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3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA

5 PAYMENT LOGISTICS LIMITED,
6
7 Plaintiff,
8 v.
9 LIGHTHOUSE NETWORK, LLC, et al.,
10 Defendants.

Case No.: 18-cv-0786-L-AGS

PROTECTIVE ORDER

11 The Court recognizes that at least some of the materials sought through discovery in
12 the above-captioned action are trade secret or other confidential research, development, or
13 commercial information that, for competitive reasons, is normally kept confidential. The
14 purpose of this Stipulation and Protective Order (“Order”) is to protect the confidentiality
15 of such materials as much as practical during the course of discovery and to expedite the
16 flow of materials, facilitate prompt resolution of disputes over confidentiality, adequately
17 protect confidential materials, and ensure that protection is afforded only to material so
18 entitled. Pursuant to Federal Rules of Civil Procedure Rule 26(c), IT IS HEREBY
19 STIPULATED AND AGREED BY THE PARTIES AND ORDERED BY THE COURT:

20 1. PURPOSE AND LIMITATIONS

21 1.1 Discovery materials covered by this Order shall be used solely for the above-
22 captioned matter except as otherwise provided herein.

23 1.2 This Order is to protect information produced in discovery that is confidential,
24 proprietary, or private in nature and which may require special protection from public
25 disclosure. The parties acknowledge that this Order does not confer blanket protections on
26 all disclosures or responses to discovery and is limited to the protections described herein.

27 1.3 Nothing in this Order shall be construed as requiring a party to produce or
28 disclose information not otherwise required to be produced under the applicable rules or

1 orders of the Court. Production or disclosure of “CONFIDENTIAL,” “HIGHLY
2 CONFIDENTIAL,” or “CONFIDENTIAL – FOR COUNSEL ONLY” material pursuant
3 to this Order shall not prejudice the right of the producing party to maintain trade secret
4 status or confidentiality of that information in other contexts. Nor does this Order prejudice
5 the rights of any party to challenge the protected status pursuant to the provisions below or
6 otherwise object to or challenge materials produced in discovery.

7 **2. DEFINITIONS**

8 2.1 Party: Any named party to this Action, including its officers, directors,
9 employees, consultants, retained experts and outside counsel (and their staff).

10 2.2 Non-Party: Any individual, corporation, association or other natural person or
11 entity that is not a named party to this Action.

12 2.3 Discovery Material: All documents, items, or other information, regardless
13 of the medium or manner generated, stored or maintained (including without limitation,
14 testimony, transcripts, or tangible things) that are produced or generated in response to
15 discovery requests in this matter.

16 2.4 Action: This lawsuit, captioned *Payment Logistics Limited v. Lighthouse*
17 *Networks LLC, et al.*, United States District Court for the Southern District of California
18 Case No. 18-cv-0786-L-AGS, or any related action.

19 2.5 Counsel: Outside counsel of record, and other attorneys, paralegals,
20 secretaries, and other support staff employed in the law firms identified below:

21 MoginRubin LLP
22 600 W. Broadway, Suite 3300
23 San Diego, CA 92101

 Montgomery McCracken Walker &
 Rhoads, LLP
 1735 Market Street
 Philadelphia, PA 19103

25 McNamara Smith LLP
26 655 W. Broadway, Suite 1600
 San Diego, CA 92101

27 Counsel does not include employees of a Party or Non-Party.
28

1 2.6 “CONFIDENTIAL” Information: Information (regardless of how generated,
2 stored or maintained), testimony, or tangible things obtained during discovery in this
3 Action that the Disclosing Party reasonably and in good faith believes contains or would
4 disclose non-public, confidential, personal, proprietary, customer, client or commercially
5 sensitive information, confidential trade secrets, or non-public research that requires
6 protections under this Order including, but not limited to, any information that constitutes
7 confidential information under the Federal Rules of Civil Procedure Rule 26(c) or other
8 applicable law, rule, or regulation. CONFIDENTIAL Information shall not include
9 information that is public or that becomes public other than by act or omission of the
10 Receiving Party including inadvertent disclosure by a Disclosing Party; disclosed in
11 connection with any governmental public filing or securities offering and could not
12 reasonably be assumed to be or have been intended to be kept confidential; or was created
13 earlier than 10 years prior to the date this Action was commenced.

14 2.7 “HIGHLY CONFIDENTIAL” Information: “CONFIDENTIAL” Information
15 that the Disclosing Party reasonably and in good faith believes contains financial data,
16 pricing and cost information, customer lists, business strategy, trade secrets and other
17 commercial or financial information, the disclosure of which to another Party or Non-Party
18 would create a substantial risk of causing the Disclosing Party to suffer significant
19 competitive or commercial disadvantage. HIGHLY CONFIDENTIAL Information shall
20 not include information that is public or becomes public other than by act or omission of
21 the Receiving Party including inadvertent disclosure by a Disclosing Party or by a person
22 who has no legal right to make the information public; disclosed in connection with any
23 governmental public filing or securities offering and could not reasonably be assumed to
24 be or have been intended to be kept confidential; or was created earlier than 10 years from
25 the date this Action was commenced.

26 2.8 “CONFIDENTIAL – FOR COUNSEL ONLY” Information:
27 “CONFIDENTIAL” Information that the Disclosing Party reasonably believes to be so
28 highly sensitive that disclosure may be made to Counsel only and contains customer or

1 client personal data (including but not limited to social security numbers, personal banking
2 and electronic payment information or other personal financial information, personal
3 telephone numbers and addresses), employee information, business strategy or plans, sales
4 or marketing strategies that have been the subject of careful efforts to maintain their secrecy
5 such that disclosure to existing or business competitors or customers would create an actual
6 and significant risk of irreparable injury to the current and ongoing business, commercial,
7 competitive or financial interests of the Disclosing Party, or materials that the Disclosing
8 Party reasonably believes may subject them to some form of retaliation by a Party. Other
9 than Information the Disclosing Party designates based on fear of retaliation,
10 CONFIDENTIAL – FOR COUNSEL ONLY Information shall not include information
11 that is public or becomes public other than by act or omission of the Receiving Party,
12 including inadvertent disclosure by a Disclosing Party, or by a person who has no legal
13 right to make the information public; disclosed in connection with any governmental public
14 filing or securities offering and could not reasonably be assumed to be or have been
15 intended to be kept confidential; or was created earlier than 10 years prior to the date this
16 Action was commenced.

17 2.9 Protected Material: Discovery Material that is designated CONFIDENTIAL,
18 HIGHLY CONFIDENTIAL and CONFIDENTIAL – FOR COUNSEL ONLY.

19 2.10 Disclosing Party: A Party or Non-Party that produces Discovery Materials in
20 this Action.

21 2.11 Receiving Party: Any person or entity that receives Discovery Material from
22 a Disclosing Party in this Action.

23 2.12 Designating Party: A Party or Non-Party that designates Discovery Material
24 as CONFIDENTIAL, HIGHLY CONFIDENTIAL or CONFIDENTIAL – FOR
25 COUNSEL ONLY.

26 2.13 Expert: A person who is not an owner, director, officer or employee of a
27 Party, who has specialized knowledge or experience in a matter pertinent to this litigation,
28 and who has been retained by a Party to serve as an expert witness or consultant in the

1 prosecution or defense of this Action, including his or her employees and support
2 personnel. This definition includes, without limitation, professional jury or trial
3 consultants retained in connection with this litigation.

4 2.14 Professional Vendors: Persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, organizing, storing, or retrieving data in any form or medium,) and their
7 employees and subcontractors.

8 3. GENERAL RULES

9 3.1 Each Party and Non-Party that produces Discovery Material may designate
10 the same as CONFIDENTIAL, HIGHLY CONFIDENTIAL or CONFIDENTIAL – FOR
11 COUNSEL ONLY.

12 3.2 Each Disclosing Party shall make a good faith effort to denominate
13 information as CONFIDENTIAL, HIGHLY CONFIDENTIAL or CONFIDENTIAL –
14 FOR COUNSEL ONLY only as needed so as to provide the greatest level of disclosure
15 possible under the circumstances.

16 3.3 The provisions of this Order cover Protected Material as well as any copies
17 derived therefrom.

18 3.4 Nothing in this Order shall prevent or restrict a Producing Party's disclosure
19 or use of its own Protected Material for any purpose, and nothing in this Order shall prevent
20 a Producing Party from showing its Protected Material to an individual who prepared,
21 received, or is the subject of the Discovery Material.

22 3.5 Nothing in this Order shall restrict in any way the use or disclosure of
23 Discovery Materials that are (i) in the public domain at the time of disclosure, or become
24 part of the public domain after their disclosure as a result of publication not involving a
25 violation of this Order; (ii) known to the Receiving Party prior to disclosure, or obtained
26 by the Receiving Party after disclosure from a source who obtained the information
27 lawfully and under no obligation of confidentiality; (iii) previously produced, disclosed
28 and/or provided during the course of the litigation without a confidentiality designation

1 and not by inadvertence or mistake; (iv) used or disclosed with the consent of the
2 Designating Party; or (v) pursuant to Court order.

3 3.6 Nothing in this Order shall restrict a Producing Party's use or disclosure of
4 Discovery Materials that are designated as Protected Material by another Party or Non-
5 Party, provided that the Producing Party complies with this Order.

6 3.7 Nothing in this Order shall be construed to preclude any Party's or Non-
7 Party's right to file any Protected Material with the Court under seal. This Order is without
8 prejudice to the right of any Party or Non-Party to seek further or additional protection of
9 any material or seek modification of this Order in any way.

10 4. DESIGNATING PROTECTED MATERIAL

11 4.1 The Disclosing Party may, subject to the provisions of this Order, designate
12 Discovery Material as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," OR
13 "CONFIDENTIAL – FOR COUNSEL ONLY." The Disclosing Party shall apply a
14 confidential designation only when the party has a reasonable, good faith basis that the
15 information so designated constitutes "CONFIDENTIAL," "HIGHLY
16 CONFIDENTIAL," OR "CONFIDENTIAL – FOR COUNSEL ONLY" material. The
17 Disclosing Party must take care to limit any such designation to the specific qualifying
18 material.

19 4.2 Except as otherwise provided in this Order, it is stipulated between the Parties
20 or ordered by the Court, that all Discovery Material must be designated for protection under
21 this Order by clearly designating the material before it is disclosed or produced. Mass,
22 indiscriminate, or routinized designations are prohibited unless expressly allowed by this
23 Order or by federal statute or regulation.

24 4.3 The designation of Discovery Materials as either "CONFIDENTIAL,"
25 "HIGHLY CONFIDENTIAL," OR "CONFIDENTIAL – FOR COUNSEL ONLY" shall
26 be made as follows:

27 a) For produced documents, by imprinting the words
28 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," OR "CONFIDENTIAL – FOR

1 COUNSEL ONLY” on the face of each page of a document so designated, and in a
2 similarly conspicuous location for non-document materials.

3 b) For written discovery responses, by imprinting the words
4 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR
5 COUNSEL ONLY” next to or above any response to a discovery request, or on each page
6 of a response if the entire page contains Protected Material.

7 c) For Electronically Stored Information (“ESI”), by either (1) imprinting
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” OR “CONFIDENTIAL – FOR
9 COUNSEL ONLY” on the face of each page of a document so designated; (2) affixing a
10 stamp with “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL –
11 FOR COUNSEL ONLY” on the medium on which the electronic data is stored when
12 copies are delivered to a Receiving Party, provided that all information stored on the
13 medium qualifies as Protected Material; or (3) if it is impractical to stamp the designation
14 on each page, identifying the materials designated “CONFIDENTIAL,” “HIGHLY
15 CONFIDENTIAL,” or “CONFIDENTIAL – FOR COUNSEL ONLY” in the production
16 transmittal cover letter.

17 d) For depositions, by indicating in the record at the deposition which
18 portions of the transcript and/or responses shall be treated as “CONFIDENTIAL,”
19 “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR COUNSEL ONLY.”
20 Alternatively, within fourteen (14) days after closing of the deposition, the Designating
21 Party may designate such transcript or recording or any relevant portion or portions thereof
22 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR
23 COUNSEL ONLY” by notifying all Parties, in writing, of the specific pages and lines of
24 the transcript or recording that are to be treated as Protected Materials and providing the
25 appropriate designation.

26 e) For all other Discovery Material, by conspicuously placing or affixing
27 on each page that contains qualifying information the corresponding “CONFIDENTIAL,”
28 “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR COUNSEL ONLY”

1 designation in such a manner that will not interfere with the legibility thereof.

2 4.4 If a Designating Party comes to realize that material designated for protection
3 does not qualify at all or at the level of initial designation, that party must promptly notify
4 all other parties that it is withdrawing the mistaken designation.

5 5. INADVERTENT FAILURE TO IDENTIFY MATERIALS AS
6 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR

7 COUNSEL ONLY”: Any Party that inadvertently fails to identify Discovery Material as
8 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR
9 COUNSEL ONLY” shall, promptly after its discovery of the oversight, make the
10 appropriate designation. The Designating Party shall provide the Receiving Party written
11 notice of the designation and substituted copies of the pertinent Discovery Material bearing
12 the appropriate designation. The Receiving Party shall thereafter treat the information as
13 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR
14 COUNSEL ONLY.” To the extent such information may have been disclosed to anyone
15 not authorized to receive the “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
16 “CONFIDENTIAL – FOR COUNSEL ONLY” Discovery Material under the terms of this
17 Order, the Receiving Party shall notify the Disclosing Party in writing and make reasonable
18 efforts to retrieve the Discovery Material promptly and avoid any further disclosure.
19 Inadvertent failure to designate qualified Discovery Materials does not, if promptly
20 corrected and standing alone, waive a Designating Party’s right to secure protection under
21 this Order.

22 6. ACCESS TO AND USE OF PROTECTED MATERIALS

23 6.1 Disclosure of CONFIDENTIAL Discovery Materials: Except as otherwise
24 ordered by the Court or agreed to by the Disclosing Party, Discovery Material designated
25 CONFIDENTIAL may be disclosed to:

- 26 a) The parties’ Counsel;
27 b) The parties’ in-house counsel, legal assistants and other legal staff for
28 each of the parties to whom disclosure is reasonably necessary for this Action. Parties that

1 do not employ in-house counsel may each designate, and identify to the other parties, one
2 officer, director or employee in the place of in-house counsel pursuant to this provision;

3 c) The Receiving Party's owners, officers or executives to whom
4 disclosure is reasonably necessary for discovery in this Action;

5 d) The Court and all persons assisting the Court in this Action and any
6 appellate court in this Action;

7 e) Court reporters, their staff, video operators transcribing deposition
8 testimony in this Action and Professional Vendors to whom disclosure is reasonably
9 necessary for discovery in this Action;

10 f) Persons who Counsel have a good faith belief are authors, recipients or
11 subjects (including those referenced as "cc" or "bcc" recipients on a document) of the
12 CONFIDENTIAL Discovery Material or who had access to or authority to access or obtain
13 such CONFIDENTIAL Discovery Material in the normal course of business, including but
14 not limited to such person's co-workers and supervisor(s) at or after the time the Discovery
15 Material was created;

16 g) Any person who is a current employee of the Disclosing Party;

17 h) Any witness who is called, or who Counsel has a good faith belief may
18 be called, to testify at deposition in this Action, provided that such person has either (1)
19 executed the Acknowledgment of Protective Order attached as Exhibit A
20 ("Acknowledgement"); or (2) been provided with a copy of this Order and, as shall be
21 memorialized in the files of the Party seeking the testimony, has been informed of the
22 obligation not to disclose information from Protected Material to persons other than those
23 authorized by this Order;

24 i) Any Expert to whom disclosure is reasonably necessary for this Action,
25 provided that the Expert has executed the Acknowledgment;

26 j) Any Professional Vendors to whom disclosure is reasonably necessary
27 for this litigation;

28 k) Any mediator or arbitrator assigned or retained to hear this Action and

1 their staff; and

2 1) Any other person or entity who counsel for the Disclosing Party agrees
3 in good faith, memorialized in writing, may have access to CONFIDENTIAL Discovery
4 Material or who the Court Orders may have access.

5 6.2 Disclosure of HIGHLY CONFIDENTIAL Discovery Materials: Except as
6 otherwise ordered by the Court or agreed to by the Disclosing Party, Discovery Material
7 designated HIGHLY CONFIDENTIAL may be disclosed to:

8 a) The parties' Counsel;

9 b) No more than four (4) of the Receiving Party's owners, officers or
10 executives and in-house counsel who have signed the Acknowledgement and to whom
11 disclosure is reasonably necessary for discovery in this Action, except that the Disclosing
12 Party may, within five (5) days of learning of the owners', officers' or executives' and in-
13 house counsel's identification, petition the Court to challenge their status as a person to
14 whom HIGHLY CONFIDENTIAL INFORMATION may be disclosed. No HIGHLY
15 CONFIDENTIAL Discovery Material will be disclosed to such person pending the Court's
16 determination absent consent by the Disclosing Party;

17 c) The Court and all persons assisting the Court in this Action and any
18 appellate court in this Action;

19 d) Court reporters, their staff, video operators transcribing deposition
20 testimony in this Action and Professional Vendors to whom disclosure is reasonably
21 necessary for discovery in this Action;

22 e) Persons who Counsel have a good faith belief are authors, recipients or
23 subjects (including those referenced as "cc" or "bcc" recipients on a document) of the
24 HIGHLY CONFIDENTIAL Discovery Material or who had access to or authority to
25 access or obtain such HIGHLY CONFIDENTIAL Discovery Material in the normal course
26 of business, including but not limited to such person's co-workers and supervisor(s) at or
27 after the time the Discovery Material was created;

28 f) Any person who is a current employee of the Disclosing Party;

1 g) Any witness whose deposition has been noticed in this Action, provided
2 that such person has either (1) executed the Acknowledgment; or (2) been provided with a
3 copy of this Order and, as shall be memorialized in the files of the Party seeking the
4 testimony, has been informed of the obligation not to disclose information from Protected
5 Material to persons other than those authorized by this Order;

6 h) Any Expert to whom disclosure is reasonably necessary for this Action,
7 provided that the Expert has executed the Acknowledgment;

8 i) Any Professional Vendors to whom disclosure is reasonably necessary
9 for this litigation;

10 j) Any mediator or arbitrator assigned or retained to hear this Action and
11 their staff; and

12 k) Any other person or entity who counsel for the Disclosing Party agrees
13 in good faith, memorialized in writing, may have access to HIGHLY CONFIDENTIAL
14 Discovery Material or who the Court Orders may have access.

15 6.3 Disclosure of CONFIDENTIAL – COUNSEL EYES ONLY Discovery
16 Materials: Except as otherwise ordered by the Court or agreed to by the Disclosing Party,
17 Discovery Material designated CONFIDENTIAL – COUNSEL EYES ONLY may be
18 disclosed to:

19 a) The parties' Counsel;

20 b) The Court and all persons assisting the Court in this Action and any
21 appellate court in this Action;

22 c) Court reporters, their staff, video operators transcribing deposition
23 testimony in this Action and Professional Vendors to whom disclosure is reasonably
24 necessary for discovery in this Action;

25 d) Persons who Counsel have a good faith belief are authors, recipients,
26 or subjects (including those referenced as "cc" or "bcc" recipients on a document) of the
27 CONFIDENTIAL – COUNSEL EYES ONLY Discovery Material or who had access to or
28 authority to access or obtain such CONFIDENTIAL – COUNSEL EYES ONLY

1 Discovery Material in the normal course of business, including such person's supervisor(s)
2 at or after the time the Discovery Material was created;

3 e) Any person who is a current employee of the Disclosing Party;

4 f) Any witness whose deposition has been noticed in this Action, provided
5 that such person has either (1) executed the Acknowledgment; or (2) been provided with a
6 copy of this Order and, as shall be memorialized in the files of the Party seeking the
7 testimony, has been informed of the obligation not to disclose information from Protected
8 Material to persons other than those authorized by this Order, and further provided that the
9 witness (i) is an author, addressee or recipient of the CONFIDENTIAL – COUNSEL
10 EYES ONLY Discovery Material; or (ii) is a source or subject of the CONFIDENTIAL –
11 COUNSEL EYES ONLY Discovery Material; or (iii) is a current or former employee of
12 the Designating Party;

13 g) Any Expert to whom disclosure is reasonably necessary for this Action,
14 provided that the Expert has executed the Acknowledgment;

15 h) Any Professional Vendors to whom disclosure is reasonably necessary
16 for this litigation;

17 i) Any mediator or arbitrator assigned or retained to hear this Action and
18 their staff; and

19 j) Any other person or entity who counsel for the Disclosing Party agrees
20 in good faith, memorialized in writing, may have access to CONFIDENTIAL – COUNSEL
21 EYES ONLY Discovery Material or who the Court Orders may have access.

22 6.4 For depositions in which CONFIDENTIAL – FOR COUNSEL ONLY
23 Discovery Material is disclosed, the Disclosing Party shall have the right to exclude from
24 attendance any other person other than the deponent, Counsel, the court reporter, and other
25 persons agreed upon pursuant to this Order during such time that CONFIDENTIAL – FOR
26 COUNSEL ONLY material is being presented to the witness.

27 6.5 Counsel shall retain the original copies of executed Acknowledgment forms
28 and need not disclose who has executed them during the course of this Action.

1 7. DISCLOSURE OF DISCOVERY MATERIAL PROTECTED BY THE
2 ATTORNEY-CLIENT PRIVILEGE OR WORK PRODUCT DOCTRINE

3 7.1 This Order is without prejudice to any Disclosing Party's right to assert that
4 any Discovery Material is subject to any applicable claim of privilege or protection
5 including, but not limited to, the attorney-client privilege and work product doctrine, and
6 is without prejudice to any other party's right to contest such a claim of privilege or
7 protection.

8 7.2 Consistent with Federal Rule of Evidence 502(b), if a Party or Non-Party
9 notifies any other Party that it disclosed Discovery Material that is protected from
10 disclosure under the attorney-client privilege, the work product doctrine, or any other
11 applicable privilege or immunity, the disclosure shall not be deemed a waiver in whole or
12 in part of the applicable privilege or protection.

13 7.3 If a Disclosing Party believes that privileged material was produced, the
14 Disclosing Party shall notify in writing any Receiving Party to which it produced the
15 material of the claim of privilege or protection and the basis for such claim to the extent
16 required by Federal Rule of Civil Procedure Rule 26. Within five (5) business days of
17 receipt, the party to whom the privileged material was disclosed shall certify that all such
18 Discovery Material has been returned or destroyed.

19 7.4 If a Receiving Party determines that it has received Discovery Material that is
20 privileged, it shall destroy or return all copies of such Discovery Material to the Disclosing
21 Party within ten (10) days of the discovery of such information and shall certify to the
22 Disclosing Party that the Discovery Material has been destroyed or returned. Where
23 appropriate, the Disclosing Party will provide a redacted version of the Discovery Material
24 to the Receiving Party within five (5) days of being notified of the production of privileged
25 Discovery Material.

26 7.5 Should the party to whom privileged material was produced seek to challenge
27 the designation of such material as privileged or protected, it shall notify the Disclosing
28 Party in writing and not use or disclose the Discovery Material until the claim is resolved.

1 The parties shall meet and confer to resolve any disagreement concerning privilege or
2 protected designations; if the parties cannot resolve their disagreement, the party objecting
3 to the designation may present the issue to the Court for resolution. The Discovery Material
4 shall be treated as protected or privileged pursuant to the designation made by the
5 Producing Party while the motion is pending. If the Court determines that the material is
6 privileged or protected, the Receiving Party shall destroy or return the Discovery Materials
7 to the extent it has not already done so within five (5) days of the Court's ruling.

8 8. NON-PARTY PROTECTED MATERIAL

9 8.1 The Parties shall include a copy of this Order with any discovery request made
10 to a Non-Party in this Action. All Non-Parties receiving this Order shall execute and return
11 the Acknowledgment to the requesting Party. Nothing in this Order prohibits any Party
12 from seeking and enforcing compliance with any discovery request made to a Non-Party.

13 8.2 All Non-Parties to this Action from whom Discovery Material is sought may
14 designate such material as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or
15 "CONFIDENTIAL – FOR COUNSEL ONLY" where appropriate and in a manner
16 consistent with this Order.

17 9. RESPONSIBILITY FOR COMPLIANCE: Counsel who discloses
18 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – FOR
19 COUNSEL ONLY" shall be responsible for assuring compliance with the terms of this
20 Order and shall obtain and retain the original Acknowledgments executed by qualified
21 recipients of the Protected Material. If it comes to a Party's or Non-Party's attention that
22 Discovery Materials that it designated for protection do not qualify for protection at all, or
23 do not qualify for the level of protection initially asserted, that Party or Non-Party must
24 promptly notify all other Parties that it is withdrawing the mistaken designation. All
25 enforcement matters concerning disclosure of Protected Materials shall be governed solely
26 by this Order.

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1 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 10.1 Nothing in this Order shall prevent any Receiving Party from producing any
4 Discovery Materials in its possession to another person in response to a subpoena,
5 compulsory process, or other request, provided, however, that if a Receiving Party receives
6 a subpoena or other compulsory process seeking production or other disclosure of
7 Discovery Materials that have been designated as CONFIDENTIAL, HIGHLY
8 CONFIDENTIAL, or CONFIDENTIAL – FOR COUNSEL ONLY, it shall, unless
9 prohibited by applicable law, give written notice to counsel for the Disclosing Party within
10 three (3) days, and shall enclose with the written notice a copy of the subpoena, compulsory
11 process, or other or other request. The Receiving Party that received the subpoena,
12 compulsory process, or other request shall allow at least twenty-one (21) days’ written
13 notice before production of the requested Discovery materials shall be made, and in no
14 event shall production or other disclosure be made before notice is given to the Disclosing
15 Party, the Disclosing Party has had a reasonably opportunity to seek a protective order
16 against production or other appropriate relief, and the court from which such an order is
17 sought has ruled on the request. Nothing in this Order shall be construed as authorizing or
18 requiring a Receiving Party to disobey any law, court order, information request, or
19 subpoena from any federal or state agency or regulatory organization, or as limiting the
20 authority of the Court, but the Receiving Party must notify the Disclosing Party and refrain
21 from producing materials within the time frames given above in Paragraph 10.

22 11. CHALLENGES TO DESIGNATIONS AND ACCESS: If, at any time, a Party
23 objects to a designation of Discovery Materials as “CONFIDENTIAL,” “HIGHLY
24 CONFIDENTIAL,” or “CONFIDENTIAL – FOR COUNSEL ONLY,” or disputes the
25 access to be accorded such information under the terms of this Order, that Party shall notify
26 the Disclosing Party, in writing, of its disagreement and identify the information or
27 restriction on access in dispute. Following receipt of such notification, counsel for the
28 disputing party and Disclosing Party shall meet and confer in an effort to resolve the

1 disagreement in good faith. If the parties are unable to resolve the disagreement informally,
2 the disputing party may thereafter petition the Court to challenge the designation or
3 restriction on access. While the disputing party must initiate the motion before the Court,
4 it is the burden of the Disclosing Party to demonstrate that the “CONFIDENTIAL,”
5 “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR COUNSEL ONLY”
6 designation is appropriate. The Discovery Material that is the subject of the dispute will
7 retain its original designation until the challenging party’s motion is resolved. A Party
8 does not waive its right to challenge a “CONFIDENTIAL,” “HIGHLY
9 CONFIDENTIAL,” or “CONFIDENTIAL – FOR COUNSEL ONLY” designation by not
10 electing to mount such a challenge promptly after the original designation is made.
11 Nothing in this section or Order shall prejudice a Party’s ability to seek relief from or
12 modify the provisions of this Order or to move the Court concerning the production,
13 exchange, or use of any Discovery Material in the course of this Action not covered by this
14 Order.

15 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL: If a Receiving
16 Party learns that it has inadvertently disclosed Protected Material to any person or in any
17 circumstance not authorized under this Order, the Receiving Party must immediately (a)
18 notify the Designating Party in writing of the unauthorized disclosure; (b) use its best
19 efforts to retrieve all copies of the Protected Material; (c) inform the person or persons to
20 whom the unauthorized disclosures were made of all the terms of this Order; and (d) request
21 such person or persons execute the Acknowledgement. The Parties agree to use best efforts
22 to cure any inadvertent unauthorized disclosure through the process described above. The
23 inadvertent disclosure of Protected Material shall not waive a Designating Party’s right to
24 secure protection under this Order.

25 13. USE AND DISCLOSURE OF INDEPENDENTLY OBTAINED INFORMATION:
26 Nothing herein shall impose any restriction on the use or disclosure by a Party of publicly
27 available information, of information lawfully available to that Party, or of information that
28 lawfully came into the possession of the Party independent of any disclosure of Discovery

1 Material made in this Action.

2 14. ADVICE TO CLIENT: Nothing in this Order will bar or otherwise restrict Counsel
3 from rendering advice to his or her client with respect to this Action or from generally
4 referring to or relying on “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
5 “CONFIDENTIAL – FOR COUNSEL ONLY” Discovery Material in rendering such
6 advice, so long as Counsel does not specifically disclose the substance of the Discovery
7 Material to the client in a manner that would violate the provisions of this Order.

8 15. DURATION, RETURN OF PROTECTED MATERIAL: All provisions of this
9 Order governing the use of “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
10 “CONFIDENTIAL – FOR COUNSEL ONLY” Discovery Material shall continue to be
11 binding after the conclusion of this Action unless otherwise agreed or ordered by the Court.
12 Within sixty (60) days of the conclusion of this Action, whether by entry of a final order
13 of dismissal, judgment, settlement, disposition on appeal or otherwise (and where the time
14 for any further appeals has expired), the Parties shall make commercially reasonable efforts
15 to either return such materials and copies thereof to the Disclosing Party or destroy such
16 materials and certify to that destruction. The Parties are not required to return or destroy
17 any Protected Material that is stored on backup storage media made in accordance with
18 regular data backup procedures for disaster recovery purposes. Counsel shall also be
19 permitted to keep a copy of “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
20 “CONFIDENTIAL – FOR COUNSEL ONLY” to the extent that it is incorporated into any
21 pleadings, motions or other work product. In that case, Counsel shall continue to treat the
22 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – FOR
23 COUNSEL ONLY” Discovery Material in accordance with this Order.

24 16. EFFECT ON OTHER AGREEMENTS: Except as otherwise agreed to in writing,
25 nothing in this Order shall be construed to effect, amend, or modify any existing
26 agreements between any of the Parties or Non-Parties hereto.

27 ///

28 ///

1 17. MISCELLANEOUS PROVISIONS

2 17.1 This Order notwithstanding, no Party waives its rights to make other
3 objections or responses to discovery requests including, without limitation, interrogatories,
4 requests for admissions, requests for production of documents, or questions at deposition.

5 17.2 Nothing within this Order will be construed to prevent disclosure of Protected
6 Material if such disclosure is consistent with the procedures of Paragraph 10 inclusive of
7 subparts, is required by law, or by order of the Court.

8 17.3 A Party that seeks to file any Protected Material under seal must comply with
9 Civil Local Rule 79.2. Protected Material may only be filed under seal pursuant to Court
10 order authorizing the sealing of the specific Protected Material at issue. Motions to file
11 documents under seal shall be filed and served in accordance with the Court's electronic
12 filing procedures. Any Party or other person or entity wishing to oppose the application
13 must contact the chambers of the judge who will rule on the application to notify the Court
14 that such opposition will be filed.

15 17.4 The restrictions and obligations within this Order will not be deemed to
16 prohibit discussions of any Protected Material with anyone if that person already has, or
17 obtains, legitimate possession of that information.

18 17.5 The Court may modify the terms and conditions of this Order for good cause,
19 or in the interest of justice, on its own order at any time in these proceedings. The parties
20 respectfully request that the Court provide them with notice of the Court's intent to modify
21 the Order and the content of those modifications, prior to entry of such an order.

22 **IT IS SO ORDERED.**

23
24 Dated: 9/7/2018


25 Hon. Barbara L. Major
26 United States Magistrate Judge
27
28

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

3 I CERTIFY THAT I HAVE RECEIVED A COPY OF THE PROTECTIVE ORDER
4 DATED _____ (“ORDER”).

5
6 I FURTHER CERTIFY THAT I HAVE READ OR AM OTHERWISE FAMILIAR
7 WITH AND UNDERSTAND THE CONTENTS OF THE ORDER.

8
9 I UNDERSTAND AND AGREE TO COMPLY WITH THE STANDARDS AND
10 PROCEDURES WHICH ARE SET FORTH IN THE ORDER. I UNDERSTAND THAT
11 COMPLIANCE WITH THESE STANDARDS AND PROCEDURES IS A CONDITION
12 OF RECEIPT OF CONFIDENTIAL MATERIAL, HIGHLY CONFIDENTIAL
13 MATERIAL OR CONFIDENTIAL – FOR COUNSEL ONLY MATERIAL AND
14 THAT A FAILURE TO COMPLY MAY CONSTITUTE CONTEMPT OF THE COURT
15 AND/OR VIOLATION OF APPLICABLE LAWS. I AGREE TO CONSENT TO
16 JURISDICTION OF THIS COURT FOR THE PURPOSE OF ENFORCING THIS
17 PROTECTIVE ORDER.

18
19 _____
20 DATE SIGNED

NAME (PLEASE PRINT)

21 _____

ADDRESS

22 _____

TELEPHONE NUMBER

23 _____

SIGNATURE