

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LIVECAREER, LTD

Plaintiff,

v.

RESUME COMPANION LLC, and SU JIA
TECHNOLOGIES LTD, dba
RESUMEGENIUS.COM

Defendants.

Case No. 3:14-CV-3336 JST

Honorable Jon S. Tigar

**STIPULATED PROTECTIVE ORDER
FOR LITIGATION INVOLVING HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS**

Complaint Filed: July 23, 2014

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS

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

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

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

9 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

11 2.5 Designating Party: a Party or Non-Party that designates information or items that it
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
13 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

14 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
15 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
16 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

17 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
18 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant
19 in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
20 of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

21 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
22 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
23 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

24 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
25 sensitive “Confidential Information or Items” representing computer code and associated comments and
26 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
27 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or
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1 Non-Party would create a substantial risk of serious harm that could not be avoided by
2 less restrictive means.

3 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
4 not include Outside Counsel of Record or any other outside counsel.

5 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
6 not named as a Party to this action.

7 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but
8 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
9 party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.13 Party: any party to this action, including all of its officers, directors, employees, consultants,
11 retained experts, and Outside Counsel of Record (and their support staffs).

12 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
13 this action.

14 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
15 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
16 retrieving data in any form or medium) and their employees and subcontractors.

17 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
18 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as “HIGHLY
19 CONFIDENTIAL – SOURCE CODE.”

20 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
21 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 copies,
25 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
27 conferred by this Stipulation and Order do not cover the following information: (a) any information that is in
28 the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after

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

6 4. DURATION

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

13 5. DESIGNATING PROTECTED MATERIAL

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

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
22 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or
23 retard the case development process or to impose unnecessary expenses and burdens on other parties)
24 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 asserted,
27 that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

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1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
2 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

3 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 documents, but excluding
7 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
9 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
10 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
11 protected 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 need not
14 designate them for protection until after the inspecting Party has indicated which material it would like
15 copied and produced. During the inspection and before the designation, all of the material made available
16 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
17 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
18 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
19 producing the specified documents, the Producing Party must affix the appropriate legend
20 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
21 CONFIDENTIAL – SOURCE CODE) to each page that contains Protected Material. If only a portion or
22 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
24 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 proceeding, all
27 protected testimony and specify the level of protection being asserted. When it is impractical to identify
28 separately each portion of testimony that is entitled to protection and it appears that substantial portions of

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

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

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

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

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

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
25 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
26 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
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1 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
2 whichever is earlier.¹ Each such motion must be accompanied by a competent declaration affirming that the
3 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
4 the Designating Party to make such a motion including the required declaration within 21 days (or 14 days,
5 if applicable) shall automatically waive the confidentiality designation for each challenged designation. In
6 addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if
7 there is good cause for doing so, including a challenge to the designation of a deposition transcript or any
8 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent
9 declaration affirming that the movant has complied with the meet and confer requirements imposed by the
10 preceding paragraph.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
12 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
13 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
14 Designating Party has waived the confidentiality designation by failing to file a motion to retain
15 confidentiality as described above, all parties shall continue to afford the material in question the level of
16 protection to which it is entitled under the Producing Party's designation until the court rules on the
17 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, defending,
21 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
22 persons and under the conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

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27 ¹ Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the burden to move on the Challenging
28 Party after a certain number of challenges are made to avoid an abuse of the process. The burden of persuasion would remain on the
Designating Party.

1 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
2 manner² 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 by the
4 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
5 item designated “CONFIDENTIAL” only to:

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

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

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

16 (d) the court and its personnel;

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

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27 ² It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in
28 password-protected form.

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

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
4 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the
5 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
6 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
7 CONFIDENTIAL – SOURCE CODE” only to:

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

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

15 (c) the court and its personnel;

16 (d) court reporters and their staff, professional jury or trial consultants,³ and Professional
17 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

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

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27 ³ *Alternative:* The parties may wish to allow disclosure of information not only to professional jury or trial consultants, but also to
28 mock jurors, to further trial preparation. In that situation, the parties may wish to draft a simplified, precisely tailored Undertaking
for mock jurors to sign.

1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items
3 to Designated House Counsel⁴ or Experts.⁵

4 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
5 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been
6 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first
7 must make a written request to the Designating Party that (1) sets forth the full name of the Designated
8 House Counsel and the city and state of his or her residence, and (2) describes the Designated House
9 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient
10 detail to determine if House Counsel is involved, or may become involved, in any competitive decision-
11 making.⁶

12 (a)(2) 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 that has
14 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
15 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the
16 Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the
18 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the
19 city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4)
20 identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has
21 received compensation or funding for work in his or her areas of expertise or to whom the expert has

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23 ⁴ *Alternative:* The parties may exchange names of a certain number of Designated House Counsel instead of following this
24 procedure.

25 ⁵ *Alternative:* “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items may be
disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert is not a current officer, director, or
employee of a competitor of a Party or anticipated to become one.

26 ⁶ It may be appropriate in certain circumstances to require any Designated House Counsel who receives “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order to disclose any relevant changes in job duties
or responsibilities prior to final disposition of the litigation to allow the Designating Party to evaluate any later-arising competitive
28 decision-making responsibilities.

1 provided professional services, including in connection with a litigation, at any time during the preceding
2 five years,⁷ and (6) identifies (by name and number of the case, filing date, and location of court) any
3 litigation in connection with which the Expert has offered expert testimony, including through a declaration,
4 report, or testimony at a deposition or trial, during the preceding five years.⁸

5 (b) A Party that makes a request and provides the information specified in the preceding
6 respective paragraphs may disclose the subject Protected Material to the identified Designated House
7 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection
8 from the 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 within
11 seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to
12 Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in
13 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
14 motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to
15 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure
16 would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such
17 motion 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 the
19 reasons advanced by the Designating Party for its refusal to approve the disclosure.

20 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert
21 shall bear the 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 Designated House
23 Counsel or Expert.

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25 ⁷ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
26 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.

27 ⁸ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination
28 of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY" information.

1 8. Intentionally omitted

2 9. SOURCE CODE

3 (a) To the extent production of source code becomes necessary in this case, a
4 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it
5 comprises or includes confidential, proprietary or trade secret source code.

6 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
7 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” information, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with
10 the exception of Designated House Counsel.⁹

11 (c) Any source code produced in discovery shall be made available for
12 inspection in a format through which it could be reasonably reviewed and searched during normal
13 business hours or other mutually agreeable times at a location that is reasonably convenient for the
14 Receiving Party and any experts to whom the source code may be disclosed. The source code shall be
15 made available for inspection on a secured computer in a secured room without Internet access or network
16 access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion
17 of the source code onto any recordable media or recordable device. The Producing Party may visually
18 monitor the activities of the Receiving Party’s representatives during any source code review, but only to
19 ensure that there is no unauthorized recording, copying, or transmission of the source code.¹⁰

20 (d) The Receiving Party may request paper copies of limited portions of source code
21 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers,
22 or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code
23 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide
24 all such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL -

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26 ⁹ It may be appropriate under certain circumstances to allow House Counsel access to derivative materials including “HIGHLY
27 CONFIDENTIAL - SOURCE CODE” information, such as exhibits to motions or expert reports,

28 ¹⁰ It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the names of any
individuals inspecting the source code and dates and times of inspection, and the names of any individuals to whom paper copies of
portions of source code are provided.

1 SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy
2 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
3 Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes
4 of dispute resolution.

5 (e) The Receiving Party shall maintain a record of any individual who has inspected
6 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
7 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not
8 create any electronic or other images of the paper copies and shall not convert any of the information
9 contained in the paper copies into any electronic format. The Receiving Party shall only make additional
10 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
11 (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for
12 the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing
13 Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized
14 individual.¹¹

15 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
16 LITIGATION

17 If a Party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
20 that Party must:

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

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

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27 ¹¹ The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For example, it may
28 be appropriate under certain circumstances to require the Receiving Party to provide notice to the Producing Party before including
“HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.

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

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

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

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

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

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

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

26
27 ¹² 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 3. make the information requested available for inspection by the Non-Party.

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

9 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
18 MATERIAL

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

26
27 ¹³ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford
28 the Non-Party an opportunity to protect its confidentiality interests in this court.

1 order submitted to the court.

2 14. MISCELLANEOUS

3 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
4 modification by the court in the future.

5 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
6 Party waives any right it otherwise would have to object to disclosing or producing any information or item
7 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
8 object on any ground to use in evidence of any of the material covered by this Protective Order.

9 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and
10 regulations relating to the export of technical data contained in such Protected Material, including the
11 release of such technical data to foreign persons or nationals in the United States or elsewhere. The
12 Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving
13 Party shall take measures necessary to ensure compliance.

14 14.4 Filing Protected Material. Without written permission from the Designating Party or a court
15 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
16 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply
17 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
18 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
19 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,
20 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request
21 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
22 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
23 unless otherwise instructed by the court.

24 15. FINAL DISPOSITION

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

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

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: January 27, 2015

13 /s/ Deepto R. Mukerjee
14 Deepto R. Mukerjee, Esq.
15 deepto.mukerjee@alston.com
16 Alston & Bird, LLP
90 Park Ave.
New York, NY 10016
Attorneys for Plaintiff

17 DATED: January 27, 2015

18 /s/ Craig J. Mariam
19 Craig J. Mariam, Esq.
20 cmariam@gordonrees.com
21 GORDON & REES LLP
633 West 5th Street, 52nd Floor
Los Angeles, California 90071
Attorneys for Defendant

22 PURSUANT TO STIPULATION, IT IS SO ORDERED

23 DATED: January 29, 2015

24 Hon. Jon
25 United St



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern District
6 of California on January __, 2015 in the case of *Live Career, Ltd. v. Resume Companion, LLC, et. al.* Case
7 No. 3:14-cv-3336 JST. I agree to comply with and to be bound by all the terms of this Stipulated Protective
8 Order 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 strict
11 compliance with the provisions of this Order.

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 Order,
14 even if 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 my
17 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 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]

26

27

28