

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE)
ASSOCIATION, INC., *et al.*,)

Plaintiffs,)

v.)

CITY OF SEATTLE, *et al.*,)

Defendants.)

No. C14-848RAJ

STIPULATED PROTECTIVE ORDER

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.

STIPULATED PROTECTIVE ORDER
(C14-848RAJ)- 1

BANCROFT PLLC
1919 M Street, NW, Suite 470
Washington, DC 20036
(202) 234-0090

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:
4

5 Social Security Numbers, tax returns, financial statements, and any portions of any
6 franchise agreements containing any confidential research, development or commercial
7 information as such terms are used in FRCP 26(c)(1)(G) and any applicable case law
8 interpreting Rule 26(c)(1)(G).
9

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as
12 defined above), but also (a) any information copied or extracted from confidential material; (2)
13 all copies, excerpts, summaries, or compilations of confidential material; and (3) any
14 testimony, conversations, or presentations by parties or their counsel that might reveal
15 confidential material. However, the protections conferred by this agreement do not cover
16 information that is in the public domain or becomes part of the public domain through trial or
17 otherwise.
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21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is
23 disclosed or produced by another party or by a non-party in connection with this case only for
24 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
25 disclosed only to the categories of persons and under the conditions described in this
26 agreement. Confidential material must be stored and maintained by a receiving party at a
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1 location and in a secure manner that ensures that access is limited to the persons authorized
2 under this agreement.

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

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

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

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

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

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

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28 (f) during their depositions, witnesses in the action to whom
29 disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement
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1 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
2 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
3 confidential material must be separately bound by the court reporter and may not be disclosed
4 to anyone except as permitted under this agreement;
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6 (g) the author or recipient of a document containing the information
7 or a custodian or other person who otherwise possessed or knew the information.
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9 4.3 Filing Confidential Material. Before filing confidential material or
10 discussing or referencing such material in court filings, the filing party shall confer with the
11 designating party to determine whether the designating party will remove the confidential
12 designation, whether the document can be redacted, or whether a motion to seal or stipulation
13 and proposed order is warranted. LCR 5(g) sets forth the procedures that must be followed and
14 the standards that will be applied when a party seeks permission from the court to file material
15 under seal.
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18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.
20 Each party or non-party that designates information or items for protection under this
21 agreement must take care to limit any such designation to specific material that qualifies under
22 the appropriate standards. The designating party must designate for protection only those parts
23 of material, documents, items, or oral or written communications that qualify, so that other
24 portions of the material, documents, items, or communications for which protection is not
25 warranted are not swept unjustifiably within the ambit of this agreement.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
3 unnecessarily encumber or delay the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the designating party to sanctions.
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6 If it comes to a designating party's attention that information or items that it designated
7 for protection do not qualify for protection, the designating party must promptly notify all other
8 parties that it is withdrawing the mistaken designation.
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10 5.2 Manner and Timing of Designations. Except as otherwise provided in
11 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
12 or ordered, disclosure or discovery material that qualifies for protection under this agreement
13 must be clearly so designated before or when the material is disclosed or produced.
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16 (a) Information in documentary form: (e.g., paper or electronic
17 documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or
18 trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page
19 that contains confidential material. If only a portion or portions of the material on a page
20 qualifies for protection, the producing party also must clearly identify the protected portion(s)
21 (e.g., by making appropriate markings in the margins).
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24 (b) Testimony given in deposition or in other pretrial or trial
25 proceedings: the parties must identify on the record, during the deposition, hearing, or other
26 proceeding, all protected testimony, without prejudice to their right to so designate other
27 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
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1 receiving a deposition transcript, designate portions of the transcript, or exhibits thereto, as
2 confidential.

3 (c) Other tangible items: the producing party must affix in a
4 prominent place on the exterior of the container or containers in which the information or item
5 is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item
6 warrant protection, the producing party, to the extent practicable, shall identify the protected
7 portion(s).
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10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 designating party's right to secure protection under this agreement for such material. Upon
13 timely correction of a designation, the receiving party must make reasonable efforts to ensure
14 that the material is treated in accordance with the provisions of this agreement.
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16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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18 6.1 Timing of Challenges. Any party or non-party may challenge a
19 designation of confidentiality at any time. Unless a prompt challenge to a designating party's
20 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
21 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
22 does not waive its right to challenge a confidentiality designation by electing not to mount a
23 challenge promptly after the original designation is disclosed.
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25 6.2 Meet and Confer. The parties must make every attempt to resolve any
26 dispute regarding confidential designations without court involvement. Any motion regarding
27 confidential designations or for a protective order must include a certification, in the motion or
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1 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
2 conference with other affected parties in an effort to resolve the dispute without court action.
3 The certification must list the date, manner, and participants to the conference. A good faith
4 effort to confer requires a face-to-face meeting or a telephone conference.
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6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
7 court intervention, the designating party may file and serve a motion to retain confidentiality
8 under LCR 7 (and in compliance with LCR 5(g), if applicable). The burden of persuasion in
9 any such motion shall be on the designating party. Frivolous challenges, and those made for an
10 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
11 parties) may expose the challenging party to sanctions. All parties shall continue to maintain
12 the material in question as confidential until the court rules on the challenge.
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16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
17 OTHER LITIGATION

18 If a party is served with a subpoena or a court order issued in other litigation that
19 compels disclosure of any information or items designated in this action as
20 “CONFIDENTIAL,” that party must:
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22 (a) promptly notify the designating party in writing and include a copy of the
23 subpoena or court order;
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25 (b) promptly notify in writing the party who caused the subpoena or order to
26 issue in the other litigation that some or all of the material covered by the subpoena or order is
27 subject to this agreement. Such notification shall include a copy of this agreement; and
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29 (c) cooperate with respect to all reasonable procedures sought to be pursued by
30 the designating party whose confidential material may be affected.
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1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under this agreement,
4 the receiving party must immediately (a) notify in writing the designating party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 protected material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this agreement, and (d) request that such person or persons execute the
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9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.
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11 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL
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14 When a producing party gives notice to receiving parties that certain inadvertently
15 produced material is subject to a claim of privilege or other protection, the obligations of the
16 receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not
17 intended to modify whatever procedure may be established in an e-discovery order or
18 agreement that provides for production without prior privilege review. Parties shall confer on
19 an appropriate non-waiver order under Fed. R. Evid. 502.
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22 10. NON TERMINATION AND RETURN OF DOCUMENTS
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24 Within sixty (60) days after the termination of this action, including all appeals, each
25 receiving party must return all confidential material to the producing party, including all
26 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
27 methods of destruction.
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29 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
30 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
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1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain confidential material.

3
4 The confidentiality obligations imposed by this agreement shall remain in effect until a
5 designating party agrees otherwise in writing or court orders otherwise.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
7

8 /s H. Christopher Bartolomucci
9 Paul D. Clement*
10 Viet D. Dinh*
11 H. Christopher Bartolomucci*
12 BANCROFT PLLC
13 1919 M Street, NW, Suite 470
14 Washington, DC 20036
15 (202) 234-0090
16 pclement@bancroftpllc.com
17 vdinh@bancroftpllc.com
18 cbartolomucci@bancroftpllc.com
19 *Admitted *pro hac vice*

20 /s David J. Groesbeck, WSBA No. 24749
21 DAVID J. GROESBECK, P.S.
22 1716 Sylvester St. SW
23 Olympia, WA 98501
24 (360) 358-3224

25 313 W. Riverside Ave.
26 Spokane, WA 99201
27 (509) 747-2800
28 david@groesbecklaw.com

29 *Counsel for Plaintiffs*
30 *The International Franchise Association, Inc.,*
31 *Charles Stempler, Katherine Lyons, Mark Lyons,*
32 *Michael Park, and Ronald Oh*

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PETER S. HOLMES
Seattle City Attorney

By: /s/Gregory C. Narver
WSBA #18127
/s/Gary T. Smith
WSBA #29718
/s/John B. Schochet
WSBA #35869
Assistant City Attorneys
Attorneys for Defendants
Seattle City Attorney's Office
600 – 4th Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769
Phone: (206) 684-8233 – Gregory C. Narver
Phone: (206) 733-9318 – Gary T. Smith
Phone: (206) 684-8224 – John B. Schochet
Fax: (206) 684-8284
E-mail: gregory.narver@seattle.gov
E-mail: gary.smith@seattle.gov
E-mail: john.schochet@seattle.gov

SUSMAN GODFREY, LLP

By: /s/ Parker C. Folse, III
WSBA #24895
/s/Edgar G. Sargent
WSBA #28283
/s/Justin A. Nelson
WSBA #31864
/s/Drew D. Hansen
WSBA #30467
1201 Third Avenue, Suite 3800
Seattle, WA 98101-3000
Phone: (206) 516-3860 – Parker C. Folse, III
Phone: (206) 516-3895 – Edgar G. Sargent
Phone: (206) 516-3867 – Justin A. Nelson
Phone: (206) 373-7384 – Drew D. Hansen
Fax: (206) 516-3883
Email: pfolse@susmangodfrey.com
Email: esargent@susmangodfrey.com
Email: jnelson@susmangodfrey.com
Email: dhansen@susmangodfrey.com
Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 DATED this 24th day of September, 2014.

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6 The Honorable Richard A. Jones
7 United States District Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that I have
6 read in its entirety and understand the Stipulated Protective Order that was agreed to by the
7 parties on September 17, 2014, in the case of *International Franchise Association, et al. vs.*
8 *City of Seattle, et al.*, No. C14-848RAJ (W.D. Wash.). I agree to comply with and to be bound
9 by all the terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is subject
12 to this Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Stipulated Protective Order.
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18 I further agree to submit to the jurisdiction of the United States District Court for the
19 Western District of Washington for the purpose of enforcing the terms of this Stipulated
20 Protective Order, even if such enforcement proceedings occur after termination of this action.
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23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____
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