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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN FRANCISCO DIVISION

20 JOYCE BENTON,)	Case No. 3:16-CV-06583-MMC
21 Plaintiff,)	STIPULATED PROTECTIVE ORDER
22 v.)	
23 CLARITY SERVICES, INC., and DOES 1)	
24 through 50, inclusive,)	Hon. Maxine M. Chesney
25 Defendants.)	
26)	

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1 WHEREAS the parties in the action entitled *Benton v. Clarity Services, Inc.* pending in the
2 United States District Court, Northern District of California, Case No. 3:16-cv-06583-MMC (“the
3 Litigation”), anticipate that during the course of the Litigation documents and/or information of a
4 sensitive, private and confidential nature may be produced in the course of discovery or otherwise
5 disclosed or provided, and the parties wish to protect the confidentiality of such documents or
6 information while ensuring that discovery may be pursued with a minimum of delay and expense;

7 THEREFORE the following parties, Plaintiff Joyce Benton (“Plaintiff”) and Defendant
8 Clarity Services, Inc. (“Defendant”) (hereafter “Party or Parties”) hereby stipulate and agree to
9 the following proposed Protective Order Re: Confidential Information (“Protective Order”),
10 subject to court approval:

11 **1. SCOPE OF PROTECTIVE ORDER**

12 a) The protection of this Protective Order may be invoked with respect to any
13 documents, testimony, information, and things (collectively “materials”) produced or created in
14 this action that contain Confidential Information. As used herein, the term “Confidential
15 Information” includes testimony and records, including but not limited to discovery responses,
16 whether hardcopy or electronic, that contain confidential and/or proprietary trade secret
17 information, including, but not limited to, technical and competitively-sensitive information
18 protected by law, and information protected by California’s constitution and common law right to
19 privacy. As set forth below, materials containing Confidential Information may be designated as
20 “Confidential.” Such designation may be made by any Party or non-party producing materials in
21 this action (“Producing Party”), or may be made by a Party who determines, in good faith, that
22 materials produced by a non-party contain “Confidential” information (“Designating Party”) even
23 though not so designated by the Producing Party.

24 b) In the event that additional Parties join or are joined in this litigation, they shall not
25 have access to materials designated as “Confidential” pursuant to this Protective Order until they
26 have executed and, at the request of any Party, filed with the court their agreement to be bound by
27 this Protective Order.

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2. DESIGNATION OF MATERIALS AS CONFIDENTIAL

a) “Confidential” materials shall include only such information as the Producing or Designating Party in good faith contends should be protected pursuant to this Protective Order on the grounds that the information is properly subject to protection under existing California or federal law. Indiscriminate or routinized designations are prohibited.

b) In making the designation of materials pursuant to this Protective Order, the Producing or Designating Party shall give due consideration to whether the information contained in the materials (1) has been produced, disclosed or made available to the public in the past, (2) has been published, communicated or disseminated to others not obligated to maintain the confidentiality of the information contained therein, (3) has not been preserved or maintained in a manner calculated to preserve its confidentiality, or (4) is available from a third party or commercial source that is not obligated to maintain its confidentiality or privacy. The Producing or Designating Party shall also give due consideration to the age of the materials.

c) The protection of this Protective Order may be invoked with respect to materials in the following manner:

i. Documents when produced or otherwise designated shall bear the clear and legible designation “Confidential” on each page of the document, except that in the case of multi-page documents bound together by staple or other permanent binding, the “Confidential” legend need only be affixed to the first page in order for the entire document to be treated as “Confidential.” Documents produced prior to the entry of this Protective Order may be designated as “Confidential” within thirty (30) days after entry, and documents produced by non-parties may be designated “Confidential” by a Party within thirty (30) days after such production.

ii. As to discovery requests or the responses thereto, the pages of such requests or responses containing “Confidential” materials shall be so marked, and the first page of the requests or responses shall bear a legend substantially stating that “This Document Contains ‘Confidential’ Material”;

1 iii. As to deposition testimony, “Confidential” treatment may be invoked by:
2 (1) declaring the same on the record at the deposition with instructions to so designate the
3 cover of the deposition transcript, or (2) designating specific pages as “Confidential” and
4 serving such designations within thirty (30) days of receipt of the transcript of the
5 deposition in which the designations are made. All deposition testimony shall be treated as
6 “Confidential” pending receipt of a transcript of the deposition.

7 d) If any Producing Party inadvertently produces or discloses any “Confidential”
8 information without marking it with an appropriate legend, the Producing Party or a Designating
9 Party shall promptly notify the receiving party that the information should be treated in
10 accordance with the terms of this Protective Order, and shall forward appropriately stamped
11 copies of the items in question. Within five (5) days of the receipt of substitute copies, the
12 receiving party shall return the previously unmarked items and all copies thereof. The inadvertent
13 disclosure shall not be deemed a waiver of confidentiality, and such designation shall be made as
14 soon as possible after the discovery of the inadvertent production or disclosure.

15 **3. CHALLENGES TO “CONFIDENTIAL” DESIGNATION**

16 a) Any Party believing materials designated as “Confidential” by another is not
17 entitled to such designation shall notify the Producing or Designating Party of that belief in
18 writing, provide a brief statement of the basis for that belief with service on all other Parties, and
19 allow ten (10) days for the Producing or Designating Party to respond.

20 b) If a Producing or Designating Party does not modify its designation of the
21 materials in response to a notice pursuant to paragraph 3(a) of this Protective Order, then the
22 Party objecting to the “Confidential” designation may move the court for an order to remove such
23 designation. To maintain “Confidential” status, the burden shall be on the proponent of
24 confidentiality to show that the material or information is entitled to protection under applicable
25 law. Unless and until a “Confidential” designation is voluntarily withdrawn by the Producing or
26 Designating party, or the court issues an order modifying or removing such designation, the
27 provisions of the Protective Order shall continue to apply.

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1 **4. DISCLOSURE OF MATERIALS DESIGNATED AS CONFIDENTIAL**

2 a) Materials designated “Confidential,” as well as summaries, excerpts and extracts
3 thereof, shall not be disclosed to or made accessible to any person except as specifically permitted
4 by this Protective Order. Materials designated “Confidential” shall be used solely in the
5 preparation for trial and/or trial of the Litigation, and shall not be used at any time for any other
6 purpose.

7 b) Materials designated as “Confidential” may be disclosed only to:

8 i. The court, its clerks and research attorneys;

9 ii. Attorneys actively involved in the representation of a Party, their
10 secretaries, paralegals, legal assistants, and other staff actively involved in assisting in the
11 Litigation;

12 iii. In-house attorneys employed by any Party and working on the Litigation,
13 and their secretaries, paralegals, legal assistants, and other staff actively involved in
14 assisting in the Litigation;

15 iv. The Parties, officers and employees of the Parties assisting counsel in the
16 preparation of the case for trial, motion practice or appellate proceedings, provided that
17 the materials designated “Confidential” may be disclosed to such persons only to the
18 extent such disclosure is, in the judgment of counsel, reasonably necessary to counsel’s
19 preparation of the case;

20 v. Any expert or consultant who is retained by any of the Parties or their
21 counsel of record to assist counsel in the Litigation, and any employee of such an expert
22 assisting in the Litigation (hereafter, “Experts”);

23 vi. Any person called to testify as a witness either at a deposition or court
24 proceeding in the Litigation, but only to the extent necessary for the purpose of assisting
25 in the preparation or examination of the witness, and also only if such persons are
26 informed of the terms of this Protective Order, provided with a copy of the Protective
27 Order and agree, on the record, that they are bound by the terms of the Protective Order
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1 and are required not to disclose information contained in the materials designated as
2 “Confidential”;

3 vii. Deposition and court reporters and their support personnel, for purposes of
4 preparing transcripts;

5 viii. Employees of outside copying services and other vendors retained by
6 counsel to assist in the copying, imaging, handling or computerization of documents, but
7 only to the extent necessary to provide such services in connection with the Litigation and
8 only after being informed of the provisions of this Protective Order and agreeing to abide
9 by its terms;

10 ix. Mediators or other Alternative Dispute Resolution neutrals (including their
11 employees, agents and contractors) to whom disclosure is reasonably necessary to their
12 involvement in the Litigation; and

13 x. Any person who created a document or was the recipient thereof.

14 c) Each person to whom “Confidential” materials are disclosed (other than persons
15 described in paragraphs 4(b)(i), (vii), and (viii)) shall execute a non-disclosure agreement in the
16 form attached hereto as Exhibit A prior to their receipt of the Confidential materials, and shall
17 agree to be bound by this Protective Order and to be subject to the jurisdiction of this court for the
18 purposes of enforcement, except that individuals identified in paragraphs 4(b)(ii), (iii), (iv), and
19 (x) shall not be required to execute such an agreement, provided that counsel making disclosure to
20 such individuals advise them of the terms of the Protective Order and they agree to be bound
21 thereby. Counsel disclosing “Confidential” materials to persons required to execute non-
22 disclosure agreements shall retain all such executed agreements. Copies of the executed
23 agreements shall be preserved by counsel and shall be provided to the opposing party if the court
24 so orders upon a showing of good cause.

25 **5. USE IN COURT PROCEEDINGS - FILING OF COURT PAPERS**

26 a) Nothing contained in this Protective Order shall be construed to prejudice any
27 Party’s right to use at trial or in any hearing before the court any Confidential Information,
28 provided that reasonable notice of the intended use of such material shall be given to all counsel

1 of record in order to enable the parties to arrange for appropriate safeguards, and provided that the
2 rules applicable to sealing records, as further addressed below, are followed. Likewise, nothing in
3 this Protective Order shall be dispositive of any issues of relevance, discoverability or
4 admissibility.

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

17 **6. MODIFICATION**

18 Nothing in this Protective Order shall preclude any Party from applying to the court to
19 modify this Protective Order to provide for additional safeguards to ensure the confidentiality of
20 materials produced in this action or otherwise modify this Protective Order for good cause shown.
21 In the event that documents or information that warrant heightened protection as for "Attorney's
22 Eyes Only" are requested to be produced, the Parties agree to negotiate in good faith to modify
23 this Protective Order to provide for such protection.

24 **7. DISPOSITION OF MATERIALS AT CONCLUSION OF CASE**

25 All materials designated as "Confidential" shall remain in the possession of the counsel of
26 record of the Party to whom such materials are produced, and they shall not permit any such
27 materials to leave their possession, except that copies of such materials may be made for the use
28 of persons to whom disclosure may be made under paragraph 4(b) of this Protective Order, or for

1 the purpose of submission to the court under paragraph 5 of this Protective Order. Within sixty
2 (60) days after this action is concluded, including the expiration or exhaustion of all rights to
3 appeal, the Designating Party may request the Receiving Party (a) return all documents and
4 copies containing “Confidential” materials (including, but not limited to, copies in the possession
5 or control of any expert or employee) to the Producing Party, except any copies required to be
6 retained under applicable Rules of Professional Conduct; or (b) promptly destroy all such
7 materials and copies. The Receiving Party shall confirm, in writing, that she or it has returned or
8 destroyed all applicable documents in accordance with this Order.

9 **8. RETENTION OF JURISDICTION**

10 The Court shall retain jurisdiction over all persons to be bound by the terms of this
11 Protective Order, during the pendency of this action and for such time thereafter as is needed to
12 carry out its terms.

13 **9. MISCELLANEOUS ITEMS**

14 Nothing herein shall affect or restrict the rights of any party to use its own documents or
15 information or to use information or documents obtained or developed independently of materials
16 afforded Confidential treatment pursuant to this Order.

17 Third parties who are the subject of discovery requests, subpoenas, or depositions in this
18 case may take advantage of the provisions of this Order by providing Plaintiff and Defendant with
19 written notice that they intend to comply with and be bound by the terms of this Order.

20 Furnishing of consumer report information regarding Plaintiff or the putative class
21 members to persons identified in Paragraph 4 of this Order for the purposes of litigating this case
22 is authorized by this Order pursuant to 15 U.S.C. § 1681b(a)(1).

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1 DATED: April 14, 2017

CHAVEZ & GERTLER LLP

2 FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

3 By: /s/ Christian Schreiber

4 Christian Schreiber

5 DATED: April 14, 2017

TROUTMAN SANDERS LLP

6 By: /s/ David M. Gettings

7 David M. Gettings

8
9 *Additional Counsel for Plaintiff:*

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21 222 Central Park Avenue Suite 2000

22 Virginia Beach, VA 23462

Telephone: (757) 687.7500

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24 **ATTESTATION OF FILER**

25 Pursuant to L.R. 5-1(i)(3), the undersigned hereby attests that all parties have concurred
26 in the filing of this stipulation.

27 /s/ David M. Gettings

28 David M. Gettings

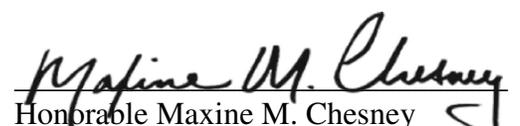
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ORDER

WHEREAS the parties have entered into a Stipulation for Protective Order re:
Confidential Information (“Protective Order”), and good cause appearing therefore, the Court
HEREBY makes the Stipulation the Order of the Court.

IT IS SO ORDERED.

DATE: April 17, 2017


Honorable Maxine M. Chesney
United States District Court Judge

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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, Northern District of California on _____, 2017 in the case of *Benton v. Clarity Services, Inc.*, Case No. 3:16-cv-06583-MMC and the Stipulated Protective Order issued by the Superior Court for the County of Alameda on _____, 2017 in the case of *Benton v. Clarity Services, Inc.*, Case No. RG16833457. I agree to comply with and to be bound by all the terms of these Stipulated Protective Orders 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 these Stipulated Protective Orders to any person or entity except in strict compliance with the provisions of these Orders.

I further agree to submit to the jurisdiction of the appropriate court for the purpose of enforcing the terms of either Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____