

Raleigh C. Thompson, NV Bar No. 11296
 Ryan M. Lower, NV Bar No. 9108
 MORRIS LAW GROUP
 411 E. Bonneville Ave., Suite 360
 Las Vegas, Nevada 89101
 Telephone: (702) 474-9400
 Email: rct@morrislawgroup.com
 Email: rml@morrislawgroup.com

Attorneys for Defendant
 PlusFour, Inc.

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

JANET B. HITCHCOCK,)	Case No. 2:17-cv-01382-APG-GWF
)	
Plaintiff,)	
)	STIPULATED PROTECTIVE
v.)	ORDER
)	
PLUSFOUR, INC.,)	
)	
Defendant.)	

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protection on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 **2. "CONFIDENTIAL" MATERIAL**

2 "Confidential" material may include the following documents and
3 tangible things produced or otherwise exchanged¹:

- 4 • Information regarding the financial affairs of the defendants
5 including, without limitation, income, expenses, and bank
6 account information;
- 7 • Information protected by Federal Rule of Civil Procedure 5.2;
- 8 • Information subject to confidentiality agreements with non-
9 parties or any pre-existing confidentiality agreements between
10 the parties;
- 11 • Information that qualifies as a "trade secret" pursuant to the law
12 of the jurisdiction where the trade secret was created, is stored
13 or maintained; and
- 14 • Commercial information that is treated as confidential by the
15 producing party and harm to the producing party's business
16 interests may reasonably result if disclosure is not limited to
17 certain individuals in accordance with this Order;
- 18 • Information appropriately marked as "Confidential" pursuant
19 to the terms of this Order.

20 **3. SCOPE**

21 The protections conferred by this agreement cover not only
22 confidential material (as defined above), but also (1) any information
23 copied or extracted from confidential material; (2) all copies, excerpts,
24

25
26 ¹ These enumerated categories do not prejudice any party from challenging
27 a confidentiality designation pursuant to Section 6 of this Order on the
28 basis that confidential protection is not warranted, even if the information
falls within one of the enumerated categories.

1 summaries, or compilations of confidential material; and (3) any testimony,
2 conversations, or presentations by parties or their counsel that might reveal
3 confidential material. However, the protections conferred by this
4 agreement do not cover information that is in the public domain or
5 becomes part of the public domain through trial or otherwise.

6 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

7 **4.1 Basic Principles.** A receiving party may use confidential
8 material that is disclosed or produced by another party or by a non-party
9 in connection with this case only for prosecuting, defending, or attempting
10 to settle this litigation. Confidential material may be disclosed only to the
11 categories of persons and under the conditions described in this agreement.
12 Confidential material must be stored and maintained by a receiving party
13 at a location and in a secure manner that ensures that access is limited to
14 the persons authorized under this agreement.

15 **4.2 Disclosure of "CONFIDENTIAL" Information or Items.**

16 Unless otherwise ordered by the court or permitted in writing by the
17 designating party, a receiving party may disclose any confidential material
18 only to:

19 (a) the receiving party's counsel of record in this action, as
20 well as employees of counsel to whom it is reasonably necessary to disclose
21 the information for this litigation;

22 (b) the officers, directors, and employees (including in house
23 counsel) of the receiving party to whom disclosure is reasonably necessary
24 for this litigation, unless the parties agree that a particular document or
25 material produced is for Attorney's Eyes Only and is so designated;

26 (c) experts and consultants to whom disclosure is reasonably
27 necessary for this litigation and who have signed the "Acknowledgment
28 and Agreement to Be Bound" (Exhibit A);

1 (d) the court, court personnel, and court reporters and their
2 staff;

3 (e) copy or imaging services retained by counsel to assist in
4 the duplication of confidential material, provided that counsel for the party
5 retaining the copy or imaging service instructs the service not to disclose
6 any confidential material to third parties and to immediately return all
7 originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the
10 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
11 otherwise agreed by the designating party or ordered by the court. Pages
12 of transcribed deposition testimony or exhibits to depositions that reveal
13 confidential material must be separately bound by the court reporter and
14 may not be disclosed to anyone except as permitted under this agreement;

15 (g) the author or recipient of a document containing the
16 information or a custodian or other person who otherwise possessed or
17 knew the information;

18 (h) other parties, or counsel of record for other parties, in this
19 lawsuit who have stipulated to this Order or whose clients are subject to
20 this Order (this exception does not include confidential information or
21 statements made or exchanged in connection with a mediation or
22 settlement to the extent they are considered privileged or protected from
23 discovery under federal or state law); or

24 (i) a Mediator and the Mediator's staff or other Dispute
25 Resolution professional who signed the "Acknowledgment and Agreement
26 to Be Bound" (Exhibit A) in order to conduct a mediation between some or
27 all of the parties.
28

1 **4.3 Filing Confidential Material.** Before filing confidential
2 material or discussing or referencing such material in court filings, the
3 filing party shall make reasonable effort to confer with the designating
4 party to determine whether the designating party will remove the
5 confidential designation, whether the document can be redacted, or
6 whether a motion to seal or stipulation and proposed order is warranted.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 **5.1 Exercise of Restraint and Care in Designating Material for**
9 **Protection.** Each party or non-party that designates information or items
10 for protection under this agreement must take care to limit any such
11 designation to specific material that qualifies under the appropriate
12 standards. The designating party must designate for protection only those
13 parts of material, documents, items, or oral or written communications that
14 qualify, so that other portions of the material, documents, items, or
15 communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified or that have been
19 made for an improper purpose (*e.g.*, to unnecessarily encumber or delay
20 the case development process or to impose unnecessary expenses and
21 burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items
23 that it designated for protection do not qualify for protection, the
24 designating party must promptly notify all other parties that it is
25 withdrawing the mistaken designation.

26 **5.2 Manner and Timing of Designations.** Except as otherwise
27 provided in this agreement (*see, e.g.*, second paragraph of section 5.2
28 below), or as otherwise stipulated or ordered, disclosure or discovery

1 material that qualifies for protection under this agreement must be clearly
2 so designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or
4 electronic documents and deposition exhibits, but excluding transcripts of
5 depositions or other pretrial or trial proceedings), the designating party
6 must affix the word "CONFIDENTIAL" to each page that contains
7 confidential material. If only a portion or portions of the material on a
8 page qualifies for protection, the producing party also must clearly identify
9 the protected portion(s) (e.g., by making appropriate markings in the
10 margins).

11 (b) Testimony given in deposition or in other pretrial or trial
12 proceedings: the parties must identify on the record, during the
13 deposition, hearing, or other proceeding, all protected testimony, without
14 prejudice to their right to so designate other testimony after reviewing the
15 transcript. Any party or non-party may, within fifteen days after receiving
16 a deposition transcript, designate portions of the transcript, or exhibits
17 thereto, as confidential.

18 (c) Other tangible items: the producing party must affix in a
19 prominent place on the exterior of the container or containers in which the
20 information or item is stored the word "CONFIDENTIAL." If only a
21 portion or portions of the information or item warrant protection, the
22 producing party, to the extent practicable, shall identify the protected
23 portion(s).

24 **5.3 Inadvertent Failures to Designate**. If timely corrected, an
25 inadvertent failure to designate qualified information or items does not,
26 standing alone, waive the designating party's right to secure protection
27 under this agreement for such material. Upon timely correction of a
28 designation, the receiving party must make reasonable efforts to ensure

1 that the material is treated in accordance with the provisions of this
2 agreement.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **6.1 Timing of Challenges.** Any party or non-party may challenge
5 a designation of confidentiality at any time. Unless a prompt challenge to a
6 designating party's confidentiality designation is necessary to avoid
7 foreseeable, substantial unfairness, unnecessary economic burdens, or a
8 significant disruption or delay of the litigation, a party does not waive its
9 right to challenge a confidentiality designation by electing not to mount a
10 challenge promptly after the original designation is disclosed.

11 **6.2 Meet and Confer.** The parties must make reasonable effort to
12 resolve any dispute regarding confidential designations without court
13 involvement. Any motion regarding confidential designations or for a
14 protective order must include a certification, in the motion or in a
15 declaration or affidavit, that the movant has engaged, or reasonably
16 attempted to engage, in a good faith meet and confer conference with other
17 affected parties in an effort to resolve the dispute without court action. The
18 certification must list the date, manner, and participants to the conference.
19 A good faith effort to confer requires a face-to-face meeting or a telephone
20 conference.

21 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge
22 without court intervention, the designating party may file and serve a
23 motion to retain confidentiality. The burden of persuasion in any such
24 motion shall be on the designating party. Frivolous challenges, and those
25 made for an improper purpose (*e.g.*, to harass or impose unnecessary
26 expenses and burdens on other parties) may expose the challenging party
27 to sanctions. All parties shall continue to maintain the material in question
28 as confidential until the court rules on the challenge.

**7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION, OR REQUESTED BY ANY NEW
PARTY TO THIS 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 the designating party in writing and 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 agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

If any additional parties are added into this litigation and they request access or copies of CONFIDENTIAL material, those additional parties shall be subject to each and every of the restrictions on such CONFIDENTIAL information set forth herein.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request

1 that such person or persons execute the "Acknowledgment and Agreement
2 to Be Bound" that is attached hereto as Exhibit A.

3 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
4 **OTHERWISE PROTECTED MATERIAL**

5 When a producing party gives notice to receiving parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the receiving parties are those set forth in
8 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
9 to modify whatever procedure may be established in an e-discovery order
10 or agreement that provides for production without prior privilege review.
11 Parties shall confer on an appropriate non-waiver order under Fed. R. Evid.
12 502.

13 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all
15 appeals, each receiving party must return all confidential material to the
16 producing party, including all copies, extracts and summaries thereof.
17 Alternatively, the parties may agree upon appropriate methods of
18 destruction.

19 Notwithstanding this provision, counsel are entitled to retain one
20 archival copy of all documents filed with the court, trial, deposition, and
21 hearing transcripts, correspondence, deposition and trial exhibits, expert
22 reports, attorney work product, and consultant and expert work product,
23 even if such materials contain confidential material. The confidentiality
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obligations imposed by this agreement shall remain in effect until a
designating party agrees otherwise in writing or a court orders otherwise.

MORRIS LAW GROUP

HAINES & KRIEGER, LLC

By: /s/ Raleigh C. Thompson
Raleigh C. Thompson,
NV Bar No. 11296
Ryan M. Lower, NV Bar No. 9108
411 E. Bonneville Ave., Suite 360
Las Vegas, Nevada 89101

By: /s/ David H. Krieger
David H. Krieger,
NV Bar No. 9086
8985 S. Eastern Ave., Suite 350
Henderson, Nevada 89123

Attorneys for Defendant
PlusFour, Inc.

Attorneys for Plaintiff
Janet B. Hitchcock

ORDER

IT IS SO ORDERED.

George Foley Jr.
UNITED STATES MAGISTRATE JUDGE

DATED: August 15, 2017

EXHIBIT A
ACKNOWLEDGMENT 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 District of Nevada in the case of *Janet B. Hitchcock v. PlusFour, Inc.*, Case No. 2:17-cv-01382-APG-GWF. 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 the
 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 District of Nevada for the purpose of enforcing the terms of
 this Stipulated Protective Order, even if such enforcement proceedings
 occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____