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 MAIN STREET HUB, INC.

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12
 13 NORMAN KAY,
 Plaintiff,
 14
 v.
 15 MAIN STREET HUB, INC., and DOES 1
 16 through 200, inclusive,
 17 Defendants.

Case No. 3:15-cv-04666-EMC
 STIPULATED PROTECTIVE ORDER

18
 19 1. PURPOSES AND LIMITATIONS

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

1 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
2 the standards that will be applied when a party seeks permission from the court to file material
3 under seal.

4 2. DEFINITIONS

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

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

10 2.3 Counsel: Outside Counsel of Record and House Counsel (as well as their support
11 staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or items that it
13 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

14 2.5 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other things,
16 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
17 responses to discovery in this matter.

18 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
19 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
20 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
21 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
22 or of a Party’s competitor.

23 2.7 House Counsel: attorneys who are employees of a party to this action. House
24 Counsel does not include Outside Counsel of Record or any other outside counsel.

25 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
26 entity not named as a Party to this action.

27 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
28

1 action but are retained to represent or advise a party to this action and have appeared in this action
2 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

3 2.10 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
6 Material in this action.

7 2.12 Professional Vendors: persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
9 organizing, storing, or retrieving data in any form or medium) and their employees and
10 subcontractors.

11 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL.”

13 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 3. SCOPE

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

20 However, the protections conferred by this Stipulation and Order do not cover the following
21 information: (a) any information that is in the public domain at the time of disclosure to a
22 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
23 a result of publication not involving a violation of this Order, including becoming part of the
24 public record through trial or otherwise; and (b) any information known to the Receiving Party
25 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
26 obtained the information lawfully and under no obligation of confidentiality to the Designating
27 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.
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1 4. DURATION

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

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
11 or Non-Party that designates information or items for protection under this Order must take care
12 to limit any such designation to specific material that qualifies under the appropriate standards.
13 To the extent it is practical to do so, the Designating Party must designate for protection only
14 those parts of material, documents, items, or oral or written communications that qualify – so that
15 other portions of the material, documents, items, or communications for which protection is not
16 warranted are not swept unjustifiably within the ambit of this Order.

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

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

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
26 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
27 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
28 designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

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

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

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
19 the Designating Party identify on the record, before the close of the deposition, hearing, or other
20 proceeding, all protected testimony.

21 (c) for information produced in some form other than documentary and for any
22 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
23 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
24 If only a portion or portions of the information or item warrant protection, the Producing Party, to
25 the extent practicable, shall identify the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items does not, standing alone, waive the Designating Party’s
28 right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

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

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
26 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
27 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
28 process will not resolve their dispute, whichever is earlier. Each such motion must be

1 accompanied by a competent declaration affirming that the movant has complied with the meet
2 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
3 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
4 shall automatically waive the confidentiality designation for each challenged designation. In
5 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
6 time if there is good cause for doing so, including a challenge to the designation of a deposition
7 transcript or any portions thereof. Any motion brought pursuant to this provision must be
8 accompanied by a competent declaration affirming that the movant has complied with the meet
9 and confer requirements imposed by the preceding paragraph.

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

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

- 28 (a) the Receiving Party's Outside Counsel of Record in this action, as well as

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
2 information for this litigation;

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

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

8 (d) the court and its personnel;

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

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

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

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

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

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

27 (b) promptly notify in writing the party who caused the subpoena or order to issue
28 in the other litigation that some or all of the material covered by the subpoena or order is subject

1 to this Protective Order. Such notification shall include a copy of this Stipulated Protective
2 Order; and

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

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

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

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

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

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

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

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
7 no Party waives any right to object on any ground to use in evidence of any of the material
8 covered by this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the Designating Party
10 or a court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
13 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
14 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
15 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
16 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
17 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
18 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
19 79-5(e)(2) unless otherwise instructed by the court.

20 13. FINAL DISPOSITION

21 Within 60 days after the final disposition of this action, as defined in Section 4,
22 each Receiving Party must return all Protected Material to the Producing Party or destroy such
23 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the Protected
25 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
26 submit a written certification to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
28 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has

1 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
3 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
5 product, and consultant and expert work product, even if such materials contain Protected
6 Material. Any such archival copies that contain or constitute Protected Material remain subject to
7 this Protective Order as set forth in Section 4.

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 Dated: April 6, 2016

FENWICK & WEST LLP

12 By: /s/ Sheeva J. Ghassemi-Vanni
13 Sheeva J. Ghassemi-Vanni
14 Attorneys for Defendant
MAIN STREET HUB, INC.

15 Dated: April 6, 2016

FRANK SARRO LAW

17 By: /s/ Frank P. Sarro
18 Frank P. Sarro
19 Attorney for Plaintiff
NORMAN KAY

20 **ATTESTATION**

21 Concurrence in the filing of this document has been obtained from the other signatories.

23 /s/ Sheeva J. Ghassemi-Vanni
24 Sheeva J. Ghassemi-Vanni

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: April 7, 2016



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
[address], declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the Northern
District of California on _____, 2016 in the case of *Norman Kay v. Main Street Hub, Inc.*, Case
No. 3:15-cv-04666-EMC. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

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

I hereby appoint _____ [full name] of _____
_____ [full address and telephone number] as my
California agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____