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Honorable Richard A. Jones

**U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

DEVON MEYER and BRYCE FINGER, on
behalf of themselves and others similarly
situated,

NO. C12-2013RAJ

Plaintiffs,

STIPULATED PROTECTIVE
ORDER

vs.

RECEIVABLES PERFORMANCE
MANAGEMENT,

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 agreement is consistent with LCR 26(c). It 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.

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2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

Defendant’s Reviewed Financial Statements; Defendant’s Training manuals and training memos to staff; Defendant’s employee personnel files; Source Code and algorithms developed by, and/or on behalf of, Defendant with respect to telephone system dialing instructions; Defendant’s proprietary material satisfying the definition of “Trade Secret” under R.C.W. 19.108.010(4) not otherwise identified above; Plaintiff’s personal financial information.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this

1 agreement. Confidential material must be stored and maintained by a receiving party at a
2 location and in a secure manner that ensures that access is limited to the persons authorized
3 under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the designating party, a receiving party may
6 disclose any confidential material only to:

7 a. the receiving party’s counsel of record in this action, as well as employees of
8 counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 b. the officers, directors, and employees (including in house counsel) of the
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the
11 parties agree that a particular document or material produced is for Attorney’s Eyes Only and
12 is so designated;

13 c. experts and consultants to whom disclosure is reasonably necessary for this
14 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
15 A);

16 d. the court, court personnel, and court reporters and their staff;

17 e. copy or imaging services retained by counsel to assist in the duplication of
18 confidential material, provided that counsel for the party retaining the copy or imaging
19 service instructs the service not to disclose any confidential material to third parties and to
20 immediately return all originals and copies of any confidential material;

21 f. during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
23 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the

1 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
2 confidential material must be separately bound by the court reporter and may not be
3 disclosed to anyone except as permitted under this agreement;

4 g. the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information.

6 4.3 Filing Confidential Material. Before filing confidential material or discussing or
7 referencing such material in court filings, the filing party shall confer with the designating
8 party to determine whether the designating party will remove the confidential designation,
9 whether the document can be redacted, or whether a motion to seal or stipulation and
10 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
11 followed and the standards that will be applied when a party seeks permission from the court
12 to file material under seal.

13 **5. DESIGNATING PROTECTED MATERIAL**

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

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
23 unnecessarily encumber or delay the case development process or to impose unnecessary

1 expenses and burdens on other parties) expose the designating party to sanctions. If it comes
2 to a designating party's attention that information or items that it designated for protection do
3 not qualify for protection, the designating party must promptly notify all other parties that it
4 is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
6 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
7 ordered, disclosure or discovery material that qualifies for protection under this agreement
8 must be clearly so designated before or when the material is disclosed or produced.

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

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

20 (c) Other tangible items: the producing party must affix in a prominent place on the
21 exterior of the container or containers in which the information or item is stored the word
22 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
23

1 protection, the producing party, to the extent practicable, shall identify the protected
2 portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the designating
5 party's right to secure protection under this agreement for such material. Upon timely
6 correction of a designation, the receiving party must make reasonable efforts to ensure that
7 the material is treated in accordance with the provisions of this agreement.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality under

1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
2 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
3 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
4 burdens on other parties) may expose the challenging party to sanctions. All parties shall
5 continue to maintain the material in question as confidential until the court rules on the
6 challenge.

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

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

12 (a) promptly notify the designating party in writing and include a copy of the
13 subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to issue in
15 the other litigation that some or all of the material covered by the subpoena or order is
16 subject to this agreement. Such notification shall include a copy of this agreement; and

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

19 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
21 confidential material to any person or in any circumstance not authorized under this
22 agreement, the receiving party must immediately:

23 (a) notify in writing the designating party of the unauthorized disclosures;

1 (b) use its best efforts to retrieve all unauthorized copies of the protected material;

2 (c) inform the person or persons to whom unauthorized disclosures were made of all
3 the terms of this agreement, and

4 (d) request that such person or persons execute the “Acknowledgment and Agreement
5 to Be Bound” that is attached hereto as Exhibit A.

6 **9. INADVERTENT PRODUCTION OF PRIVILEGED**
7 **OR OTHERWISE PROTECTED MATERIAL**

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

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

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

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
22 work product, even if such materials contain confidential material.
23

1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

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4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 **SIMBURG KETTER SHEPPARD
& PURDY, LLP**

MORGAN & MORGAN, P.A.

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13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14 DATED this 30th day of December, 2013.

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The Honorable Richard A. Jones
United States District Judge

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 under penalty of perjury that I have read in its
5 entirety and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Western District of Washington on _____ in the
7 case of *Devon Meyer and Bryce Finger v. Receivables Performance Management, LLC*,
8 2:12-cv-02013-RAJ. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to
12 this Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

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

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____
21 [Print or Type Name]

22 Signature: _____
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