

1 Eric A. Welter, Bar No. 270591  
 eaw@welterlaw.com  
 2 WELTER LAW FIRM, P.C.  
 1141 Elden Street, Suite 220  
 3 Herndon, VA 20170  
 Telephone: (703) 435-8500  
 4 Facsimile: (703) 435-8851

5 Laura B. Thomasian, Bar No. 251502  
 lbt@welterlaw.com  
 6 Sean F. Daley, Bar No. 272493  
 sfd@welterlaw.com  
 7 WELTER LAW FIRM, P.C.  
 520 N. Central Avenue, Suite 730  
 8 Glendale, CA 91203  
 Telephone: (818) 858-0188  
 9 Facsimile: (818) 244-5580

10 Attorneys for Defendant  
 GUARANTEED RATE, INC.

WELTER LAW FIRM, P.C.  
 ATTORNEYS AT LAW  
 520 N. CENTRAL AVE., SUITE 730  
 GLENDALE, CA 91203  
 (818) 858-0188

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

DANIELLE KESTERSON, an individual,  
 Plaintiff,

v.

GUARANTEED RATE, INC., a corporation;  
 and DOES 1 through 5, inclusive,  
 Defendants.

CASE NO. 3:15-cv-05430-EMC

**STIPULATED PROTECTIVE ORDER**

Date Action Filed: September 11, 2015  
 Trial Date: June 19, 2017

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.

1           The parties acknowledge that this action is likely to involve trade secrets and other valuable  
2 research, development, commercial, financial, technical, proprietary, and/or private information for  
3 which special protection from public disclosure and from use for any purpose other than prosecution  
4 of this action is warranted. Such confidential and proprietary materials and information consist of,  
5 among other things, confidential loan applicant identifying, financial, and personal information,  
6 business financial information, information regarding confidential business practices, or other  
7 confidential research, development, or commercial information (including information implicating  
8 privacy rights of third parties), information otherwise generally unavailable to the public, or which  
9 may be privileged or otherwise protected from disclosure under state or federal statutes, court rules,  
10 case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the  
11 prompt resolution of disputes over confidentiality of discovery materials, to adequately protect  
12 information the parties are entitled to keep confidential, to ensure that the parties are permitted  
13 reasonable necessary uses of such material in preparation for and in the conduct of trial, to address  
14 their handling at the end of the litigation, and serve the ends of justice, a protective order for such  
15 information is justified in this matter.

16           The parties acknowledge that this Order does not confer blanket protections on all disclosures  
17 or responses to discovery and that the protection it affords from public disclosure and use extends only  
18 to the limited information or items that are entitled to confidential treatment under the applicable legal  
19 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
20 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule  
21 79-5 sets forth the procedures that must be followed and the standards that will be applied when a  
22 party seeks permission from the court to file material under seal.

23       2.     DEFINITIONS

24           2.1    Challenging Party: a Party or Non-Party that challenges the designation of information  
25 or items under this Order.

1           2.2    “CONFIDENTIAL” Information or Items: information (regardless of how it is  
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
3 Civil Procedure 26(c), and as specific above in Section 1.

4           2.3    Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
5 as their support staff).

6           2.4    Designating Party: a Party or Non-Party that designates information or items that it  
7 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

8           2.5    Disclosure or Discovery Material: all items or information, regardless of the medium  
9 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
10 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
11 discovery in this matter.

12          2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to the  
13 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant  
14 in this action.

15          2.7    House Counsel: attorneys who are employees of a party to this action. House Counsel  
16 does not include Outside Counsel of Record or any other outside counsel.

17          2.8    Non-Party: any natural person, partnership, corporation, association, or other legal  
18 entity not named as a Party to this action.

19          2.9    Outside Counsel of Record: attorneys who are not employees of a party to this action  
20 but are retained to represent or advise a party to this action and have appeared in this action on behalf  
21 of that party or are affiliated with a law firm which has appeared on behalf of that party.

22          2.10 Party: any party to this action, including all of its officers, directors, employees,  
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24          2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material  
25 in this action.

1           2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
2 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,  
3 or retrieving data in any form or medium) and their employees and subcontractors.

4           2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
5 “CONFIDENTIAL.”

6           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
7 Producing Party.

8           3. SCOPE

9           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
10 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
11 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
12 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
13 However, the protections conferred by this Stipulation and Order do not cover the following  
14 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
15 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
16 publication not involving a violation of this Order, including becoming part of the public record  
17 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure  
18 or obtained by the Receiving Party after the disclosure from a source who obtained the information  
19 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected  
20 Material at trial shall be governed by a separate agreement or order.

21           4. DURATION

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

1       5.       DESIGNATING PROTECTED MATERIAL

2           5.1       Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
3 Non-Party that designates information or items for protection under this Order must take care to limit  
4 any such designation to specific material that qualifies under the appropriate standards. The  
5 Designating Party must designate for protection only those parts of material, documents, items, or oral  
6 or written communications that qualify – so that other portions of the material, documents, items, or  
7 communications for which protection is not warranted are not swept unjustifiably within the ambit of  
8 this Order.

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

13           If it comes to a Designating Party’s attention that information or items that it designated for  
14 protection do not qualify for protection, that Designating Party must promptly notify all other Parties  
15 that it is withdrawing the mistaken designation.

16           5.2       Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
17 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
19 the material is disclosed or produced.

20           Designation in conformity with this Order requires:

21           (a) for information in documentary form (e.g., paper or electronic documents, but excluding  
22 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
23 legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions  
24 of the material on a page qualifies for protection, the Producing Party also must clearly identify the  
25 protected portion(s) (e.g., by making appropriate markings in the margins).

26           A Party or Non-Party that makes original documents or materials available for inspection need  
27 not designate them for protection until after the inspecting Party has indicated which material it would  
28

1 like copied and produced. During the inspection and before the designation, all of the material made  
2 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified  
3 the documents it wants copied and produced, the Producing Party must determine which documents,  
4 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
5 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains  
6 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the  
7 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
8 markings in the margins).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
10 Designating Party identify protected testimony

11 (i) on the record, before the close of the deposition, hearing, or other proceeding, all  
12 protected testimony, or

13 (ii) within 7 days following receipt of the deposition, hearing, or proceeding transcript.

14 In circumstances where portions of the deposition, hearing, or proceeding testimony are  
15 designated for protection, the transcript pages containing “Confidential” information must be  
16 separately bound by the court reporter, who must affix to the top of each page the legend  
17 “Confidential,” as instructed by the Designating Party.

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

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
25 to secure protection under this Order for such material. Upon timely correction of a designation, the  
26 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
27 the provisions of this Order.

1       6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

2           6.1       Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
5 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
6 confidentiality designation by electing not to mount a challenge promptly after the original designation  
7 is disclosed.

8           6.2       Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
9 by providing written notice of each designation it is challenging and describing the basis for each  
10 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
11 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
12 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
13 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
14 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
15 Party must explain the basis for its belief that the confidentiality designation was not proper and  
16 must give the Designating Party an opportunity to review the designated material, to reconsider the  
17 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
18 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
19 has engaged in this meet and confer process first or establishes that the Designating Party is  
20 unwilling to participate in the meet and confer process in a timely manner.

21           6.3       Judicial Intervention. If the Parties cannot resolve a challenge without court  
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
23 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 35 days of the initial  
24 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not  
25 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent  
26 declaration affirming that the movant has complied with the meet and confer requirements imposed in  
27 the preceding paragraph. Failure by the Designating Party to make such a motion including the  
28

1 required declaration within 35 days (or 14 days, if applicable) shall automatically waive the  
2 confidentiality designation for each challenged designation. In addition, the Challenging Party may  
3 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,  
4 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion  
5 brought pursuant to this provision must be accompanied by a competent declaration affirming that the  
6 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
16 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
18 categories of persons and under the conditions described in this Order. When the litigation has been  
19 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
20 DISPOSITION).

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

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
24 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
25 information or item designated "CONFIDENTIAL" only to:  
26  
27  
28

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of  
2 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
3 litigation;

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

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

9 (d) the Court and its personnel;

10 (e) court reporters and their staff,

11 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and  
13 Agreement to Be Bound" (Exhibit A);

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

16 (h) any deposition, proceeding, or hearing witness who previously has had access to the  
17 "CONFIDENTIAL" Information or who is currently or was previously an officer, director, employee  
18 or agent of an entity that has had access to the "CONFIDENTIAL" Information;

19 (i) during their depositions, witnesses, and attorneys for witnesses, in the Action who  
20 previously did not have access to the "CONFIDENTIAL" Information, provided that: (1) disclosure  
21 is reasonably necessary, (2) the deposing party requests that the witness and the attorney for the  
22 witness sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and (3) the witness and  
23 the attorney for the witness will not be permitted to keep any confidential information unless they sign  
24 the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the  
25 Designating Party or ordered by the Court. This paragraph does not apply to persons covered under  
26 sections 7.2(a)-(c). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
27 Protected Material must be separately bound by the court reporter and may not be disclosed to anyone  
28

1 except as permitted under this Stipulated Protective Order;

2 (j) any mediator, third-party neutral, or settlement officer, and their supporting personnel,  
3 mutually agreed upon by any of the Parties engaged in settlement discussions; and

4 (k) any other person or entity that Designating Party agrees to in writing.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
6 LITIGATION.

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

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

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

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

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

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

25 The terms of this Order are applicable to information produced by a Non-Party in this action  
26 and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with  
27

1 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
2 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
12 MATERIAL

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

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
23 its modification by the court in the future. This Order shall not be construed to preclude either Party  
24 from asserting in good faith that certain “CONFIDENTIAL” Information or Items require additional  
25 protection. The Parties shall meet and confer to agree upon the terms of such additional protection.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
27 no Party waives any right it otherwise would have to object to disclosing or producing any information  
28

1 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives  
2 any right to object on any ground to use in evidence of any of the material covered by this Protective  
3 Order.

4 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
5 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
6 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
7 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to  
8 a Court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil  
9 Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material  
10 at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If  
11 a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d)  
12 is denied by the court, then the Receiving Party may file the information in the public record pursuant  
13 to Civil Local Rule 79-5(e) unless otherwise instructed by the Court. This paragraph does not apply to  
14 deposition testimony regarding material marked as "CONFIDENTIAL" unless the deposition  
15 testimony itself is marked "CONFIDENTIAL." This paragraph applies only to disclosures of  
16 information marked "CONFIDENTIAL" and does not apply to abstracts, compilations, summaries of  
17 information created by the Receiving Party so long as the abstract, compilation, or summary of  
18 information does not include any information as marked as "CONFIDENTIAL."

19 13. FINAL DISPOSITION

20 Within 90 days after the final disposition of this action, as defined in paragraph 4, each  
21 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
22 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
23 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
24 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
25 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
26 by the 90 day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
27 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type 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 March \_\_\_\_, 2016, in the case of *Kesterson v. Guaranteed Rate, Inc.*, CASE NO.3:15-cv-05430-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 \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type 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: \_\_\_\_\_

