

1 HOWARD COLE, ESQ.  
 STATE BAR NO. 4950  
 2 HCole@lrlaw.com  
 CHANTEL D. WALKER, ESQ.  
 3 STATE BAR NO. 7640  
 CWalker@lrlaw.com  
 4 JENNIFER HOSTETLER, ESQ.  
 STATE BAR NO. 11994  
 5 JHostetler@lrlaw.com  
 LEWIS AND ROCA LLP  
 6 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, Nevada 89169  
 7 Tel: (702) 949-8200  
 Fax: (702) 949-8398

8 *Attorneys for Defendants/Counterclaimants*

10 **UNITED STATE DISTRICT COURT**  
 11 **DISTRICT OF NEVADA**

12 MARK SCHADT, an individual,  
 13 Plaintiff,

Case No. 2:11-CV-01885

14 vs.

**STIPULATED PROTECTIVE ORDER**

15 ATAL BANSAL, an individual; CHETU,  
 INC., a Florida corporation; DOES I-X,  
 16 inclusive; and ROE CORPORATIONS 1-10  
 inclusive;  
 17 Defendants.

18 ATAL BANSAL, an individual, and CHETU,  
 19 INC., a Florida corporation,  
 20 Counterclaimants,

21 vs.

22 MARK SCHADT, an individual, DOES 1 - 10,  
 23 inclusive; and ROE CORPORATIONS 1-20  
 inclusive,  
 24 Counter-Defendants,

25 All parties, Plaintiff/Counter-Defendant Mark Schadt, and Defendants/Counterclaimants  
 26 Atal Bansal and Chetu, Inc. ("Defendants/Counterclaimants"), stipulate to the following terms  
 27 regarding a Protective Order of confidentiality and request that the Court enter a corresponding  
 28 order:

1           1.       **“Confidential Material.”** As used in this Protective Order, confidential material  
2 shall refer to records and/or things any party designates as confidential information including, but  
3 not limited to: (1) the identity of Chetu, Inc.’s past, present and/or prospective customers except as  
4 otherwise previously disclosed in the parties’ pleadings; (2) Chetu, Inc.’s customer agreements  
5 including, but not limited, service agreements and/or work orders and any drafts thereof; (3)  
6 Defendants/Counterclaimants communications with Chetu, Inc.’s past, present and/or prospective  
7 customers; (3) any and all proprietary and/or otherwise confidential information obtained from  
8 and/or provided by third parties including, but not limited to ,Chetu, Inc.’s past, present and/or  
9 prospective customers; (4) Chetu, Inc.’s financial information including, but not limited to, pricing  
10 information, customer receipts, salary/commission/bonus calculations and/or structure and  
11 payments made thereunder; and (5) any and all other information and/or documents which relate  
12 to Chetu, Inc.’s confidential and/or proprietary information and/or Chetu, Inc.’s trade secrets. All  
13 confidential material is the exclusive, inalienable property of the party producing the materials or  
14 acquiring the same from a non-party.

15           2.       **“Records.”** As used in this Protective Order, records shall mean information that  
16 is in document form, inscribed or otherwise recorded on a tangible medium, or that is stored in an  
17 electronic or other medium and is retrievable in perceivable form. Records include both electronic  
18 records and printed, typewritten, and other tangible records.

19           3.       **Scope.** This Protective Order shall govern confidential material produced or  
20 disclosed by any party in response to formal or informal discovery conducted in this matter.  
21 Nothing in this Protective Order shall be deemed to preclude a party’s right to: (a) oppose  
22 discovery on grounds not addressed under the terms of this Protective Order, or (b) object on any  
23 ground to the admission of any confidential material into evidence at trial. Further, nothing  
24 contained in this Protective Order shall prejudice the right of any party to contest the alleged  
25 relevancy, admissibility, or discoverability of the confidential material sought.

26           4.       **Designation of Confidential Material.** Any party may designate all or any  
27 portion of records and/or things it produces formally or informally to other parties to this litigation  
28 or obtains through subpoena as confidential material. The designation of confidential material

1 shall be made by any practicable means, including placing on the thing so designated, such that it  
2 will not interfere with its legibility, an appropriate notice such as the following: “confidential” or  
3 “confidential material.” Confidential material will be Bates stamped, if appropriate. All records  
4 and things designated as confidential material shall be treated as such pursuant to the terms of this  
5 Protective Order until further order by the Court.

6       5.     **Unintentional Disclosure.** Inadvertent production of any materials without a  
7 confidential designation will not waive a party’s claim that the information is confidential or estop  
8 a party from designating the information as confidential at a later date. If materials have not yet  
9 been designated as confidential, disclosure of them by the other party does not violate this Order.

10       6.     **Objection to Designation.** If any party objects to the designation of any record or  
11 thing as confidential material, that party shall promptly notify all other parties in writing within  
12 thirty (30) days of receipt of the confidential material. The parties shall have a period of no longer  
13 than twenty (20) days to resolve the dispute by agreement. If the dispute is not resolved by  
14 agreement, the designating party shall move to enforce the confidential designation ten (10) days  
15 thereafter. The designating party shall bear the burden of establishing that the materials are  
16 properly designated as confidential. Pending such determination by the Court (or the expiration of  
17 the period in which any party may make a challenge to an adverse ruling, if later), the records  
18 and/or things shall be maintained as confidential material.

19       7.     **Access to Confidential Material.** Access to confidential material shall be limited  
20 to the parties, the attorneys of the parties in this action, the attorneys’ clerical, secretarial, and  
21 support staff, witnesses and potential witnesses, and outside experts or other consultants retained  
22 to assist in the prosecution or defense of this action. Confidential material may also be disclosed  
23 to the persons that authored or created the same. Confidential material, to the extent they discuss a  
24 particular person, may be disclosed to the person so discussed. Such access shall only be for the  
25 purposes of this litigation and not for any other purpose. Parties, witnesses and potential witnesses  
26 may only view confidential materials in the presence of a party’s counsel, they may not be given  
27 copies of any confidential materials.

28     ...

1           8.     **Disclosure.** Confidential materials shall not be disclosed or communicated to any  
2 person except attorneys for the parties and their employees unless and until that person has been  
3 given a copy of this Order and has signed the Promise of Confidentiality, attached as Exhibit A,  
4 that he or she has received and agreed to comply with its terms. Copies of acknowledgement  
5 forms shall be retained by counsel for the party having the same executed and upon a showing of  
6 good cause to the satisfaction of the Court they shall be disclosed to counsel for the opposing  
7 party. The party seeking such disclosure shall have the burden of establishing good cause for such  
8 disclosure.

9           Other than as provided, confidential material may not be disclosed except pursuant to an  
10 order of the Court, or pursuant to a modification of this Order by a writing signed by counsel for  
11 all parties.

12           9.     **Storage of Confidential Material.** Persons receiving confidential information  
13 shall maintain all confidential material in a secure location.

14           10.    **Use of Confidential Material.** Persons receiving confidential information shall  
15 use the confidential material for the purpose of this lawsuit only.

16           (a) No confidential material will be produced, disclosed, or otherwise utilized in any other  
17 litigation, whether or not that litigation involves parties to this case. Further, no confidential  
18 material shall be disseminated to or shared with any organization or entity, or any representative  
19 thereof, that regularly disseminates documents or information regarding documents, including  
20 abstracts or summaries, or any other records as a service to its members, subscribers, or others, or  
21 the representative of such an organization or entity.

22           (b) If any subpoenas, requests for production, or other forms of discovery in connection  
23 with other litigation are served on any authorized person, that authorized person will immediately  
24 notify counsel of record for the party designating the materials as confidential, provide such  
25 counsel with a copy of the subpoena or other discovery request, and will consent to and assist in  
26 obtaining an order from the appropriate court protecting the confidential material from being  
27 disseminated outside the scope of this Protective Order of confidentiality.

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1           11.     **Confidential Material Submitted to the Court.**

2           Any confidential material to be filed with the Court, including but not limited to any  
3 pleading, motion, transcript, videotape, exhibit, photograph, or other material filed with any court  
4 that incorporates or includes confidential material, shall be filed under seal.

5           (a) Confidential material in the form of attachments to summary judgment or dispositive  
6 motions, or documents that are identified in the joint pretrial order, may be filed under seal only  
7 after the Court orders that such documents may be sealed because “compelling reasons” exist to  
8 seal them. *See Kamakana v. City and County of Honolulu*, 447 F. 3d 1172 (9th Cir. 2006).

9           If Plaintiff/Counter-Defendant or Defendants/Counterclaimants intend to file confidential  
10 material as (1) an attachment to a motion for summary judgment or other dispositive motion filed  
11 with the Court, or (2) documents that are identified in the joint pretrial order, the party seeking to  
12 file will notify counsel for the other party at the time of the filing of such motion and will identify  
13 (by bates number) the confidential documents sought to be filed so that the other party can file a  
14 Motion to File Documents Under Seal with the Court. The confidential material will not be filed  
15 until after the Court has ruled on the party’s Motion to File Documents Under Seal.

16           (b) Confidential material that is not being submitted to the Court as part of a summary  
17 judgment or other dispositive motion, or as part of a joint pretrial order, may be filed under seal  
18 without first seeking a further order to seal from the Court. Such documents may be filed under  
19 seal pursuant to this protective order.

20           (c) Confidential material that is submitted to the Court for *in camera* review shall be  
21 submitted in accordance with LR 10-5, i.e., material will be submitted in an envelope that bears a  
22 captioned cover sheet marked “For in camera review only.” When the Court has completed its  
23 review of such materials, the materials will be returned to the party that submitted them.

24           12.     **Depositions.** Discovery material furnished by a party in the form of testimony  
25 shall be designated as confidential either at the time the testimony is taken, or in writing within  
26 twenty (20) days after the transcript of the testimony has been received by the designating party.  
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1 The court reporter for any such testimony shall be informed of this Order by the party making the  
2 confidential designation. The court reporter shall comply with and be bound by this Order. In the  
3 event the party furnishing deposition testimony designates portions or all of that testimony as  
4 confidential, the court reporter shall separately transcribe and submit under seal, to counsel for the  
5 parties, transcriptions of the testimony designated as confidential. Confidential transcripts of  
6 deposition testimony shall be treated the same and afforded the same protections as other material  
7 designated as confidential under this Order.

8 Nothing in this Order shall be construed to preclude counsel from showing confidential  
9 material to any witnesses during depositions in this action, hearings conducted in this action, or at  
10 trial of this action. Any counsel showing confidential material shall have a good faith basis for  
11 making the disclosure and shall act in good faith. In the event any confidential material is shown  
12 to a witness, it shall not lose its confidential status. Counsel for each party shall show confidential  
13 information to a witness in a manner that will protect the confidential material from further  
14 disclosure. Any witness shown confidential material shall state under oath on the record that the  
15 witness agrees to be bound by this Protective Order.

16 13. **Evidence at Trial.** Any party objecting to the introduction at trial of any  
17 confidential materials or that seeks to maintain the confidentiality of such materials at trial shall  
18 make a motion to the court. Such moving party will have the burden of establishing good cause to  
19 bar the introduction of such materials or maintain their confidential status at trial. Such motion  
20 shall be made within ten (10) days of the submission of the parties' final pre-trial order which will  
21 in turn designate all materials, except those used for purposes of impeachment, that a party seeks  
22 to introduce at trial. The designation of confidential materials in the final pre-trial order shall be  
23 by opaque descriptions such as bates number that does not disclose any confidential information.

24 14. **Improper Disclosure.** Should any confidential material be disclosed to any  
25 unauthorized person, the unauthorized person (a) shall be informed promptly of the provisions of  
26 this Protective Order of confidentiality by the party who first learns of the disclosure, and upon  
27 such notice shall be subject to the terms of this Protective Order of confidentiality; (b) shall be  
28 identified immediately to counsel of record for the party designating the materials as confidential

1 and (c) shall be directed, if within control of a party or his/her/its counsel, or otherwise asked, to  
2 sign the Promise of Confidentiality (Exhibit A). At the sole discretion of the party designating the  
3 materials as confidential, such unauthorized person may be required to surrender to the party  
4 designating the materials as confidential all copies of confidential material in such unauthorized  
5 person's possession. The person or entity who caused the unauthorized disclosure shall be  
6 responsible for securing the unauthorized person's assent to the Promise of Confidentiality and for  
7 all reasonable attorneys' fees, costs, and expenses associated with enforcement of this Protective  
8 Order of Confidentiality.

9           15.    **Return of Confidential Material.** The provisions of this Order shall survive the  
10 termination of this action. Within thirty (30) days of the termination of this action (including  
11 appeals), the parties shall return all confidential materials to counsel for the disclosing party,  
12 without keeping any copies (paper, electronic, or otherwise). Any party seeking the return of  
13 materials shall assume the costs of having the same returned.

14           In lieu of returning confidential materials, the party in possession of such information may  
15 destroy such materials. The party in possession of confidential information must notify counsel  
16 for the disclosing party in writing of the destruction of the information within sixty (60) days of  
17 the conclusion of litigation between the parties.

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1 Counsel for the parties are responsible for retrieving from their retained experts and  
2 consultants all confidential materials and returning or destroying them, and for assuring that their  
3 retained experts and consultants do not keep any copies. In lieu of having such materials returned,  
4 such counsel shall secure a written confirmation from their retained expert and consultants that  
5 such materials have been destroyed.

6 **IT IS SO STIPULATED:**

7 LEWIS AND ROCA LLP

MORTENSON & RAFIE, LLP

8 By: *Howard E. Cole*  
9 HOWARD E. COLE  
Nevada State Bar No. 4950  
10 CHANTEL D. WALKER  
Nevada State Bar No. 7640  
11 JENNIFER HOSTETLER  
Nevada State Bar No. 11994  
12 3993 Howard Hughes Pkwy., Ste. 600  
Las Vegas, Nevada 89169

BY: *Darius F. Rafie*  
DARIUS F. RAFIE  
Nevada State Bar No. 6465  
13 Jason M. Peck  
Nevada State Bar No. \_\_\_\_\_  
10781 W. Twain Avenue  
Las Vegas, Nevada 89135

13 *Attorneys for Defendants/Counterclaimants*

*Attorney for Plaintiff/Counter-Defendant*

14 Dated this 1<sup>st</sup> day of June, 2012.

Dated this 1 day of June, 2012.

17 **IT IS SO ORDERED:**

18 *George Foley Jr.*  
19 UNITED STATES MAGISTRATE JUDGE

20 June 6, 2012

21 DATE



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**EXHIBIT A**

**PROMISE OF CONFIDENTIALITY**

State of \_\_\_\_\_ )  
  ) ss.  
County of \_\_\_\_\_ )

1. My name is \_\_\_\_\_. I live at \_\_\_\_\_.

2. I am employed as \_\_\_\_\_ by \_\_\_\_\_.

3. I am aware that a Protective Order has been entered in the lawsuit styled Case No. Case No. 2:11-CV-01885, *Mark Schadt v. Atal Bansal, et al* in the United States District Court, District of Nevada, and a copy of that Protective Order has been given to me.

4. I promise that I will use the confidential material as defined under that Protective Order only in connection with assisting counsel of record for a party in the prosecution or defense of this matter.

5. I promise that I will not disclose or discuss such confidential material with any person other than counsel of record for the parties or members of their staff who are actively engaged in the preparation of this case. If I am an outside expert or consultant retained by a party's counsel, I may discuss and share the materials with my employees who assist me in my work for such counsel.

6. I promise that I will not attempt or assist in any attempt to seek permission from any other court to access the confidential material produced in this matter for use in other litigation or for any other purpose.

7. I understand that any use of the confidential material I obtain, in any manner contrary to the provisions of the Protective Order or this Promise of Confidentiality may subject me to sanctions by this Court, and I agree to the jurisdiction of this Court to enforce any such Order.

8. I expressly consent to the jurisdiction of this Court with respect to matters within the scope of the Protective Order.

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9. I understand that violating the terms of the Protective Order or this Promise of Confidentiality could result in civil sanctions levied by the Court, as well as criminal penalties under state or federal law.

10. Within twenty (20) days of final termination of this action (the earlier of execution of a settlement agreement or entry of a judgment), I will return to counsel from whom I received the confidential material in this case, all confidential material, including all copies, notes, direct quotes, descriptions, summaries, indices, transcripts, renderings, photographs, recordings, floppy discs, compact discs, DVDs, other magnetic or electronic media, and physical or electronic reproductions of every kind thereof. I promise that under no circumstance will I retain any originals or duplicate of any such confidential material. I assume all responsibility for returning the confidential material as set forth herein. Alternatively, I may securely destroy all such materials unless I am instructed to return them. Should I destroy the confidential material, I agree to notify counsel who provided me with such materials in writing of the destruction of the material within sixty (60) days of the conclusion of litigation between the parties. My failure to return or destroy all such confidential material will be deemed a disclosure of the confidential information in violation of the Protective Order of confidentiality and this Promise of Confidentiality, which may subject me to sanctions. I expressly agree to pay all reasonable attorneys' fees, costs, and expenses associated with enforcement of this paragraph in order to obtain my compliance with it, in addition to any sanctions the Court may impose.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date