

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ITHACA CAPITAL INVESTMENTS I, S.A., ITHACA
CAPITAL INVESTMENTS II, S.A., and ORESTES
FINTIKLIS,

Plaintiffs,

v.

TRUMP PANAMA HOTEL MANAGEMENT LLC,
and TRUMP INTERNATIONAL HOTELS
MANAGEMENT, LLC,

Defendants.

Civil Action No. 1:18-cv-390-ER

STIPULATED CONFIDENTIALITY AGREEMENT AND
[PROPOSED] PROTECTIVE ORDER

WHEREAS, Plaintiffs Ithaca Capital Investments I, S.A., Ithaca Capital Investments II, S.A., and Orestes Fintiklis (“Plaintiffs”) and Defendants Trump Panama Hotel Management LLC and Trump International Hotels Management, LLC (“Defendants”) (collectively, “the parties”) assert claims in this action (the “Action”);

WHEREAS, certain documents and information have been and may be sought, produced, exhibited or disclosed in the Action which relate to the parties’ financial information, competitive information, personnel information, development or other kinds of commercially sensitive or otherwise proprietary or personal information, including non-public information;

WHEREAS, the parties in this Action, through their respective counsel, wish to enter into a protective order preserving the confidentiality of and limiting access to certain documents and information produced by any party and their respective counsel or by any non-party in the course of discovery;

IT IS HEREBY STIPULATED AND AGREED THAT:

1. This Protective Order shall govern the treatment of all documents, the information contained therein, and all other information produced or disclosed during the Action, whether revealed in a document, deposition, other testimony, discovery response or otherwise (“Documents or Information”), by any party or other person in this Action including non-parties (the “Producing Party” to any other party (the “Discovering Party”)), when the foregoing are designated by a party (the “Designating Party”) in accordance with the procedures set forth herein. This Protective Order is binding upon the parties to the Action, including any party who may join or seek to join this litigation, and including their respective corporate parents, subsidiaries, affiliates, successors and assigns, and their respective attorneys, agents, representatives, officers, employees and others as set forth in this Protective Order.

2. “Confidential Information” as used herein means any Documents or Information that are designated pursuant to this Protective Order as “CONFIDENTIAL” because counsel determines in good faith that the Documents or Information contain or reflect:

a. Previously nondisclosed (*i.e.*, non-public) financial information (including, without limitation, financial statements (audited or otherwise), trial balance, cash balances, and any other similar reporting);

b. Previously nondisclosed (*i.e.*, non-public) materials relating to the ownership, operation or control of a non-public company;

c. Previously nondisclosed (*i.e.*, non-public) business plans, product development information, or marketing plans;

d. Any information that is of a personal or intimate nature regarding any individual;

e. Any information for which the Producing Party is under a duty of

confidentiality imposed by contract or other source of legal or judicial authority; or

f. Any other category of information hereinafter given confidential status by the Court.

In no event shall material which is available to the public be designated as “CONFIDENTIAL.”

3. Documents or Information shall, if appropriate, be designated as Confidential Information by marking the first page of the document and each subsequent page thereof containing such Documents or Information as “CONFIDENTIAL.” Designations shall be made by the Producing Party, except to the extent that any parties or non-parties produce any Documents or Information developed by, pertaining to, or belonging to a party to this action, in which case counsel for such party reserves the right to designate those documents as Confidential Information pursuant to this Protective Order by providing written notice to the Producing Party, copied to all parties in this action, containing the Bates Stamps of the documents to be designated and the corresponding designations.

4. Counsel for any Designating Party shall have the right to exclude from depositions, other than the deponent and the deponent’s counsel, any person who is not authorized by this Protective Order to receive or access Documents or Information based on the designation of such Documents or Information. Deponents shall not be shown Documents or Information to which they are not entitled pursuant to the terms of this Protective Order. Disclosures made at a deposition taken in connection with this Action may be designated as “CONFIDENTIAL” by any party, by:

a. designating testimony as “CONFIDENTIAL” on the record during the taking of the deposition; or

b. notifying the reporter and all counsel of record, in writing, within twenty (20) business days after receipt of a final and official deposition transcript, of the specific pages

and lines of the transcript that are to be designated “CONFIDENTIAL,” in which case all counsel receiving the transcript will be responsible for marking the copies of the designated transcript in their possession or under their control accordingly. During the 20-day period following receipt of a final deposition transcript, all parties will treat the entire deposition transcript as if it had been designated “CONFIDENTIAL.”

5. Confidential Information shall not be furnished, shown, distributed, quoted, summarized or disclosed in any way to any person or entity, except to:

- a. the parties;
- b. outside counsel employed by the parties to assist in the Action, as well as the attorneys, paralegals and stenographic and clerical employees in the respective law firms of such outside counsel;
- c. the personnel supplied by any independent contractor (including litigation support service personnel with whom such attorneys work) in connection with the Action subject to compliance with paragraph 11 of this Protective Order;
- d. such officers and employees of the discovering party, including in-house counsel, as outside counsel for that party deem necessary for the sole purpose of assisting in this Action, subject to compliance with paragraph 11 of this Protective Order;
- e. any outside consultant or expert who is assisting counsel or a party to the Action to whom it is necessary to disclose Confidential Information for the purpose of assisting in, or consulting with respect to, the preparation of this Action, provided that such person has first executed a Non-Disclosure Agreement in the form annexed as Exhibit A to this Protective Order;
- f. any trial or deposition witnesses, who are examined in good faith by counsel with respect to Confidential Information for legitimate discovery or trial purposes, counsel for

such witnesses, and any person whom counsel believes in good faith may be a witness in this action and whose examination with respect to Confidential Information may be necessary in connection with that testimony, provided that such persons have first executed a Non-Disclosure Agreement in the form annexed as Exhibit A to this Protective Order;

g. any individual who can reasonably be identified as having sent, drafted, or received the Document or Information, as facially identifiable by the four corners of the Document or Information;

h. the Court and any members of its staff to whom it is necessary to disclose Confidential Information for the purpose of assisting the Court in this Action;

i. stenographic employees and court reporters recording or transcribing testimony relating to the Action; and

j. any other person agreed to by the parties in writing, provided that such persons have first executed a Non-Disclosure Agreement in the form annexed as Exhibit A to this Protective Order.

6. If any person subject to this Protective Order who has custody of any Confidential Information receives a subpoena or other process (“Subpoena”) from any government or other person or entity demanding production of such materials, the recipient of the Subpoena shall promptly give notice of the same by electronic mail transmission, followed by either express mail or overnight delivery to counsel of record for the Designating Party, and shall furnish such counsel with a copy of the Subpoena; provided, however, that should such Subpoena by its terms limit disclosure of its existence, no such notice of the Subpoena to the Designating Party is required. Upon receipt of this notice, the Designating Party may, in its sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise oppose production of the Confidential

Information, and/or seek to obtain confidential treatment of such materials from the subpoenaing person or entity to the fullest extent available under law. The recipient of the Subpoena may not produce any materials designated as “CONFIDENTIAL” pursuant to the Subpoena prior to the date specified for production on the Subpoena.

7. Counsel shall take all reasonable and necessary steps to assure the security of any Confidential Information and will take all reasonable steps to limit access to Confidential Information to those persons listed in paragraph 5 of this Protective Order, as applicable. Documents or Information designated pursuant to this Protective Order will be kept in the possession of persons entitled to receive copies of the documents pursuant to the terms of this Protective Order.

8. A file of all Non-Disclosure Agreements that are executed pursuant to this Protective Order shall be maintained by outside counsel for the party obtaining them and shall be made available, upon request, for inspection by the Court in camera, or by a party who has reasonable grounds to believe that the terms of this Protective Order may have been violated.

9. Any designating party may redesignate (or withdraw a designation regarding) any Documents or Information that it has designated during the course of this Action (“Redesignated Material”), provided that such redesignation shall be effective only as of the date of such redesignation. Any redesignation, or withdrawal of designations shall be accomplished by notifying counsel for each party in writing of such redesignation (or withdrawal). Upon receipt of any such notice, counsel of record shall: (a) not make any further disclosure or communication of such redesignated material except as provided for in this Protective Order; and (b) take reasonable steps to notify any persons known to have possession of any redesignated material of the effect of

such redesignation under this Protective Order. The parties specifically reserve the right to withdraw any designation on any document or information they designated in this litigation.

10. Any party may object to the propriety of the designation, redesignation, or lack of designation (“Objecting Party”) of specific Documents or Information as “CONFIDENTIAL,” including any objections by other parties to designations or redesignations pursuant to this Protective Order, by serving a written objection upon the Designating Party’s counsel. The Designating Party or its counsel shall thereafter, within ten (10) business days, respond to such objection in writing by either: (a) agreeing to remove, revise, or add the designation pursuant to the Objecting Party’s request; or (b) stating the reason why the designation (or decision not to designate) was made. If the Objecting Party and the Designating Party are subsequently unable to agree upon the terms and conditions of disclosure for the Documents or Information in issue, any Party shall be free to move the Court for an Order removing, adding, or modifying the disputed designation. Pending the resolution of the motion, the Documents or Information in issue shall continue to be treated in the manner as designated by the Designating Party unless and until the Court orders otherwise.

11. Notwithstanding any other provisions hereof, nothing in the foregoing shall restrict any party’s counsel from rendering advice to its clients with respect to this Action, and in the course thereof, relying upon Confidential Information.

12. Inadvertent production of any Documents or Information, including that which is disclosed during a deposition, without a designation will not be deemed to waive a party’s right to subsequently designate said Documents or Information pursuant to this Protective Order at a later date. Disclosure of said Documents or Information by any party prior to such later designation shall not be deemed a violation of the provisions of this Protective Order provided, however, that

the party that disclosed the redesignated Documents or Information shall make a reasonable effort to procure all copies of such redesignated Documents or Information from any persons known to have possession who are not entitled to receipt thereof under this Protective Order and have such persons sign on to the certification attached as Exhibit A hereto, unless such person is not required to execute Exhibit A pursuant to paragraph 5 of this Protective Order.

13. In the event that a Receiving Party determines to file or submit any papers containing or making reference to any confidential Discovery Material produced by a Producing Party, such papers, or any portions thereof containing or making reference to such Confidential Information, shall be filed either in redacted form or with a request that the papers be filed under seal in accordance with the Southern District of New York's Electronic Case Filing Rules and the rules of the Court (and kept under seal until further order of the Court).

14. Nothing herein shall be construed to affect in any manner the admissibility at trial of any Documents or Information. Nor shall this Protective Order be deemed to waive any privilege recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). The foregoing is entirely without prejudice to the right of any party or non-party to apply to the Court for a protective order relating to Confidential Information; to review Documents or Information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production; to object to the production of Documents or Information; to redact content contained within Documents or Information, regardless of their designations; or to apply to the Court for an order compelling the production of Documents or Information. This Protective Order may be enforced by any party.

15. Upon the conclusion of the Action, including any appeals related thereto, at the written request and option of either party, all Confidential Information, and any and all copies

thereof, shall be returned or destroyed within sixty (60) calendar days to the designating party at the designating party's expense, provided, however, that counsel may retain their attorney work product and all court-filed documents, all of which shall remain subject to the terms of this Protective Order. In the alternative, either the designating party or the person receiving the Confidential Information may elect to have the same destroyed.

16. If Confidential Information is disclosed to any person other than in the manner authorized by this Protective Order, the party responsible for the disclosure shall, as soon as possible upon learning of such disclosure, inform the Designating Party of all pertinent facts relating to such disclosure and shall make every effort to prevent disclosure by each unauthorized person who received such information, and shall promptly endeavor to procure all copies of such Documents or Information have each person sign on to the certification attached as Exhibit A hereto.

17. Should the need arise for any of the parties to disclose Confidential Information during any hearing or trial before the Court, including through argument or the presentation of evidence, such party may do so only after taking such steps as the Court, upon motion of the party seeking to disclose the Documents or Information, shall deem necessary to preserve the confidentiality of such Confidential Information.

18. Nothing contained in this Protective Order shall preclude any party from using its own Documents or Information in any manner it sees fit, without prior consent of any other party or the Court, unless any party has retained or produced any Documents or Information belonging to another party, in which case the retaining/producing party shall not use those Documents or Information except as governed by this Protective Order, shall not disclose those Documents or Information except to those individuals entitled to disclosure pursuant to this Protective Order, and

shall subsequently destroy or return those Documents or Information pursuant to paragraph 15 of this Protective Order.

19. Nothing herein shall operate as an admission by any of the parties hereto that any particular material contains or reflects trade secrets, or other confidential or proprietary information.

20. By written agreement of the parties, or upon motion and order of the Court, the terms of this Protective Order may be amended or modified. This Protective Order shall continue in force until amended or superseded by express order of the Court, and shall survive any final judgment or settlement in this Action.

21. This Protective Order may be changed by further order of this Court, and is without prejudice to the rights of a party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular document or information.

SO STIPULATED AND AGREED.

AKERMAN LLP

PRYOR CASHMAN LLP

/s/ Kathleen M. Prystowsky (w/ permission)

/s/ Marion R. Harris

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Attorneys for Plaintiffs

Attorneys for Defendants

SO ORDERED, on: _____

BY THE COURT:

Edgardo Ramos
United States District Judge

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CAPITAL INVESTMENTS II, S.A., and ORESTES
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TRUMP PANAMA HOTEL MANAGEMENT LLC,
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MANAGEMENT, LLC,

Defendants.

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I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of Confidential Information. I agree that I will not disclose to anyone such Confidential Information other than as defined in the Protective Order, and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: _____
By: _____