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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 THOMAS A. PAULSEN, et al.  
18 Plaintiffs,  
19 v.  
20 CNF, INC., et al.  
21 Defendants.

CASE NO. C 03-03960 JW (PVT)

**STIPULATED PROTECTIVE  
ORDER FOR STANDARD  
LITIGATION**

24 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve  
26 production of confidential, proprietary, or private information for which special  
27 protection from public disclosure and from use for any purpose other than  
28 prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate

1 to and petition the court to enter the following Stipulated Protective Order. The  
2 parties acknowledge that this Order does not confer blanket protections on all  
3 disclosures or responses to discovery and that the protection it affords from public  
4 disclosure and use extends only to the limited information or items that are entitled to  
5 confidential treatment under the applicable legal principles. The parties further  
6 acknowledge, as set forth in Section 8, below, that this Stipulated Protective Order  
7 does not entitle them to file confidential information under seal; Civil Local Rule 79-  
8 5 sets forth the procedures that must be followed and the standards that will be  
9 applied when a party seeks permission from the court to file material under seal.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the  
12 designation of information or items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: Information  
14 (regardless of how it is generated, stored or maintained) or tangible things that qualify  
15 for protection under Federal Rule of Civil Procedure 2 6(c).

16 2.3 Counsel (without qualifier): Outside Counsel of Record  
17 and House Counsel (as well as their support staff).

18 2.4 Designating Party: A Party or Non-Party that designates  
19 information or items that it produces in disclosures or in responses to discovery as  
20 “CONFIDENTIAL.”

21 2.5 Disclosure or Discovery Material: All items or information,  
22 regardless of the medium or manner in which it is generated, stored, or maintained  
23 (including, among other things, testimony, transcripts, and tangible things), that are  
24 produced or generated in disclosures or responses to discovery in this matter.

25 2.6 Expert: A person with specialized knowledge or experience  
26 in a matter pertinent to the litigation who has been retained by a Party or its counsel  
27 to serve as an expert witness or as a consultant in this action.

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

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

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

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

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

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

2.13 Protected Material: Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

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

3. SCOPE

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

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

11 4. DURATION

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

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for  
22 Protection. Each Party or Non-Party that designates information or items for  
23 protection under this Order must take care to limit any such designation to specific  
24 material that qualifies under the appropriate standards. The Designating Party must  
25 designate for protection only those parts of material, documents, items, or oral or  
26 written communications that qualify – so that other portions of the material,  
27 documents, items, or communications for which protection is not warranted are not  
28 swept unjustifiably within the ambit of this Order.

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

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

10                   5.2 Manner and Timing of Designations. Except as otherwise  
 11 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as  
 12 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
 13 protection under this Order must be clearly so designated before the material is  
 14 disclosed or produced.

15                   Designation in conformity with this Order requires:

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

22                   A Party or Non-Party that makes original documents or  
 23 materials available for inspection need not designate them for protection until after  
 24 the inspecting Party has indicated which material it would like copied and produced.  
 25 During the inspection and before the designation, all of the material made available  
 26 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has  
 27 identified the documents it wants copied and produced, the Producing Party must  
 28 determine which documents, or portions thereof, qualify for protection under this

1 Order. Then, before producing the specified documents, the Producing Party must  
 2 affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If  
 3 only a portion or portions of the material on a page qualifies for protection, the  
 4 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
 5 appropriate markings in the margins).

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

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

15 5.3 Inadvertent Failures to Designate. If timely corrected, an  
 16 inadvertent failure to designate qualified information or items does not, standing  
 17 alone, waive the Designating Party’s right to secure protection under this Order for  
 18 such material. Upon timely correction of a designation, the Receiving Party must  
 19 make reasonable efforts to assure that the material is treated in accordance with the  
 20 provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may  
 23 challenge a designation of confidentiality at any time. Unless a prompt challenge to a  
 24 Designating Party’s confidentiality designation is necessary to avoid foreseeable,  
 25 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
 26 delay of the litigation, a Party does not waive its right to challenge a confidentiality  
 27 designation by electing not to mount a challenge promptly after the original  
 28 designation is disclosed.

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

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions

1 thereof. Any motion brought pursuant to this provision must be accompanied by a  
2 competent declaration affirming that the movant has complied with the meet and  
3 confer requirements imposed by the preceding paragraph.

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

12           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

23           7.2    Disclosure of “CONFIDENTIAL” Information or Items.

24 Unless otherwise ordered by the court or permitted in writing by the Designating  
25 Party, a Receiving Party may disclose any information or item designated  
26 “CONFIDENTIAL” only to:

27                   (a)    the Receiving Party’s Outside Counsel of Record in  
28 this action, as well as employees of said Outside Counsel of Record to whom it is

1 reasonably necessary to disclose the information for this litigation and who have  
2 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as  
3 Exhibit A;

4 (b) the officers, directors, and employees (including  
5 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary  
6 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
7 Bound” (Exhibit A);

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

11 (d) the court and its personnel;

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

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

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

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8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
PRODUCED IN OTHER LITIGATION

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

- (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

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

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

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

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

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

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

11 3. make the information requested available for  
12 inspection by the Non-Party.

13 (c) If the Non-Party fails to object or seek a protective order  
14 from this court within 14 days of receiving the notice and accompanying information,  
15 the Receiving Party may produce the Non-Party's confidential information  
16 responsive to the discovery request. If the Non-Party timely seeks a protective order,  
17 the Receiving Party shall not produce any information in its possession or control that  
18 is subject to the confidentiality agreement with the Non-Party before a determination  
19 by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the  
20 burden and expense of seeking protection in this court of its Protected Material.

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED  
22 MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it  
24 has disclosed Protected Material to any person or in any circumstance not authorized  
25 under this Stipulated Protective Order, the Receiving Party must immediately (a)

26 \_\_\_\_\_  
27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence  
28 of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to  
protect its confidentiality interests in this court.

1 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
2 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform  
3 the person or persons to whom unauthorized disclosures were made of all the terms of  
4 this Order, and (d) request such person or persons to execute the “Acknowledgment  
5 and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR  
7 OTHERWISE PROTECTED MATERIAL

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

18 12. MISCELLANEOUS

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

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

27 12.3 Filing Protected Material. Without written permission from  
28 the Designating Party or a court order secured after appropriate notice to all interested

1 persons, a Party may not file in the public record in this action any Protected  
 2 Material. A Party that seeks to file under seal any Protected Material must comply  
 3 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant  
 4 to a court order authorizing the sealing of the specific Protected Material at issue.  
 5 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
 6 establishing that the Protected Material at issue is privileged, protectable as a trade  
 7 secret, or otherwise entitled to protection under the law. If a Receiving Party's request  
 8 to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by  
 9 the court, then the Receiving Party may file the information in the public record  
 10 pursuant to Civil Local Rule 79- 5(e) unless otherwise instructed by the court.

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: May 27, 2010 JEFFER, MANGELS, BUTLER & MARMARO LLP  
ROBERT E. MANGELS  
SUSAN ALLISON

By: \_\_\_\_\_ /s/Susan Allison  
SUSAN ALLISON  
Attorneys for Defendants TOWERS, PERRIN, FORSTER  
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DATED: May 27, 2010 LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.  
TERESA S. RENAKER  
JEFFREY LEWIS  
CATHA WORTHMAN

By: \_\_\_\_\_ /s/Catha Worthman  
CATHA WORTHMAN  
Attorneys for Plaintiffs

DATED: May 27, 2010 RUKIN HYLAND DORIA & TINDALL LLP  
STEVEN M. TINDALL

By: \_\_\_\_\_ /s/Steven M. Tindall  
STEVEN M. TINDALL  
Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: July 26, 2010 \_\_\_\_\_

  
\_\_\_\_\_  
The Honorable Patricia V. Trumbull  
United States Magistrate Judge

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**EXHIBIT A**  
**ACKNOWLEDGEMENT 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 \_\_\_\_\_ [date] in the case of Thomas A. Paulsen, et al. v. CNF, Inc., et al., Case No. C 03-03960 JW (EAI). 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: \_\_\_\_\_  
[printed name]  
Signature: \_\_\_\_\_  
[signature]