

1 THERESE Y. CANNATA (SBN 88032)
 2 KIMBERLY A. ALMAZAN (SBN 288605)
 3 100 Pine Street, Suite 350
 4 San Francisco, CA 94111
 5 Telephone: (415) 409-8900
 6 Facsimile: (415) 409-8904
 7 tcannata@ccolaw.com

8 JAMES J. BROSNAHAN
 9 KEVIN A. CALIA
 10 MORRISON & FOERSTER LLP
 11 425 Market Street
 12 San Francisco, CA 94105-2482
 13 Tel: (415) 268-7000
 14 Fax: (415) 268-7522
 15 E-mail: jbrosnahan@mofoc.com

16 Attorneys for Plaintiffs
 17 ALEXANDER GRAHAM-SULT
 18 and DAVID GRAHAM

19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
 21 **OAKLAND DIVISION**

22 ALEXANDER GRAHAM-SULT, an
 23 individual and DAVID GRAHAM, an
 24 individual,

25 Plaintiffs,

26 v.

27 NICHOLAS P. CLAINOS, an individual,
 28 BILL GRAHAM ARCHIVES LLC, d/b/a
 WOLFGANG'S VAULT, a limited
 liability company, NORTON LLC, a
 limited liability company, and WILLIAM
 E SAGAN, an individual,

Defendants.

Case No. 4:10-cv-04877-CW

**STIPULATION AND ~~PROPOSED~~
 ORDER RE CONFIDENTIAL
 INFORMATION**

Judge: Hon. Claudia Wilken

Plaintiffs ALEXANDER GRAHAM-SULT, an individual, and DAVID GRAHAM, an
 individual ("plaintiffs"), and defendants NICHOLAS P. CLAINOS, an individual, BILL

1 GRAHAM ARCHIVES LLC, d/b/a WOLFGANG'S VAULT, a limited liability company,
2 NORTON LLC, a limited liability company, and WILLIAM E SAGAN, an individual
3 (collectively referred to herein as "defendants") by and through their respective counsel, stipulate
4 and agree as follows.

5
6 **A. Basis for Protective Order**

7 In response to various requests for production of documents, the parties agree to produce
8 responsive, non-privileged, non-work product documents, which may include private and
9 confidential information. Based on the scope of the request, a protective order is required to
10 safeguard against the disbursement of private and confidential information. Nothing in this
11 protective order shall be deemed a waiver by any party to object to production of document(s) or
12 to seek a protective order precluding production of documents.

13
14 NOW THEREFORE, the parties agree as follows:

15
16 **A. Terms of Protective Order:**

17 1. **Confidential Information.** "Confidential Information" shall mean information
18 designated with a Party's Bates prefix along with the term "Confidential" (per Paragraph 2) that
19 falls within one or more of the following categories: (a) information absolutely or qualifiedly
20 prohibited from disclosure by statute; (b) information that pertains to research, technical,
21 commercial or financial information of any individual or entity; (d) personal identity and medical
22 information; (e) income tax returns (including attached schedules and forms), W-2 forms and
23 1099 forms; (f) personnel or employment records of a person who is not a party to the case; and
24 (g) intellectual property rights.

25
26 2. **Method of Designation of Confidential Information:** The Confidential
27 Information, and all copies, shall have a Bates label prefix as follows: "**Confidential.**" As used in
28

1 this agreement, “copies” includes electronic images, duplicates, extracts, summaries or
2 descriptions that contain the Confidential Information. The marking of “**Confidential**” shall be
3 applied at the time documents are produced or disclosed.

4 3. **Nondisclosure of Confidential Information.** A stamped confidential document,
5 and all information contained within a stamped confidential document, may not be disclosed to
6 any person except those persons identified in paragraph 4, herein. A stamped confidential
7 document means any document which bears the word "Confidential" to signify that it contains
8 information subject to protection under this Stipulation and Order.

9
10 4. **Designation Not Determined of Status.** A Party shall not be obligated to
11 challenge the propriety of a confidentially designation at the time made, and a failure to do so
12 shall not preclude a subsequent challenge thereto. The designation or failure to designate material
13 as “Confidential” shall not be determinative of that material’s status as a trade secret or
14 proprietary information. All challenges to the propriety of a confidentiality designation shall first
15 be made in writing by letter or other document identifying the specific material challenged.
16 Within ten (10) business days following the receipt of such a written challenge, the designating
17 party shall substantiate the basis for such designation to the challenging party. Thereafter, the
18 Parties shall attempt to resolve such challenge in good faith on an informal basis. If the dispute
19 cannot be informally resolved, the party challenging the designation may seek appropriate relief
20 from the Court. The burden of proof shall be on the designating party. Any document designated
21 “Confidential” shall enjoy the protection of such designation until the issue relating to the
22 propriety of the designation has been resolved.

23
24 5. **Access and Copying.** Access to the Confidential Information designated as
25 “Confidential” shall be strictly limited to the following persons: (a) the individual parties and
26 employees of a party but only to the extent counsel determines in good faith that the individual
27
28

1 and/or employee's assistance is reasonably necessary to the conduct of the litigation in which the
2 information is disclosed; (b) counsel of record in this action as well as their employees; (c)
3 consultants and experts retained to assist in this action; (d) the Court and its personnel; (e) court
4 reporters and recorders engaged for depositions; (f) those persons specifically engaged for the
5 limited purpose of making copies of documents or organizing or processing documents, including
6 outside vendors hired to process electronically stored documents; and (g) mediator.

8 Before any access to or disclosure of the Confidential Information to any person described
9 in this Paragraph is allowed, that person shall be provided with a copy of this Stipulation and
10 Order, and shall execute a written acknowledgment that the person has received, read, and
11 understood the terms of the Stipulation and Order, agrees to be bound by its terms, and agrees to
12 submit to the personal jurisdiction of this Court. A form of the required written acknowledgment
13 is attached as **Exhibit A**.

15 Counsel shall further agree to take all reasonable and necessary steps to secure the
16 electronic information from access by others, who are not a party to this stipulation.

17 7. **Inadvertent Failure to Designate.** An inadvertent failure to designate a
18 document as Confidential Information does not, standing alone, waive the right to so designate
19 the document. If a Party designates a document as Confidential Information after it was initially
20 produced, the Receiving Party, on notification of the designation, must make a reasonable effort
21 to assure that the document is treated in accordance with the provisions of this Stipulation and
22 Order. No party shall be found to have violated this Stipulation and Order for failing to maintain
23 the confidentiality of material during a time when that material has not been designated
24 Confidential Information, even where the failure to so designate was inadvertent and where the
25 material is subsequently designated Confidential Information.

1 8. **Other Permitted Disclosure.** No person covered by this Stipulation and Order
2 may disclose any Confidential Information or any part thereof to any person who is not expressly
3 allowed access to the Confidential Information by this Stipulation and Order, except by leave of
4 this Court obtained after showing good cause for such disclosure and reasonable notice to the
5 producing Party of the application for leave. In the event that the Confidential Information
6 referenced herein is required to be included in any pleading or document or proceeding, the party
7 seeking to include said documents shall comply with all statutes and rules of court, including the
8 local rules, necessary to secure such information from public access as a result of the court filing.

9
10 10. **Use.** The persons obtaining access to stamped confidential documents under this
11 Stipulation and Order shall use the information solely for the limited purpose of this action, and
12 shall not use such information for any other purpose, including business, governmental,
13 commercial, administrative, or judicial proceedings.

14
15 11. **Use of Confidential Documents or Information at Trial.** Nothing in this Order
16 shall be construed to affect the use of any document, material, or information at any trial or
17 hearing. A party that intends to present or that anticipates that another party may present
18 Confidential Information at a hearing or trial shall bring that issue to the Court's and parties'
19 attention by motion or in a pretrial memorandum without disclosing the Confidential Information.
20 The Court may thereafter make such orders as are necessary to govern the use of such documents
21 or information at trial.

22
23 12. **Additional Safeguards.** Persons having authorized access to Confidential
24 Information shall keep all stamped confidential documents in a safe, secure location.

25 13. **Return of Confidential Information.** Within 60 days after settlement or the final
26 judgment, including the conclusion of all appeals, the Receiving Party, through counsel or
27 personally, shall return to counsel for the Producing Party all Confidential Information and
28

1 documents stamped “Confidential,” including copies as defined in paragraph 2 unless: (1) the
2 document has been offered into evidence or filed without restriction as to disclosure; (2) the
3 parties agree to destruction to the extent practicable in lieu of return and certifies to the Producing
4 Party that it has done so; or (3) as to documents bearing the notations, summations, or other
5 mental impressions of the Receiving Party, that party elects to destroy the documents and certifies
6 to the Producing Party that it has done so.
7

8 14. **Client Consultation.** Nothing in this Stipulation and Order shall prevent or
9 otherwise restrict counsel for the parties from rendering advice to their respective client(s) and, in
10 the course thereof, relying generally on examination of stamped confidential document, or
11 constitute a waiver of the attorney-client privilege and work product privileges.
12

13 15. **Violation.** If a party and/or their counsel violate any term of this Stipulation and
14 Order, the Producing Party may seek appropriate relief with the Court in the above referenced
15 action or in a separate action, including a motion for temporary and permanent injunctive relief,
16 sanctions and any other relief needed to rectify the violation. Nothing in this Stipulation and
17 Order shall be deemed to be a contract or a waiver by counsel for any party of their right to
18 oppose any such motion or defend any such action, and, if appropriate, seek sanctions or other
19 forms of relief for such conduct against the Producing Party.
20

21 16. **Modification.** This Stipulation and Order may be modified only by written
22 agreement of the parties to this agreement.

23 17. **No Waiver.** The disclosure of Confidential Information shall not be deemed a
24 waiver of objections as to admissibility in pretrial and trial proceedings.
25

26 //

27 //

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

Dated: September 26, 2014

Dated: September 26, 2014

CANNATA, CHING & O'TOOLE LLP

WINSTON & STRAWN

By: /s/ Therese Y. Cannata
THERESE CANNATA
Attorneys for Plaintiffs ALEXANDER
GRAHAM-SULT and DAVID
GRAHAM

By: /s/ Erin Ranahan
ERIN RANAHAN
Attorneys for Defendants BILL
GRAHAM ARCHIVES LLC, d/b/a
WOLFGANG'S VAULT, NORTON
LLC, and WILLIAM E. SAGAN
(Per Local Rule 5-1(i)(3), Ms.
Ranahan's concurrence in the filing of
this document was obtained on 5.9.14.)

Dated: September 26, 2014


KATTEN MUCHIN ROSEMAN LLP

By: /s/ Zia Modabber
ZIA MODABBER
Attorneys for Defendant
NICHOLAS P. CLAINOS

ORDER

PURSUANT TO STIPULATION BUT SEE LOCAL RULE 79-5, IT IS
ORDERED.

DATED: OCTOBER 2, 2014



CLAUDIA WILKEN
United States District Judge