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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF LOS ANGELES

20 PATRICK GALENTINE, as Receiver for
21 NORDHOFF WAY, LLC,

22 Plaintiff,

23 v.

24 WALGREEN CO., an Illinois Corporation
25 and DOES 1 through 50, inclusive,

26 Defendants.

Case No.: BC443562

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

**Department 39
Hon. Michael Solner**

Filing Date: August 12, 2010
Trial Date: Not yet set

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1 This Stipulated Protective Order is reached by and between the parties to this
2 action, Plaintiff Patrick Galentine, as the court-appointed Receiver for Nordhoff Way,
3 LLC in the action entitled *GE Business Financial Services Inc. v. Tampa Plaza*
4 *Partners, LLC, et al.*, filed on or about March 23, 2009, in the Superior Court of the
5 State of California for the County of Los Angeles, Case No. BC410267 (the
6 "Receivership Action"), and Defendant Walgreen Co. (collectively referred to herein
7 as the "Parties").

8 The Parties recognize that at least some of the documents and information being
9 sought through discovery in this action are, for competitive reasons, normally kept
10 confidential by the Parties. The documents and information to be exchanged
11 throughout the course of the litigation between the Parties may contain trade secret or
12 other confidential research, development, or other commercial information, as is
13 contemplated by California Code of Civil Procedure Section 2031.060(b)(5).

14 The Parties have therefore agreed by and through their respective counsel to be
15 bound by the terms of a Protective Order ("Order") in this action. Accepting these
16 statements by the Parties, the Court agrees to enter a Protective Order in accordance
17 with the following:

18 **I. PURPOSE OF THIS PROTECTIVE ORDER**

19 The purpose of this Stipulated Protective Order is to provide a means for
20 limiting access to and use and disclosure of Confidential Documents or Information
21 that are produced in this action. Any unauthorized disclosure of Confidential
22 Documents or Information in violation of this Order may be subject to discipline by
23 the contempt powers of this Court.

24 **II. DEFINITION OF "CONFIDENTIAL DOCUMENTS OR**
25 **INFORMATION"**

26 "Confidential Documents or Information" are all documents or information that
27 (a) have been produced by either Party; and (b) have been properly designated as
28

1 “Confidential” or “Confidential-Attorney’s Eyes Only” pursuant to paragraph III,
2 below.

3 **III. DESIGNATION OF “CONFIDENTIAL DOCUMENTS OR**
4 **INFORMATION”**

5 The Parties may designate such documents or information as “Confidential” or
6 “Confidential-Attorney’s Eyes Only” in accordance with the following procedures:

7 **A. Criteria for Classification**

8 **1. “Confidential” Designation**

9 Either Party may designate documents or information as “Confidential” if it has
10 a reasonable good faith belief that the disclosure of said documents or information
11 absent the protections of this order will have the effect of causing harm to the
12 producing party’s competitive position or privacy interests or a third party’s privacy
13 interests because the documents or information embody (a) sensitive, competitive or
14 other confidential business information; (b) sensitive financial information; (c)
15 sensitive product information; (d) sensitive personal information; (e) other sensitive
16 material that the Party does not customarily disclose to the public; or (f) documents or
17 information that the Party currently maintains as Confidential and is seeking to
18 maintain as Confidential for purposes of this action.

19 **2. “Confidential-Attorney’s Eyes Only” Designation**

20 The designation “Confidential-Attorney’s Eyes Only” shall be limited to such
21 documents, materials or other things that either Party believes, in good faith, contain
22 information, the disclosure of which is likely to cause harm to its competitive position,
23 or which materials meet the definition of a trade secret set forth in section 3426.1(d)
24 of the California Civil Code or other applicable trade secret statutes including but not
25 limited to customer lists and proprietary software, hardware, or technology.

26 None of the restrictions set forth in this Protective Order shall apply to any
27 documents or information that are or become public knowledge by means not in
28 violation of the provisions of this Protective Order, or any law or statute.

1 **B. Time of Designation**

2 Unless otherwise agreed between counsel for the Parties, the designation of
3 Confidential Documents or Information shall be made at the time of the production of
4 documents or information.

5 **C. Manner of Designation**

6 The designation of Confidential Documents or Information shall be made in the
7 following manner:

8 1. For documents, by placing the notation "Confidential" or "Confidential-
9 Attorney's Eyes Only" on each page of such document;

10 2. For tangible items, including any documents or information produced on
11 magnetic disks or other computer related media, by placing the notation "Confiden-
12 tial" or "Confidential-Attorney's Eyes Only" on the object and, if applicable, on the
13 container thereof or if such are not practicable, as otherwise agreed by the Parties. In
14 the event either Party generates any "hard copy" or printout from any "Confidential
15 Material," that Party must immediately stamp each page "Confidential" or
16 "Confidential-Attorney's Eyes Only," and the hard copy or printout shall be treated as
17 "Confidential Information pursuant to this Stipulated Protective Order."

18 3. For deposition testimony, by noting on the record that information is
19 "Confidential" or "Confidential-Attorneys' Eyes Only" at the time the deposition is
20 taking place.

21 **D. Retroactive Designation**

22 1. Inadvertent production of any Confidential Documents or Information
23 without a designation of confidentiality will not be deemed to waive a later claim as to
24 confidentiality or privilege, or prevent the Party claiming said confidentiality from re-
25 designating such documents or information as "Confidential" or "Confidential-
26 Attorney's Eyes Only" promptly after discovery of the inadvertent production and
27 written notice to the other party.

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1 2. Within ten (10) business days after production or deposition testimony,
2 any Party may retroactively designate (or withdraw a designation) of Confidential
3 Documents or Information under paragraphs III(B) and (C) above, regarding any
4 material that it has produced, provided however, that such retroactive designation (or
5 withdrawal) shall be in accordance with the terms of this Order. Such retroactive
6 designation (or withdrawal) shall be accomplished by notifying counsel for the non-
7 designating Party in writing of such retroactive designation (or withdrawal). Upon
8 receipt of any such written re-designation, counsel (i) shall not make any further dis-
9 closure or communication of such retroactively designated material except as provided
10 for in this Order; (ii) shall take reasonable steps to notify all persons known to have
11 possession of any retroactively designated material of the effect of such re-designation
12 under this Order; and (iii) shall take reasonable steps to procure all copies of such
13 retroactively designated material from any persons known to have possession of any
14 such retroactively designated material who are not entitled to receipt under this Order.

15 **E. Resolution of Disputes Regarding Designation**

16 If either Party wishes to have the “Confidential” or “Confidential-Attorney’s
17 Eyes Only” designation of any particular Confidential Documents or Information
18 removed or changed, that Party must first request in writing that the Party having
19 made the designation at issue change its designation. Thereafter, the Parties shall
20 meet and confer and make good faith efforts to resolve the dispute in the manner
21 provided for in California Code of Civil Procedure Section 2031.060(a).

22 If the designating Party refuses to agree to remove or change the designation,
23 then the Party requesting that the designation be changed shall request the Court for a
24 decision by regular noticed motion in accordance with California Code of Civil Proce-
25 dure Section 2031.060(a). A recipient of Confidential Documents or Information
26 designated as "Confidential" or "Confidential-Attorney's Eyes Only" shall not be
27 obligated to challenge the propriety of such designation at the time the Confidential
28 Documents or Information is received, and a failure to do so shall not preclude a

1 subsequent challenge thereto. At all times during the process of challenging a design-
2 nation, the Parties shall treat the designated material as originally designated until a
3 change is mutually agreed upon or a motion to remove any such confidential
4 designation is granted by the Court.

5 By agreeing to this Protective Order or treating any document or information as
6 "Confidential" or "Confidential-Attorney's Eyes Only," no Party admits the confiden-
7 tiality or waives the right to challenge any other Party's designation of any document,
8 testimony or information as "Confidential" or "Confidential-Attorney's Eyes Only."

9 **F. Designation of Third Party Documents.**

10 Documents and/or information produced by a third party in response to a
11 subpoena or during deposition in the course of this litigation may involve receipt of
12 information, documents, things or testimony which include, contain or comprise pro-
13 tected information that may or may not be appropriate for "Confidential-Attorneys'
14 Eyes Only" or "Confidential" designation under this Order. Unless otherwise agreed
15 in writing between counsel for the Parties, documents and information so produced by
16 a third party shall be treated as follows: First of all, all such documents and
17 information shall automatically be deemed to be and shall be treated as "Confidential-
18 Attorneys' Eyes Only" for five [5] business days following their actual receipt by both
19 counsel for Plaintiffs and counsel for Defendants in this action, in order to enable each
20 such counsel to determine whether in their view any protected information is
21 embodied therein. If no designation of the information as "Confidential" or
22 "Confidential-Attorneys' Eyes Only" by the Designating Party is received by the non-
23 Designating Party within five [5] business days after said production, then the infor-
24 mation will not be protected by this Protective Order except pursuant to subsequent
25 designation by a party hereto or pursuant to a subsequent agreement of the Parties or
26 Court order; if however a written designation of "Confidential" or "Confidential-
27 Attorneys' Eyes Only" is made by a Designating Party and is received by the non-
28 Designating Party within five [5] business days after said production of documents or

1 information by the non-party, then the information will be subject to this Protective
2 Order and will be deemed to be “Confidential” or “Confidential-Attorneys’ Eyes
3 Only” (as requested by the Designating Party); provided, however, that the
4 designation may be challenged in the manner set forth in Section III. E, *supra*.

5 Lastly, to the extent third party documents or information contains information
6 that is confidential and/or proprietary to the third party, said third party can avail itself
7 of the protections set forth in this Order and designate documents and/or information
8 it produces accordingly by executing this Order and agreeing to be bound by its terms.

9 **IV. PERSONS TO WHOM CONFIDENTIAL DOCUMENTS OR**
10 **INFORMATION MAY BE DISCLOSED**

11 **A. Disclosure of Documents or Information Designated as “Confidential”**

12 Documents or Information designated as “Confidential” may be disclosed and
13 copies may be provided only to:

14 1. Counsel of record and in-house counsel for the Parties and such counsel's
15 employees and paralegals to whom disclosure is reasonably necessary in connection
16 with the preparation for and/or prosecution, defense or settlement of the litigation
17 between the Parties;

18 2. Expert witnesses or consultants retained by the Parties or their respective
19 counsel in connection with this action who have complied with paragraph IV(D),
20 below;

21 3. Outside court reporting services and court reporters only as may be
22 reasonably necessary in connection with the preparation or conduct of this action;

23 4. This Court and its personnel, or any other tribunal of competent
24 jurisdiction having involvement in this matter and its personnel; and

25 5. Any mediator or arbitrator selected by the Parties to mediate or arbitrate
26 this action;

27 6. The Parties;

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1 7. The parties to the Receivership Action and representatives of those
2 parties who have complied with paragraph IV(F), below.

3 **B. Disclosure of Documents or Information Designated As “Confidential-
4 Attorney’s Eyes Only”**

5 Confidential Documents or Information designated as “Confidential-Attorney’s
6 Eyes Only” may be disclosed and copies may be provided only to:

7 1. Counsel of record and in-house counsel for the Parties (or parties to the
8 Receivership Action) and such counsel's employees and paralegals to whom
9 disclosure is reasonably necessary in connection with the preparation for and/or
10 prosecution, defense or settlement of the litigation between the Parties.

11 2. Expert witnesses or consultants retained by the Parties or their respective
12 counsel in connection with this action who have complied with paragraph IV(D),
13 below;

14 3. Outside court reporting services and court reporters only as may be
15 reasonably necessary in connection with the preparation or conduct of this action;

16 4. This Court and its personnel, or any other tribunal of competent
17 jurisdiction having involvement in this matter and its personnel; and

18 5. Any mediator or arbitrator selected by the Parties to mediate or arbitrate
19 this action.

20 **C. Additional Authorized Disclosure of Documents or Information Designated
21 as “Confidential” or “Confidential Attorney’s Eyes Only”**

22 Notwithstanding anything to the contrary in paragraphs IV(A) or IV(B) above,
23 particular Confidential Documents or Information that have been designated as
24 “Confidential” or “Confidential-Attorney’s Eyes Only” may be disclosed and copies
25 may be provided:

26 1. To Persons who are explicitly named on the document as the authors or
27 addressees or to persons who may be shown to be an author or recipient or intended
28 recipient of any particular document;

1 2. To any other persons with the prior written consent of the designating
2 Party; and

3 3. To any other persons with the prior authorization of this Court or any
4 other tribunal of competent jurisdiction having involvement in this matter.

5 4. If a document designated as “Confidential” or “Confidential-Attorney’s
6 Eyes Only” refers to the conduct or affairs of a potential witness, the Party’s counsel
7 of record may discuss such conduct or affairs with such person without revealing the
8 existence of the document, or its authors or source.

9 **D. Disclosure to Experts or Consultants**

10 Prior to disclosing or providing copies of any Confidential Documents or Infor-
11 mation to any expert or consultant pursuant to paragraphs IV(A) or IV(B), above, the
12 Parties shall first obtain the acknowledgement of the expert, consultant or anyone else
13 to whom such disclosure will be made to be bound by the terms of this Stipulated
14 Protective Order. Specifically, the expert or consultant shall acknowledge that, during
15 the course of his or her retention, the expert or consultant may have access to, and
16 become acquainted with Confidential Documents or Information, which are regularly
17 used in the operation of the businesses of the designating Party and in which the
18 designating Party has an expectation of confidentiality. The expert or consultant shall
19 agree not to disclose such Confidential Documents or Information, directly or indi-
20 rectly, to any person or entity not subject to this Stipulated Protective Order or use
21 them in any way outside the specific scope of his/her retention as an expert witness in
22 this action, or at any time thereafter. A separate acknowledgement (Exhibit A to this
23 confidentiality agreement) requiring the expert to be bound by these terms shall be
24 secured from the expert.

25 **E. Return of Confidential Documents or Information by Experts and**
26 **Consultants**

27 Confidential Documents or Information disclosed to any expert or consultant
28 may be retained by such expert or consultant provided that such expert or consultant

1 subsequently destroys any and all copies of such Confidential Documents or
2 Information upon the termination of their engagement.

3 **F. Disclosure to the Parties to the Receivership Action**

4 Prior to disclosing or providing copies of any Confidential Documents or Infor-
5 mation to any party to the Receivership Action and/or representatives of those parties
6 pursuant to paragraphs IV(A) or (B), above, the Parties shall first obtain the acknow-
7 ledgment of the party to the Receivership Action, or anyone else to whom such
8 disclosure will be made, that they will be bound by the terms of this Stipulated
9 Protective Order. The party or anyone else to whom such disclosure will be made
10 shall agree not to disclose such Confidential Documents or Information, directly or
11 indirectly, to any person or entity not subject to this Stipulated Protective Order. A
12 separate acknowledgement (Exhibit B to this confidentiality agreement) requiring the
13 party to whom disclosure is made to be bound by these terms shall be secured from
14 that party.

15 **V. USE OF CONFIDENTIAL DOCUMENTS OR INFORMATION**

16 **A. Use of Confidential Documents or Information Generally**

17 Confidential Documents or Information shall only be used by the Parties, their
18 respective agents, and any other persons to whom such Confidential Documents or
19 Information may be disclosed pursuant to this Stipulated Protective Order: (1) in this
20 action; (2) as otherwise compelled by lawful process (provided the designating Party
21 is given a reasonable notice to object); or (3) to law enforcement or as otherwise
22 required by law. Notwithstanding the foregoing, nothing in this Stipulated Protective
23 Order shall prevent or limit the designating Party from disclosing Confidential
24 Documents or Information they so designate.

25 **B. Use of Confidential Documents or Information in the Conduct of this**
26 **Action**

27 1. Confidential Documents or Information may be used by counsel for the
28 non-designating Party in good faith in connection with investigating this action,

1 provided that the Confidential Documents or Information are protected pursuant to the
2 terms and conditions of this Stipulated Protective Order.

3 2. The terms of this Stipulated Protective Order do not apply to evidence
4 presented at court proceedings and/or trial in this matter. Any protective measures
5 relating to Confidential Documents or Information should be taken up with the
6 judicial officer conducting the particular proceeding at the appropriate time.

7 3. If either Party seeks to file pleadings or other documents with this Court
8 that contains the other Party's Confidential Documents or Information, it may do so
9 only if: (a) reasonably necessary to the proceeding; and (b) the filing Party files such
10 documents under seal.

11 **VI. RETURN OF CONFIDENTIAL DOCUMENTS, TESTIMONY, OR**
12 **INFORMATION**

13 Upon written request after the final conclusion of this action, the Parties shall:

14 A. Return to the other Party or destroy any and all Confidential Documents
15 or Information so designated by that Party and all copies thereof in its possession,
16 custody and control, except that one set of such Confidential Documents or
17 Information may be retained by counsel for archival purposes;

18 B. Ensure that all Confidential Documents or Information in the possession,
19 custody or control of any permitted parties or third parties are returned to the
20 designating Party; and

21 C. Destroy all notes, memoranda or other documents (collectively "Notes")
22 that contain excerpts from any of the Confidential Documents or Information, except
23 that one such set of Notes may be retained by counsel for archival purposes.

24 Notwithstanding the foregoing, attorney work product, attorney-client
25 communications, and information derived from Confidential Documents or
26 Information may be retained by the non-designating Party and its counsel.

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1 **VII. NO PROBATIVE VALUE**

2 This Stipulated Protective Order shall not aggregate or diminish any
3 contractual, statutory or other legal obligation or right of any party or person with
4 respect to any Confidential Documents or Information. The fact that information is
5 designated "Confidential" or "Confidential-Attorney's Eyes Only" under the
6 Stipulated Protective Order shall not be deemed to be determinative of what a trier of
7 fact may determine to be confidential or proprietary. This Stipulated Protective Order
8 shall be without prejudice to the right of any party to bring information before this
9 Court, regardless of (a) whether any particular material is or is not Confidential, or (b)
10 whether any particular information or material is or is not entitled to a greater or lesser
11 degree of protection under the terms of this Stipulated Protective Order, provided that
12 in doing so, the party complies with the procedures set forth herein. The fact that any
13 information is disclosed, used, or produced in any proceeding in this action shall not
14 be offered in any other action or proceeding before this or any other Court, agency or
15 tribunal as evidence of or concerning whether or not such information is admissible,
16 confidential or proprietary.

17 **VIII. MODIFICATION OF THIS STIPULATED PROTECTIVE ORDER**

18 The Parties hereto may modify the terms of this Stipulated Protective Order by
19 further stipulation. However, no modification by the Parties shall have the force or
20 effect of a court order unless the Court approves the modification. Alternatively, any
21 party hereto may seek an order of this Court to modify the terms of this Stipulated
22 Protective Order. Any motion seeking such modification must be served upon all
23 counsel of record and filed in accordance with this Court's filing procedures.

24 **IX. EXECUTION AND COUNTERPART**

25 This Stipulated Protective Order may be executed in one or more counterparts,
26 each of which shall be deemed to be an original, but all of which together shall

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1 constitute one and the same instrument. Facsimile signatures shall be binding upon
2 the Parties hereto and may be submitted and considered as originals.

3 **SO STIPULATED.**

4 DATED: February 25, 2011

WILLENKEN WILSON LOH & LIEB LLP

By Jason H. Wilson (wrs)
Jason H. Wilson
Attorneys for Defendant
Walgreen Co.

9 DATED: February 24, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By Stephen R. Thames
Stephen R. Thames
Attorneys for Plaintiff
Patrick Galentine

15 **IT IS SO ORDERED.**

16 Dated: _____

The Honorable Michael C. Solner

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1 EXHIBIT A

2 **ACKNOWLEDGMENT AND AGREEMENT**

3 I, _____, hereby certify and declare as follows:

4 1. My address is _____. My present employer is
5 _____ . My present occupation is _____.

6 2. I have received and carefully read a copy of the Stipulation and Protective
7 Order ("Order") in this action, and fully understand its terms and restrictions. I
8 acknowledge that, during the course of my retention in this litigation, I may have access
9 to, and become acquainted with Confidential Documents or Information, as that term is
10 used in the Order, which are regularly used in the operation of the businesses of the
11 designating Party and in which the designating Party has an expectation of
12 confidentiality. I agree not to disclose such Confidential Documents or Information,
13 directly or indirectly, to any person or entity not subj ect to this Order or use them in any
14 way outside the specific scope of my retention as an expert witness in this action, or at
15 any time thereafter. I agree to be bound by the Order's terms and restrictions. I hereby
16 consent to personal jurisdiction over me by the Court for purposes of enforcing the
17 Stipulation and Protective Order, even if such enforcement proceedings occur after the
18 termination of this action.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

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22 Dated: _____
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EXHIBIT B

ACKNOWLEDGMENT AND AGREEMENT

I, _____, hereby certify and declare as follows:

1. My address is _____. My present employer is _____.
My present occupation is _____.

2. I have received and carefully read a copy of the Stipulation and Protective Order ("Order") in this action, and fully understand its terms and restrictions. I acknowledge that I may have access to, and become acquainted with Confidential Documents or Information, as that term is used in the Order, which are regularly used in the operation of the businesses of the designating Party and in which the designating Party has an expectation of confidentiality. I agree not to disclose such Confidential Documents or Information, directly or indirectly, to any person or entity not subject to this Order. I agree to be bound by the Order's terms and restrictions. I hereby consent to personal jurisdiction over me by the Court for purposes of enforcing the Stipulation and Protective Order, even if such enforcement proceedings occur after the termination of this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____