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THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DARREN DONAHUE,

Plaintiff,

No. 2:17-cv-00023-JLR

~~[PROPOSED]~~ STIPULATED  
PROTECTIVE ORDER

v.

RED ROBIN INTERNATIONAL, INC., a  
Nevada Corporation; RED ROBIN GOURMET  
BURGERS, INC., a Delaware Corporation; and  
HAROLD HART and his marital community,

Defendants.

[PROPOSED] STIPULATED PROTECTIVE ORDER  
(Cause No. 2:17-cv-00023-JLR)  
Page 1

**THE BLANKENSHIP LAW FIRM, P.S.**  
1000 Second Avenue, Suite 3250  
Seattle, Washington 98104  
(206) 343-2700

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential, proprietary, or  
3 private information and documents (“Confidential Materials”) for which special protection  
4 may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter  
5 the following Stipulated Protective Order. The parties acknowledge that this agreement is  
6 consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses  
7 to discovery, the protection it affords from public disclosure and use extends only to the  
8 limited information or items that are entitled to confidential treatment under the applicable  
9 legal principles, and it does not presumptively entitle parties to file confidential information  
10 under seal.

11 **2. “CONFIDENTIAL” MATERIAL**

12 Without waiving any objection to the discoverability of such materials, “Confidential  
13 Material” shall include the following documents and tangible things produced or otherwise  
14 exchanged by the parties: (a) medical records and health information; (b) financial information  
15 and proprietary documents not in the public domain or subject to public disclosure; and (c)  
16 wage information, disciplinary records, and personal identifying information or current and  
17 former employees of Defendants (such as social security numbers, birthdates, addresses and  
18 phone numbers).

19 **3. SCOPE**

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

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

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

9 4.2 Disclosure of "CONFIDENTIAL" Materials or Items. Unless otherwise ordered  
10 by the court or permitted in writing by the designating party, a receiving party may disclose  
11 any Confidential Material only to:

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

15 (b) a party, the officers, directors, managers, and in house counsel of the  
16 receiving party to whom disclosure is reasonably necessary for this litigation;

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

19 (Exhibit A);

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

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

25 (f) during their depositions, witnesses or potential witnesses in the action to  
26 whom disclosure is reasonably necessary, and who have signed the "Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or  
2 ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that  
3 reveal confidential material must be separately bound by the court reporter and may not be  
4 disclosed to anyone as permitted under this agreement;

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

7 (h) the videographer who videotapes Confidential Material at a deposition in this  
8 litigation;

9 (i) any mediator or discovery referee in this litigation, and employees and  
10 personnel of said mediator or discovery referee;

11 (j) any other individuals agreed to in writing by the designating party.

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

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each party or non-party that designates information or items for protection under this  
22 agreement must take care to limit any such designation to specific material that qualifies under  
23 the appropriate standards. The designating party must designate for protection only those parts  
24 of material, documents, items, or oral or written communications that qualify, so that other  
25 portions of the material, documents, items, or communications for which protection is not  
26 warranted are not swept unjustifiably within the ambit of this agreement.

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
9 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies  
10 for protection under this agreement must be clearly so designated before or when the material  
11 is disclosed or produced.

12 (a) Information in documentary form: (e.g., paper or electronic documents  
13 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
14 proceedings), (see, e.g., second paragraph of section 5.2(a) below), the designating party must  
15 affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a  
16 portion or portions of the material on a page qualifies for protection, the producing party also  
17 must clearly identify the protected portion(s).

18 (b) Testimony given in deposition or in other pretrial proceedings: the  
19 parties and any participating non-parties must identify on the record, during the deposition, or  
20 other pretrial proceeding, all protected testimony, without prejudice to their right to so  
21 designate other testimony after reviewing the transcript. Any party or non-party may, within  
22 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,  
23 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party  
24 desires to protect confidential information at trial, the issue should be addressed during the pre-  
25 trial conference.  
26

1 (c) Other tangible items: the producing party must affix in a prominent place on the  
2 exterior of the container or containers in which the information or item is stored the word  
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
4 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

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

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
25 intervention, the designating party may file and serve a motion to retain confidentiality under  
26 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of

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

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

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

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

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

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

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

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
20 confidential material to any person or in any circumstance not authorized under this agreement,  
21 the receiving party must immediately (a) notify in writing the designating party of the  
22 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
23 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
24 made of all the terms of this agreement, and (d) request that such person or persons execute the  
25 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.  
26

1 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
2 **PROTECTED MATERIAL**

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

9 **10. NONTERMINATION AND RETURN OF DOCUMENTS**

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

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
17 work product, even if such materials contain confidential material and discovery as part of the  
18 complete client file, which either counsel may maintain for up to six years as recommended by  
19 the ~~WSBA Guide to Best Practices for Client File Retention and Management~~, even if such  
20 materials contain confidential material.

21 The confidentiality obligations imposed by this agreement shall remain in effect until a  
22 designating party agrees otherwise in writing or a court orders otherwise.  
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1 STIPULATED TO this 1<sup>st</sup> day of May, 2017.

2  
3 THE BLANKENSHIP LAW FIRM, P.S.

FISHER & PHILLIPS LLP

4  
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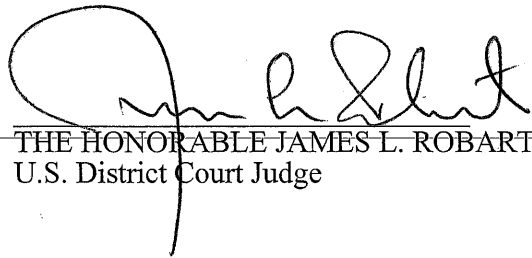
11 *Attorneys for Plaintiff*

*Attorneys for Defendants*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.

7 Dated this 2<sup>ND</sup> day of May, 2017.

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11 THE HONORABLE JAMES L. ROBART  
12 U.S. District Court Judge  
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**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 Western District of Washington on \_\_\_\_\_ [date] in the case of  
 DARREN DONAHUE V. RED ROBIN INTERNATIONAL INC. ET AL., No. 2:17-CV-  
 00023-JLR. 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 this 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  
 Western District of Washington 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: \_\_\_\_\_

**DECLARATION OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date and in the manner listed below I caused delivery of a true copy of the attached document to the following attorneys for Defendant(s):

Catharine M. Morisset, WSBA No. 29682  
Anne M. Milligan, WSBA No. 48994  
Fisher & Phillips LLP  
1201 Third Ave, Suite 2750  
Seattle, WA 98101  
Telephone: (206) 682-2308  
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- by Electronic Mail
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery
- by Notification via E-filing System

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*Attorneys for Defendants*

DATED this 1<sup>st</sup> day of May, 2017, at Seattle, Washington.

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