 declaration affirming that the movant has complied with the meet and confer requirements imposed in the  
7 preceding paragraph. Failure by the Designating Party to make such a motion including the required  
8 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
9 designation for each challenged designation. In addition, the Challenging Party may file a motion  
10 challenging a confidentiality designation at any time if there is good cause for doing so, including a  
11 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought  
12 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has  
13 complied with the meet and confer requirements imposed by the preceding paragraph.

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

21           **7.    Access To and Use of Protected Material**

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

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

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

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
7 as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
8 information for this litigation;

9 (b) the officers, directors, and employees (including House Counsel) of the  
10 Receiving Party to whom disclosure is reasonably necessary for this litigation;

11 (c) Experts (as defined in this Order) of the Receiving Party to whom  
12 disclosure 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 to whom disclosure is reasonably necessary  
16 for this litigation;

17 (f) professional jury or trial consultants, mock jurors, and Professional  
18 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) during their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
22 Protected Material must be separately bound by the court reporter and may not be disclosed to anyone  
23 except as permitted under this Stipulated Protective Order.

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



1           **8. Protected Material Subpoenaed or Ordered Produced In Other Litigation**

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

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

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

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

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

19           **9. A Non-Party’s Protected Material Sought to be Produced in this Litigation**

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

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

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

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

7 iii. make the information requested available for inspection by the  
8 Non-Party.

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

16 **10. Unauthorized Disclosure of Protected Material**

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

24 **11. Inadvertent Production of Privileged or Otherwise Protected Material**

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
26 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
27 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
28 modify whatever procedure may be established in an e-discovery order that provides for production

1 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
2 parties reach an agreement on the effect of disclosure of a communication or information covered by  
3 the attorney-client privilege or work product protection, the parties may incorporate their agreement in  
4 the stipulated protective order submitted to the court.

5 **12. Miscellaneous**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
7 seek its modification by the court in the future.

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

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

23 **13. Final Disposition**

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

1 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
2 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned  
3 or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
4 compilations, summaries or any other format reproducing or capturing any of the Protected Material.  
5 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
6 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and  
7 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if  
8 such 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  
12 DATED: July 21, 2014

\_\_\_\_\_  
/s/ James Kan  
James Kan  
Attorneys for Plaintiffs

13  
14 DATED: July 21, 2014

\_\_\_\_\_  
/s/ Julia Collins Riechert  
Julia Collins Riechert  
Attorneys for Defendant

15  
16 **ATTESTATION**

17 Pursuant to General Order 45(X), I attest that concurrence in the filing of this document has  
18 been obtained from each of the other signatories.

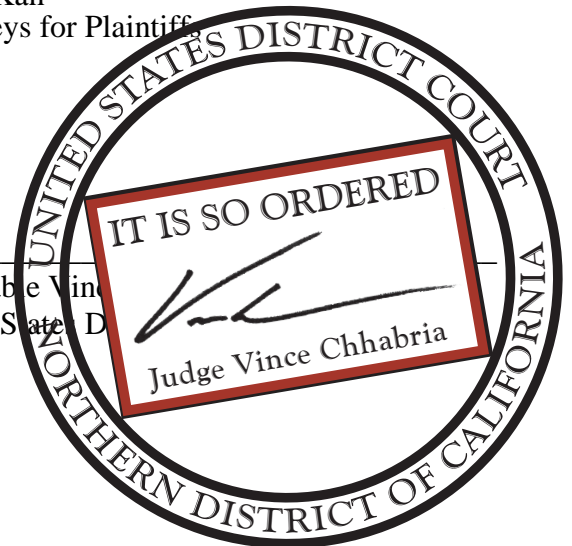
19 DATED: July 21, 2014

By: \_\_\_\_\_  
/s/ James Kan  
James Kan  
Attorneys for Plaintiff

20  
21  
22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23  
24 DATED: July 22, 2014

\_\_\_\_\_  
Honorable Vince Chhabria  
United States District Judge



1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print  
4 or type full address], declare under penalty of perjury that I have read in its entirety and understand the  
5 Stipulated Protective Order that was issued by the United States District Court for the Northern District  
6 of California on [date] in the case of *Rulli, et al. v. Nielsen Company (U.S.), LLC*, Case No. 3:14-CV-  
7 01835 VC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order  
8 and I understand and acknowledge that failure to so comply could expose me to sanctions and  
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any  
10 information or item that is subject to this Stipulated Protective Order to any person or entity except in  
11 strict compliance with the provisions of this Order.

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

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

19  
20 Date: \_\_\_\_\_

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

22  
23 Printed name: \_\_\_\_\_

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