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**ATTORNEYS FOR PLAINTIFFS**

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE

20 FELTON A. SPEARS, JR. and  
 21 SIDNEY SCHOLL, on behalf of themselves  
 and all others similarly situated,

22 Plaintiffs,

23 v.

24 FIRST AMERICAN EAPPRAISEIT  
 (a/k/a eAppraiseIT, LLC),  
 25 a Delaware limited liability company;

26 Defendant.

Case No. 5:08-cv-00868 (RMW)(HRL)

**CLASS ACTION**

**STIPULATED PROTECTIVE ORDER**

**(MODIFIED BY THE COURT)**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation would be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
6 Protective Order (“Order”). The parties acknowledge that this Order does not confer blanket  
7 protections on all disclosures or responses to discovery and that the protection it affords extends  
8 only to the limited information or items that are entitled under the applicable legal principles to  
9 treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that  
10 this Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5  
11 sets forth the procedures that must be followed and reflects the standards that will be applied when  
12 a party seeks permission from the Court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Party: any party to this action, including all of the party’s officers, directors,  
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium  
17 or manner generated, stored, or maintained (including, among other things, testimony, transcripts,  
18 or tangible things) that are produced or generated in disclosures or responses to discovery in this  
19 matter.

20 2.3 “Confidential” Information or Items: information (regardless of how generated,  
21 stored or maintained) or tangible things that qualify for protection under standards developed under  
22 Fed. R. Civ. P. 26(c).

23 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely  
24 sensitive “Confidential Information or Items” whose disclosure to another Party or non-party would  
25 create a substantial risk of serious injury that could not be avoided by less restrictive means.

26 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
27 Producing Party.

28 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery

1 Material in this action.

2 2.7 Designating Party: a Party or non-party that designates information or items that it  
3 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential –  
4 Attorneys’ Eyes Only.”

5 2.8 Protected Material: any Disclosure or Discovery Material that is designated as  
6 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

7 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to  
8 represent or advise a Party in this action.

9 2.10 House Counsel: attorneys who are employees of a Party.

10 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
11 support staffs).

12 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to  
13 the litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a  
14 consultant in this action and who is not a past or a current employee of a Party and who, at the time  
15 of retention, is not anticipated to become an employee of a Party. This definition includes a  
16 professional jury or trial consultant retained in connection with this litigation.

17 2.13 Professional Vendors: persons or entities that provide litigation support services  
18 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
19 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

20 **3. SCOPE**

21 The protections conferred by this Order cover not only Protected Material (as defined  
22 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,  
23 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or  
24 counsel to or in court or in other settings that might reveal Protected Material.

25 **4. DURATION**

26 Even after the termination of this litigation, the confidentiality obligations imposed by this  
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
28 otherwise directs. **For a period of six months after the final termination of this action, the court will retain jurisdiction to enforce the terms of this order.**

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  
4 limit any such designation to specific material that qualifies under the appropriate standards. A  
5 Designating Party must take care to designate for protection only those parts of material,  
6 documents, items, or oral or written communications that qualify, so that other portions of the  
7 material, documents, items, or communications for which protection is not warranted are not swept  
8 unjustifiably within the ambit of this Order.

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

13 If it comes to a Party's or a non-party's attention that information or items that it designated  
14 for protection do not qualify for protection at all, or do not qualify for the level of protection  
15 initially asserted, that Party or non-party must promptly notify all other parties that it is  
16 withdrawing the mistaken designation.

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

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (apart from transcripts of depositions or  
23 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each page that contains  
25 protected material. If only a portion or portions of the material on a page qualifies for protection,  
26 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
27 markings in the margins) and must specify, for each portion, the level of protection being asserted  
28 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

1 A Party or non-party that makes original documents or materials available for  
2 inspection need not designate them for protection until after the inspecting Party has indicated  
3 which material it would like copied and produced. During the inspection and before the  
4 designation, all of the material made available for inspection shall be deemed “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
6 documents it wants copied and produced, the Producing Party must determine which documents, or  
7 portions thereof qualify for protection under this Order, then, before producing the specified  
8 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each page that contains  
10 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
11 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
12 markings in the margins) and must specify, for each portion, the level of protection being asserted  
13 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
15 Party or non-party offering or sponsoring the testimony identify on the record, before the close of  
16 the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
17 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
18 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to  
19 protection, and when it appears that substantial portions of the testimony may qualify for  
20 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
21 record (before the deposition or proceeding is concluded) a right to have up to 30 days to identify  
22 the specific portions of the testimony as to which protection is sought and to specify the level of  
23 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
24 EYES ONLY”). Only those portions of the testimony that are appropriately designated for  
25 protection within the 30 days shall be covered by the provisions of this Order.

26 Transcript pages containing Protected Material must be separately bound by the  
27 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or  
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-

1 party offering or sponsoring the witness or presenting the testimony.

2 (c) for information produced in some form other than documentary, and for any  
3 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
4 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information  
6 or item warrant protection, the Producing Party, to the extent practicable, shall identify the  
7 protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential –  
8 Attorneys’ Eyes Only.”

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
10 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’  
11 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under  
12 this Order for such material. If material is appropriately designated as “Confidential” or “Highly  
13 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,  
14 on timely notification of the designation, must make reasonable efforts to assure that the material is  
15 treated in accordance with the provisions of this Order.

## 16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
18 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
19 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
20 its right to challenge a confidentiality designation by electing not to mount a challenge promptly  
21 after the original designation is disclosed.

22 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s  
23 confidentiality designation must do so in good faith and must begin the process by conferring  
24 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel  
25 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief  
26 that the confidentiality designation was not proper and must give the Designating Party an  
27 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
28 designation is offered, to explain the basis for the chosen designation. A challenging Party may

1 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
2 process first.

3         6.3     Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
4 designation after considering the justification offered by the Designating Party may file and serve a  
5 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that  
6 identifies the challenged material and sets forth in detail the basis for the challenge. Each such  
7 motion must be accompanied by a competent declaration that affirms that the movant has complied  
8 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with  
9 specificity the justification for the confidentiality designation that was given by the Designating  
10 Party in the meet and confer dialogue.

11             The burden of persuasion in any such challenge proceeding shall be on the Designating  
12 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
13 question the level of protection to which it is entitled under the Producing Party’s designation.

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  
18 the categories of persons and under the conditions described in this Order. When the litigation has  
19 been terminated, a Receiving Party must comply with the provisions of section 11, 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  
24 by 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             (a) the Receiving Party’s Outside Counsel of record in this action, as well as  
27 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
28 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached

1 hereto as Exhibit A;

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

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

8 (d) the Court and its personnel;

9 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
10 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
11 to Be Bound” (Exhibit A);

12 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
13 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).  
14 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
15 must be separately bound by the court reporter and may not be disclosed to anyone except as  
16 permitted under this Stipulated Protective Order; and

17 (g) the author of the document or the original source of the information.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

19 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
20 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
21 CONFIDENTIAL - ATTORNEYS' EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of record in this action, as well as  
23 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
24 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached  
25 hereto as Exhibit A;

26 (b) House Counsel of a Receiving Party (1) to whom disclosure is reasonably  
27 necessary for this litigation, and (2) who has signed the “Acknowledgment and Agreement to Be  
28 Bound” (Exhibit A);



1 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably  
2 necessary for this litigation and (2) who have signed the “Acknowledgment and Agreement to Be  
3 Bound” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
6 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
7 to Be Bound” (Exhibit A); and

8 (f) the author of the document or the original source of the information.

9 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
10 **OTHER LITIGATION**

11 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
12 would compel disclosure of any information or items designated in this action as  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the  
14 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
15 and in no event more than three court days after receiving the subpoena or order. Such notification  
16 must include a copy of the subpoena or court order.

17 The Receiving Party also must immediately inform in writing the Party who caused the  
18 subpoena or order to issue in the other litigation that some or all the material covered by the  
19 subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a copy  
20 of this Order promptly to the Party in the other action that caused the subpoena or order to issue.

21 The purpose of imposing these duties is to alert the interested parties to the existence of this  
22 Protective Order and to afford the Designating Party in this case an opportunity to try to  
23 protect its confidentiality interests in the court from which the subpoena or order issued. The  
24 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
25 confidential material, and nothing in these provisions should be construed as authorizing or  
26 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

27 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

28 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected

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

7 **10. FILING PROTECTED MATERIAL**

8 Without written permission from the Designating Party or a court order secured after  
9 appropriate notice to all interested persons, a Party may not file in the public record in this action  
10 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
11 with Civil Local Rule 79-5.

12 **11. FINAL DISPOSITION**

13 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
14 after the final termination of this action, each Receiving Party must return all Protected Material to  
15 the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,  
16 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
17 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
18 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
19 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
20 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
21 deadline that identifies (by category, where appropriate) all the Protected Material that was returned  
22 or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,  
23 compilations, summaries or other forms of reproducing or capturing any of the Protected Material.  
24 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,  
25 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if  
26 such materials contain Protected Material. Any such archival copies that contain or constitute  
27 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),  
28 above.

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
3 seek modification of this Order by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party  
5 waives any right it otherwise would have to object to disclosing or producing any information or  
6 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives  
7 any right to object on any ground to use in evidence of any of the material covered by this  
8 Protective Order.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 Dated: October 27, 2009

**DLA PIPER LLP**

11 By: s/Jeffrey D. Rotenberg via email consent .  
12 JEFFREY D. ROTENBERG

13 Attorneys for Defendant  
14 FIRST AMERICAN EAPPRAISEIT

15 **SPECTER SPECTER EVANS & MANOGUE, P.C.**

16 Dated: October 27, 2009

17 By: s/Joseph N. Kravec, Jr.  
18 JOSEPH N. KRAVEC, JR.

19 Attorneys for Plaintiffs  
20 FELTON A. SPEAR, JR. and SIDNEY SCHOLL

21 **AS MODIFIED BY THE COURT,**  
22 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

23 Dated: November 2, 2009

24   
25 Honorable Howard R. Lloyd  
26 United States Magistrate Judge

27  
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare  
5 under penalty of perjury that I have read in its entirety and understand the Stipulated Protective  
6 Order that was issued by the United States District Court for the Northern District of California on  
7 \_\_\_\_\_ in the case of *Spears v. Washington Mutual, Inc., et al.*, Case No. 5:08-cv-00868  
8 (HRL). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order  
9 and I understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
11 any information or item that is subject to this Stipulated Protective Order to any person or entity  
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and  
18 telephone number] as my California agent for service of process in connection with this action or  
19 any proceedings related to enforcement of this Stipulated Protective Order.

20 Date: \_\_\_\_\_

21 City and State where signed: \_\_\_\_\_

22 Signature: \_\_\_\_\_

23  
24 Printed Name: \_\_\_\_\_

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