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 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

12 EILEEN BROWN, et. al.,
 13 Plaintiffs,
 14 vs.
 15 FREEDOM WEST HOMES INC, et. al.
 16 Defendants.
 17

Case No. 3:15-cv-04874-EMC

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

18
 19 1. INTRODUCTION

20 1.1 Purposes and Limitations

21 To date, disclosures and discovery in this action have involved production of confidential,
 22 proprietary, or private information for which special protection from public disclosure and from
 23 use for any purpose other than prosecuting this litigation has been warranted. Future anticipated
 24 discovery in this action will likely require the disclosure of highly sensitive and confidential
 25 information, including but not limited to social security numbers, birth certificates, and personal
 26 financial documents.
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AMENDED AND RESTATED
 STIPULATED PROTECTIVE ORDER
 8:16-CV-1225-CJC-DFM

1 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
2 Amended and Restated Stipulated Protective Order that shall supersede the parties' Stipulated
3 Protective Order for Standard Litigation (Dkt. No. 93), and which creates an additional discovery
4 designation of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." The parties
5 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
6 discovery and that the protection it affords from public disclosure and use extends only to the
7 limited information or items that are entitled to such treatment under the applicable legal
8 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
9 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
10 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
11 applied when a party seeks permission from the court to file material under seal.

12 2. DEFINITIONS

13 2.1 Action: This pending federal lawsuit.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.3 "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
18 of Civil Procedure 26(c).

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
20 staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

24 2.6 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other things,
26 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
27 responses to discovery in this matter.
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1 2.7 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 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
5 Items: Extremely sensitive “Confidential Information or Items” disclosure of which to another
6 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
7 less restrictive means.

8 2.9 House Counsel: attorneys who are employees of a party to this Action. House
9 Counsel does not include Outside Counsel of Record or any other outside counsel.

10 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity not named as a Party to this action.

12 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
13 Action but are retained to represent or advise a party to this Action and have appeared in this
14 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
15 that party, and includes support staff.

16 2.12 Party: any party to this Action, including all of its officers, directors, employees,
17 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this Action.

20 2.14 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
22 organizing, storing, or retrieving data in any form or medium) and their employees and
23 subcontractors.

24 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.

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1 3. SCOPE

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

6 Any use of Protected Material at trial shall be governed by the orders of the trial judge.
7 This Order does not govern the use of Protected Material at trial.

8 4. DURATION

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

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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1 If it comes to a Designating Party's attention that information or items that it designated
2 for protection do not qualify for protection, that Designating Party must promptly notify all other
3 Parties that it is withdrawing the inapplicable designation.

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

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
11 Party affix at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
12 ATTORNEYS' EYES ONLY" to each page that contains protected material.

13 A Party or Non-Party that makes original documents available for inspection need not
14 designate them for protection until after the inspecting Party has indicated which documents it
15 would like copied and produced. A Party or Non-Party that makes original documents or
16 materials available for inspection need not designate them for protection until after the inspecting
17 Party has indicated which material it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for inspection shall be deemed
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has
20 identified the documents it wants copied and produced, the Producing Party must determine
21 which documents, or portions thereof, qualify for protection under this Order. Then, before
22 producing the specified documents, the Producing Party must affix the appropriate legend
23 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"), as
24 appropriate, to each page that contains Protected Material.

25 (b) for testimony given in depositions, that the Designating Party identify the
26 Disclosure or Discovery Material on the record, before the close of the deposition, hearing, or
27 other proceeding, all protected testimony and specify the level of protection being asserted.
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1 Where it is impractical to identify separately each portion of testimony that is entitled to
2 protection and it appears that substantial portions of the testimony may qualify for protection, the
3 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
4 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
5 which protection is sought and to specify the level of protection being asserted. Only those
6 portions of the testimony that are appropriately designated for protection within the 21 days shall
7 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
8 Party may specify, at the deposition, hearing, or other proceeding, or up to 21 days afterwards if
9 that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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

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

26 (c) for information produced in some form other than documentary and for any
27 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
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1 container or containers in which the information is stored the legend “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as appropriate.

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

8 No party shall be responsible to another party for disclosure of Confidential Information
9 under this Order, if the Confidential Information in question is not labeled or otherwise
10 designated in accordance with this Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
13 confidentiality at any time that is consistent with the Court’s Scheduling Order.

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

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1 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
2 the Designating Party shall file and serve a motion to retain confidentiality in compliance with Civil
3 Local Rule 79-5, if applicable, within 30 days of the initial notice of challenge or within 14 days of
4 the parties agreeing that the meet and confer process will not resolve their dispute, whichever is
5 earlier. Each such motion must be accompanied by a competent declaration affirming that the
6 movant has complied with the meet and confer requirements imposed in the preceding paragraph.
7 Failure by the Designating Party to make such a motion including the required declaration within 21
8 days (or 14 days, if applicable) shall be presumed to effect a waiver of confidentiality absent leave
9 of court for good cause shown." In addition, the Challenging Party may file a motion challenging
10 a confidentiality designation at any time if there is good cause for doing so, including a challenge to
11 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
12 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 6.3 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
16 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
17 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
18 designation, all parties shall continue to afford the material in question the level of protection to
19 which it is entitled under the Producing Party's designation until the Court rules on the challenge.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

27 Protected Material must be stored and maintained by a Receiving Party at a location and
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1 in a secure manner that ensures that access is limited to the persons authorized under this Order.
2 Materials stored electronically must be stored on a system that used passwords or other access-
3 control mechanisms.

4 Nothing in this Order will bar Counsel from rendering advice to their clients with respect
5 to this litigation and, in the course thereof, relying upon any Confidential Information designated
6 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
7 provided that the contents of the Confidential Information must not be disclosed to those not
8 authorized by this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
10 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
11 disclose any information or item designated “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
14 information for this Action;

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

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

20 (d) the Court and its personnel;

21 (e) court reporters and their staff;

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

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

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1 (h) during their depositions, witnesses, and attorneys for witnesses, in the
2 Action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment
3 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
4 ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that
5 reveal Protected Material may be separately bound by the court reporter and may not be disclosed
6 to anyone except as permitted under this Stipulated Protective Order; and

7 (i) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
11 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
14 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
15 information for this Action;

16 (b) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment
18 and Agreement to Be Bound” (Exhibit A) and as to whom the procedures set forth in paragraph
19 7.4 below, have been followed;

20 (c) the Court and its personnel;

21 (d) court reporters and their staff;

22 (e) professional jury or trial consultants, mock jurors, and Professional
23 Vendors to whom disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (f) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information;

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1 (g) the Receiving party’s House Counsel who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

3 (h) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts

7 (a) Unless ordered by the Court or agreed to in writing by the Designating
8 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
9 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
10 to paragraph 7.3(b) first must make a request to the Designating Party that (1) identifies the
11 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information
12 that the Receiving Party seeks permission to disclose to the Expert; (2) sets forth the full name of
13 the Expert and the city and state of his or her primary residence; (3) attaches a copy of the
14 Expert’s current resume; (4) identifies the Experts current employer(s); (5) identifies each person
15 or entity from whom the Expert has received compensation or finding for work in his or her areas
16 of expertise or to whom the expert has provided professional services, including in connection
17 with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and
18 number of the case, filing date, and location of court) any litigation in connection with which the
19 Expert has offered expert testimony, including through a declaration, report, or testimony at a
20 deposition or trial, during the preceding five years.

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

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

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

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

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

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

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

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

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

6 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
7 LITIGATION

8 (a) The terms of this Order are applicable to information produced by a Non-
9 Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with
11 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
12 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request, to
14 produce a Non-Party's confidential information in its possession, and the Party is subject to an
15 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
16 Party shall:

17 (1) promptly notify in writing the Requesting Party and the Non-Party
18 that some or all of the information requested is subject to a confidentiality agreement with a Non-
19 Party;

20 (2) promptly provide the Non-Party with a copy of the Stipulated
21 Protective Order in this Action, the relevant discovery request(s), and a reasonably specific
22 description of the information requested; and

23 (3) make the information requested available for inspection by the
24 Non-Party, if requested.

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

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
14 MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently
16 produced material is subject to a claim of privilege or other protection, the obligations of the
17 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
18 provision is not intended to modify whatever procedure may be established in an e-discovery
19 order that provides for production without prior privilege review.

20 Inadvertent or unintentional production of any document or thing subject to attorney-client
21 privilege or work-product immunity shall not constitute a waiver of the attorney-client privilege
22 or work-product immunity, if any, as they apply to those documents specifically or to the subject
23 matter of those documents generally. If a party produces documents or things that it believes
24 should have been withheld as privileged or work-product, such party shall provide a written
25 request for the return of those documents or things within a reasonable time after having actual
26 knowledge that said documents have been produced. Upon receipt of such written notice, the
27 Receiving Party shall promptly gather the original and all such copies of such documents and
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1 things and shall promptly return the original and all such copies to the Designating Party. If the
2 Designating Party discovers that privileged, work-product, or otherwise protected
3 documents and things have been inadvertently produced based on the Receiving Party's use of
4 such information during a deposition or hearing, the Designating Party may orally request the
5 return of the information and that the Receiving Party must immediately cease examination or
6 argument regarding the specific substantive content of the document. If a Designating Party
7 orally requests the return of inadvertently produced documents or things at a deposition, the
8 Designating Party shall provide the specific basis of the claim of privilege at the time the oral
9 request is made. Upon such an oral request, the receiving party shall immediately (a) return the
10 documents and things at issue and all copies to the Producing Party; and (b) cease examination or
11 argument regarding the specific content of such documents and things. The return of such
12 documents and things shall not preclude a Receiving Party from later moving the Court to compel
13 production of the returned documents and things on the basis that any privilege applicable thereto
14 has been waived. The Receiving Party may challenge the privileged nature of the recalled
15 documents by filing a motion with the Court and requesting an in camera review of the
16 documents or things in question.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
19 seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
21 Order no Party waives any right it otherwise would have to object to disclosing or producing any
22 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
23 no Party waives any right to object on any ground to use in evidence of any of the material
24 covered by this Protective Order.

25 12.3 Filing Protected Material. Without written permission from the Designating Party
26 or a court order secured after appropriate notice to all interested persons, a Party may not file in
27 the public record in this action any Protected Material. A Party that seeks to file under seal any
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1 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
2 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material
3 at issue. A sealing issue will order only upon a request establishing that the Protected Material is
4 entitled to protection under the law. If a Party's request to file Protected Material under seal is
5 denied by the court, then the Receiving Party may file the information in the public record unless
6 otherwise instructed by the court.

7 13. FINAL DISPOSITION

8 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a
9 written request by the Designating Party, each Receiving Party must return all Protected Material
10 to the Producing Party or destroy such material. As used in this subdivision, "all Protected
11 Material" includes all copies, abstracts, compilations, summaries, and any other format
12 reproducing or capturing any of the Protected Material. Whether the Protected Material is
13 returned or destroyed, the Receiving Party must submit a written certification to the Producing
14 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that
15 (1) identifies (by category, where appropriate) all the Protected Material that was returned or
16 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
17 compilations, summaries or any other format reproducing or capturing any of the Protected
18 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
19 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
20 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
21 consultant and expert work product, even if such materials contain Protected Material. Any such
22 archival copies that contain or constitute Protected Material remain subject to this Protective
23 Order as set forth in Section 4.

24 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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Dated: February 28, 2018

By: /s/ Yosef Peretz _____
Yosef Peretz
Attorneys for Plaintiffs

Dated: February 28, 2018

By: /s/ Jason P. Gonzalez _____
Jason P. Gonzalez
Attorneys for Defendants Freedom West Homes,
Inc. and Raymond Brown

Dated: February 28, 2018

By: /s/ Ann M. Asiano _____
Ann M. Asiano
Attorneys for Defendants Alton Management Co.
and William Hutton

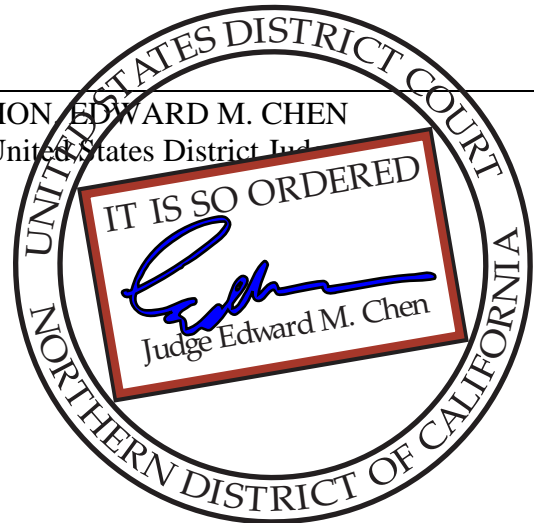
Dated: February 28, 2018

By: /s/ David Ian Dalby _____
David Ian Dalby
Attorneys for Defendant Anason Won Pak

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 3/2/2018

HON. EDWARD M. CHEN
United States District Judge



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____ [full 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 [date] in the case of _____ [insert case name and number]. 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 signed: _____

Printed name: _____

Signature: _____