



ORDERED in the Southern District of Florida on August 12, 2008.

**John K. Olson, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov**

In re:)	Chapter 11 Cases
)	Case No. 08-10928-JKO
TOUSA, INC., <i>et al.</i> ,)	Joint Administration Pending
)	
Debtors.)	
)	

STIPULATED PROTECTIVE ORDER

This matter comes before the Court, ex parte, by stipulation of: (A) TOUSA, Inc. and its affiliated debtors, as debtors and debtors-in-possession (each individually a "Debtor" and, collectively with TOUSA, Inc., the "Debtors"); (B) the Official Committee of Unsecured Creditors of Debtors (the "Official Committee of Unsecured Creditors"); (C) Citicorp North America, Inc., as Administrative Agent for the Prepetition First Lien Revolving Credit Facility and Prepetition First Lien Term Loan Facility ("Citicorp"); (D) Wells Fargo Bank, N.A., as



successor Administrative Agent as of January 28, 2008 under the Second Lien Term Loan Credit Agreement (“Wells Fargo”); (E) an Informal Group of Holders of Second Lien Term Loan debt instruments (the “Second Lien Holders”); (F) holders of (i) the 10 3/8% senior subordinated notes due 2012, (ii) the 7 1/2% senior subordinated notes due 2011, (iii) the 7 1/2% senior subordinated notes due 2015, (iv) the 9% senior notes due 2010, and (v) the 8 1/4% senior notes due 2011 (the “Noteholders”); and (G) The CIT Group/Business Credit Inc. (“CIT”), for a protective order (the “Order”) concerning certain discovery sought in relation to the Debtors’ chapter 11 proceedings. The Debtors, the Official Committee of Unsecured Creditors, Citicorp, Wells Fargo, the Second Lien Holders, the Noteholders, and CIT are collectively referred to herein as the “Parties.”

WHEREAS, there are, or may be, contested matters, adversary proceedings or other proceedings, including but not limited to contested motions and other disputes (the “Disputes”) pending in the U.S. Bankruptcy Court for the Southern District of Florida arising out of and related to the Debtors’ chapter 11 proceedings;

WHEREAS, the Parties have sought or may seek certain discovery from one another with respect to the Disputes, including through service of document requests, interrogatories, depositions, and otherwise as provided by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court (the “Discovery Requests”); and

WHEREAS, the Parties anticipate that persons or entities other than the Parties hereto (the “Non-Parties”) may also propound or be served with Discovery Requests in connection with the Disputes during the course of the Debtors’ chapter 11 proceedings.

To expedite the exchange of discovery materials, to facilitate the prompt resolution of disputes over confidentiality, and to protect discovery material entitled to be kept confidential, the Parties stipulate and the Court hereby ORDERS as follows:

1. The Parties signing below, and any Non-Party that subsequently agrees to be bound by this Order, acknowledge and agree that the Bankruptcy Court has and shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

2. This Order applies to all information, documents and things subject to discovery in this action produced either by a Party or a Non-Party (each a "Producing Person") in response to or in connection with any discovery conducted related to the Disputes, including without limitation, deposition testimony (whether based upon oral examination or written questions), answers to interrogatories, requests for admission, responses to requests for admission, documents and things produced (including documents and things produced to the receiving Party for inspection and documents and things provided to the receiving Party, whether in the form of originals or copies) as well as any and all copies, abstracts, digests, notes, summaries, and excerpts thereof (collectively referred to as "Discovery Material").

3. A Producing Person may designate Discovery Material as "Confidential" if such Producing Person believes in good faith that such Discovery Material constitutes or includes information: (i) that has not been made public and that the Producing Person would not make public in the ordinary course of its activities, including but not limited to technical, business, financial, personal or other information of a nature that can be protected under Federal Rule of Civil Procedure 26(c) and Federal Rule of Bankruptcy Procedure 7026; or (ii) that the Producing Person is under a preexisting obligation to a third-party to treat as confidential (provided, however, that this provision does not create an obligation to produce information that the

Producing Party is under a preexisting obligation to a third-party to treat as confidential); or (iii) that the Producing Person has in good faith been requested by another Party to so mark on the ground that such other Party considers such material to contain information that is confidential or proprietary to such Party. A Producing Person may designate Discovery Material as "Highly Confidential" if such Producing Person believes in good faith that such Discovery Material constitutes or includes Confidential information (as defined herein) that is of such a nature that a risk of competitive injury would be created if such Discovery Material were disclosed to persons other than those identified in paragraph 8 of this Order, such as trade secrets or highly sensitive financial or business information.

4. Subject to the other provisions of this Order, each receiving Party may designate up to two (2) Persons (the "Receiving Party Designees") who, in addition to the persons identified in paragraphs 8 and 9, shall be permitted to review any and all Discovery Material, including materials marked as Highly Confidential or Confidential pursuant to this Order. The receiving Party shall disclose the identities of its proposed Receiving Party Designees (including a curriculum vitae or similar description of employment history for each Receiving Party Designee) to each Party in writing (the "Designation"). Any Party who objects to a proposed Receiving Party Designee on the grounds that disclosure of Confidential or Highly Confidential Discovery Materials to the proposed Receiving Party Designee would create a risk of competitive harm to the objecting Party must so object in writing within five (5) court days of such designation, and must include in its objection a description of the nature of the alleged competitive risk. In the event of such an objection to a Designation, disclosure of Highly Confidential or Confidential Discovery Material shall not be made to the Receiving Party Designee (except to the extent such disclosure already is permitted pursuant to Paragraphs 8

and/or 9 hereof) unless and until the parties otherwise agree or the Court otherwise directs. In addition, if any Receiving Party Designee changes employment before the conclusion of all proceedings in which Highly Confidential Material or Confidential Material was produced (including all appeals as to all Parties), the receiving Party who previously designated the Receiving Party Designee shall promptly notify each other Party in writing of the change in the Receiving Party Designee's employment. Any Party who objects to a Receiving Party Designee continuing to serve in that capacity after any such change in the Receiving Party Designee's employment on the grounds that disclosure of Confidential or Highly Confidential Discovery Materials to the proposed Receiving Party Designee would create a risk of competitive harm to the objecting Party must so object in writing within five (5) court days of the notice of the change in employment, and must include in its objection a description of the nature of the alleged competitive risk. In the event of such an objection, or in the event the Receiving Party Designee no longer wishes to serve in that capacity upon his/her change in employment, disclosure of Highly Confidential or Confidential Discovery Material shall no longer be made to the Receiving Party Designee (except to the extent such disclosure otherwise is permitted pursuant to Paragraphs 8 and/or 9 hereof) unless and until the parties otherwise agree or the Court otherwise directs.

5. Any "Highly Confidential Material" or "Confidential Material" may be designated by the Producing Person as such by marking the first page "Highly Confidential" or "Confidential" respectively. Such markings should not obliterate or obscure the content of the material that is produced.

6. Any Discovery Material designated "Confidential" or "Highly Confidential" may be used only in connection with the Debtors' chapter 11 proceedings.

7. Any Non-Party that agrees in writing to the terms of this Order shall be treated as a Party to this Order and permitted to review Highly Confidential Material and Confidential Material as set forth in paragraphs 8 and 9.

8. Highly Confidential Material shall be given, shown, made available to or communicated only to the following:

- a. outside counsel, and staff working under the direction of such counsel, for:
 - (i) the Debtors;
 - (ii) the Official Committee of Unsecured Creditors, and any member or constituent of the Official Committee of Unsecured Creditors, provided that counsel for such member or constituent agrees to be bound by the terms of this Order;
 - (iii) Citicorp;
 - (iv) Wells Fargo;
 - (v) the Second Lien Holders;
 - (vi) the Noteholders;
 - (vii) CIT; or
 - (viii) any Non-Party who is bound by the terms of this Order, by agreement or otherwise.
- b. testifying and consulting experts, industry advisors, financial advisors and accounting advisors and their respective staff (the "Advisors"), provided that such Advisors are working under the direction of counsel for:
 - (i) the Debtors;
 - (ii) the Official Committee of Unsecured Creditors;
 - (iii) Citicorp;
 - (iv) Wells Fargo;
 - (v) the Second Lien Holders;
 - (vi) the Noteholders;
 - (vii) CIT; or

- (viii) any Non-Party who is bound by the terms of this Order, by agreement or otherwise.
- c. any person who is: (i) a current employee, officer, or director of the Producing Person or any of its affiliates; (ii) an author or recipient of the Highly Confidential Material in question; or (iii) any witness at a deposition, hearing, or similar formal proceeding during such deposition, hearing, or other formal proceeding, provided that such witness is not employed by one of Debtors' competitors and provided further that such witness shall not be allowed to maintain Highly Confidential Material in his or her possession outside of the deposition, hearing, or similar formal proceeding;
- d. the Receiving Party Designees, provided that the Receiving Party Designees have been approved pursuant to the procedures set forth in paragraph 4;
- e. the Court, its officers and clerical staff;
- f. outside photocopying, graphic production services, or litigation support services;
- g. court reporters, stenographers, or videographers who record deposition or other testimony in the litigation; and,
- h. any other person or entity to whom the Producing Person may consent in writing.

9. Confidential Material shall be given, shown, made available to or communicated only to the following:

- a. those provided in paragraph 8;
- b. the Debtors;
- c. the Official Committee of Unsecured Creditors, and any member or constituent of the Official Committee of Unsecured Creditors, provided that such member or constituent agrees to be bound by the terms of this Order;
- d. Citicorp;
- e. Wells Fargo;
- f. the Second Lien Holders;
- g. the Noteholders;

- h. CIT;
- i. any Non-Party who is bound by the terms of this Order, by agreement or otherwise; and,
- j. any person who is identified as a witness at a deposition, hearing, or similar formal proceeding, or who counsel believes in good faith may be called as a witness at a deposition, hearing, or similar formal proceeding, in connection with the Disputes, provided that such witness may not maintain any Confidential Material in his or her possession outside of a deposition, hearing, or similar formal proceeding, unless and until he or she is provided with a copy of this Order and has acknowledged in a written statement in the form provided as Exhibit A hereto, that he or she has read the Order and agrees to be bound by the terms thereof.

10. Highly Confidential Material and the substantive information contained within such items shall not be given, shown, made available to, disclosed or communicated in any way, except to those people provided in paragraphs 4 and 8. Confidential Material and the substantive information contained within such items shall not be given, shown, made available to, disclosed or communicated in any way, except to those people provided in paragraphs 4 and 9.

11. Before any Receiving Party Designee or Advisor is given access to Discovery Materials designated "Confidential," or "Highly Confidential," if allowed by the above rules, such person shall be provided with a copy of this Order and shall acknowledge in a written statement, in the form provided as Exhibit A hereto, that he or she read the Order and agrees to be bound by the terms thereof. Such executed forms shall be retained in the files of counsel for the Party who gave access to the Confidential Materials to the person who was provided such access. Such executed forms shall not be subject to disclosure under the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure unless a showing of good cause is made and the Bankruptcy Court so orders.

12. Provided that Highly Confidential Material or Confidential Material is accepted for filing by the Courts in this proceeding under seal, Highly Confidential Material or Confidential

Material shall be filed under seal with the United States Bankruptcy Court for the Southern District of Florida, the United States District Court for the Southern District of Florida, and the United States Court of Appeals for the Eleventh Circuit (the "Courts") (including Clerks and other personnel of the Courts). Highly Confidential Material or Confidential Material and any copies thereof, and the information contained therein, that are filed with the Courts or any pleadings, motions or other papers filed with the Courts, shall be filed under seal in a separate sealed envelope conspicuously marked "Filed Under Seal – Subject to Confidentiality Order," or with such other markings as required by the Courts' rules. Where possible, only those portions of filings with the Courts that disclose Highly Confidential Material or Confidential Material shall be filed under seal.

13. To the extent that any Party wishes to use Confidential or Highly Confidential Material at a court hearing in the above-captioned proceedings, persons not among those identified in paragraphs 4, 8, or 9 of this Order, as applicable, shall be excluded from the courtroom while such Confidential or Highly Confidential Material is in use, and the court reporter shall be instructed to include on the cover page of each transcript that contains or refers to Confidential or Highly Confidential Material the legend: "This transcript portion contains information subject to a Protective Order and shall be used only in accordance therewith." In addition, each page of the transcript containing information designated Confidential shall include the legend: "Confidential," and each page of the transcript containing information designated as Highly Confidential shall include the legend: "Highly Confidential," and all such transcripts shall be handled and maintained by the Parties and the Court in accordance with the other terms of this Order.

14. In the case of depositions, if counsel for a Party believes that a portion or all of the testimony given at a deposition constitutes Confidential or Highly Confidential Material of such Party or Non-Party, counsel shall so state on the record and shall request that the entire transcript or the relevant portion of testimony be sealed. The court reporter, who shall first have agreed to abide by the terms of this Order, shall be instructed to include on the cover page of each sealed transcript the legend: "This transcript portion contains information subject to a Protective Order and shall be used only in accordance therewith." In addition, each page of the transcript containing information designated as Confidential Material shall include the legend "Confidential" and each page containing information designated as Highly Confidential shall include the legend "Highly Confidential." If the deposition is videotaped, the videotape shall be subject to the same level of confidentiality as the transcript and the cover of the videotape shall include the legend "Confidential" or "Highly Confidential", as appropriate, if any portion of the transcript itself is so designated. When testimony designated as Confidential or Highly Confidential is elicited during a deposition, persons not entitled to receive such information under the terms of this Order shall be excluded from the portion of the deposition so designated. In addition, any Party may designate the transcript or videotape of a deposition as Confidential or Highly Confidential within five (5) court days of the Party's receipt of the transcript from the court reporter. Such designation and notice shall be made in writing to the court reporter, with copies to all other counsel, identifying the portion(s) of the transcript that constitute items designated as Confidential or Highly Confidential Material, and directing the court reporter to place the same under seal as provided in this paragraph. Until expiration of the aforesaid five (5) day court period following receipt of the transcript by the Parties, all deposition transcripts and videotapes shall be considered and treated as Highly Confidential unless otherwise agreed on the

record at the deposition. Nothing in this paragraph shall apply to or affect the confidentiality designations on documents or materials entered as exhibits at depositions.

15. Nothing herein shall be a waiver or relinquishment by any person of any right to object to any discovery request, or to the admission of evidence on any ground, or to seek any further protective order, or to seek relief from the Bankruptcy Court from any provision of this Order by application on notice on any grounds.

16. If any receiving Party objects to the designation of any Discovery Material as "Confidential" or "Highly Confidential," the receiving Party shall first raise the objection with the Party responsible for such designation, and seek to confer in good faith by telephone or in person to attempt to resolve any dispute respecting the terms or operation of this Order. If such dispute cannot be resolved within five (5) court days (or such other reasonable time as the parties may agree or the court shall allow) after such objection is first raised, the objecting Party may then move the Bankruptcy Court to do so. Until the Bankruptcy Court rules on such dispute, the Discovery Material shall continue to be treated as designated. Upon motion, the Bankruptcy Court may order the removal of the "Confidential" or "Highly Confidential" designation from any Discovery Material so designated subject to the provisions of this Order.

17. Any material produced subject to this Order shall be deemed produced pursuant to legal proceedings and by Order of this Court.

18. A receiving Party shall not be obliged to challenge the propriety of a confidentiality designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto.

19. The limitations on disclosure contained in this Order shall not apply to documents or information that (i) were already in the possession of the receiving Party, without an obligation

of confidentiality to another person, including a Party, prior to their disclosure in this case; (ii) are received on a non-confidential basis from a person that does not owe an obligation of confidentiality to any other person, including a Party, with respect thereto; or (iii) are published or become publicly available in a manner that is not in violation of this Order or of any obligation of confidentiality to any other person, including a Party.

20. Within 60 days of the conclusion of all proceedings in connection with which Highly Confidential Material or Confidential Material was produced, including all appeals as to all Parties, all Highly Confidential Material or Confidential Material, and all copies or notes thereof, shall be returned to counsel for the respective Producing Parties, or destroyed, except that counsel may retain their work product and copies of court filings, transcripts, and exhibits, provided said retained documents will continue to be treated as provided in this Order. If a person in possession of Highly Confidential Material or Confidential Material chooses to destroy documents after the conclusion of these proceedings, that person shall certify such destruction in writing to opposing counsel. Notwithstanding anything in this paragraph, to the extent that the information in the Highly Confidential Material or Confidential Material remains confidential, the terms of this Order shall remain binding.

21. This Order applies to all Non-Parties that are served with subpoenas in connection with the Debtors' chapter 11 proceedings or who otherwise produce documents or are noticed for deposition in connection with the Debtors' chapter 11 proceedings, and all such Non-Parties are entitled to the protection afforded hereby upon signing a copy of this Order and agreeing to be bound by its terms.

22. Any Party may move to modify the provisions of this Order at any time or the Parties may agree by written stipulation, subject to further order of the Bankruptcy Court, to modify the provisions of the Order.

23. Any person or Party subject to this Order that may be subject to a motion or other form of legal process seeking the disclosure of another Party's or Non-Party's information designated under one of the categories of confidentiality pursuant to this Order: (i) shall promptly notify that Party or Non-Party so that it may have an opportunity to appear and be heard on whether that information should be disclosed, and (ii) shall not provide such materials unless required by law or with the consent of the Producing Party. For the avoidance of doubt, nothing herein should be construed as requiring the party receiving such motion or legal process to retain counsel or make any expenditure of any kind other than to provide notice as set forth in this paragraph.

24. Nothing in this Order affects the right of any Producing Person that designates material "Confidential" or "Highly Confidential" to use or disclose such material in any way. Such disclosure will not waive the protections of this Order and will not entitle other Parties, Non-Parties, or their attorneys to use or disclose such material in violation of this Order, except that if the Producing Person uses such material in a manner inconsistent with its confidential status, then that will serve as a basis to object to the designation and said objections will be resolved as set forth in this Order.

25. Except as provided in this paragraph, following a Producing Person's production or dissemination of Discovery Material, the inadvertent failure to designate particular Discovery Material as "Confidential" or "Highly Confidential" at the time of production shall not operate to waive a Party's right to later designate such Discovery Material as "Confidential" or "Highly

Confidential.” No Party shall be deemed to have violated this Order if, prior to notification of any later designation, such Discovery Material has been disclosed or used in a manner inconsistent with the later designation. Once such a designation has been made, however, the relevant documents or materials shall be treated as “Confidential” or “Highly Confidential” in accordance with this Order; provided, however, that if the Discovery Material that was inadvertently not designated is, at the time of the later designation, filed with a court on the public record, the Party or person that failed to make the designation shall move for appropriate relief. If an inadvertently omitted “Confidential” or “Highly Confidential” designation is first claimed during the course of a deposition, hearing, or other court proceeding, the subject Discovery Material may be used throughout the deposition, hearing, or proceeding as though no designation had been made, but shall be treated as though such designation had been made immediately thereafter.” The failure to designate Discovery Material as “Confidential” or “Highly Confidential” within a reasonable period following its production shall be presumed to waive the right to so designate that Discovery Material.

26. If information subject to a claim of attorney-client privilege, work product immunity, or other privilege is inadvertently or mistakenly produced, such production will in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for such information provided the Producing Person acts in accordance with the procedures set forth in this paragraph. If information subject to a claim of immunity or privilege is inadvertently or mistakenly produced, the Producing Person may give written notice within thirty (30) days of discovery of such inadvertent or mistaken production that the document or information produced is considered privileged and request the return of the document or information. Upon receipt of such notice, the receiving party shall return to the

Producing Person the original and destroy all copies of the document. If the receiving party wishes to challenge the Producing Person's assertion of privilege or immunity, the receiving party may move the Court for an order compelling the return of such information on any basis other than waiver due to inadvertent disclosure of privileged material. *

27. The provisions of this Order shall survive the final termination of the Disputes for any retained Highly Confidential Material or Confidential Material.

Dated: August 7, 2008

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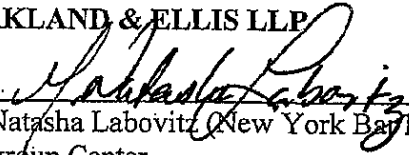
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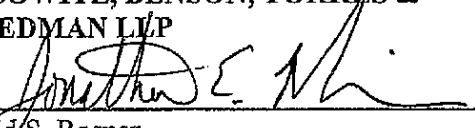
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instruments

Dated: July __, 2008

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Dated: July __, 2008

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instruments

Dated: July __, 2008

**ROBBINS, RUSSELL, ENGLERT, ORSECK,
UNTEREINER & SAUBER LLP**

By: _____

Michael L. Waldman
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Counsel to the Official Committee of Unsecured
Creditors

Dated: July __, 2008

CHADBOURNE & PARKE

By: _____

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Counsel to Citicorp North America, Inc., as
Administrative Agent for the Prepetition First Lien
Revolving Credit Facility and Prepetition First Lien
Term Loan Facility

Dated: July 22, 2008

BRACEWELL & GUILIANI LLP

By:  _____

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Counsel to (1) Wells Fargo Bank, N.A., as successor
Administrative Agent under the Second Lien Term
Loan Credit Agreement, and (2) an Informal Group
of Holders of Second Lien Term Loan debt
instruments

#

Copy furnished to:

Paul Steven Singerman, Esq.

(Attorney Singerman is directed to mail a conformed copy of this Order upon all interested parties, and to file a Certificate of Service with the Court).

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:)	Chapter 11 Cases
)	Case No. 08-10928-JKO
TOUSA, INC., <i>et al.</i> ,)	Joint Administration Pending
)	
Debtors.)	
)	

Exhibit A

**DECLARATION OF ACKNOWLEDGEMENT AND
AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER**

I, _____, declare under penalty of perjury that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.

4. I hereby certify and agree that I have read and understand the terms of the Stipulated Protective Order in the above-captioned actions. I further certify that I will not use "Confidential" or "Highly Confidential" information for any purpose other than this litigation among the parties, and will not disclose or cause "Confidential" or "Highly Confidential" information to be disclosed to anyone not expressly permitted by the Order to receive "Confidential" or "Highly Confidential," as applicable, information. I agree to be bound by the terms and conditions of the Order.

5. I understand that I am to retain in confidence from all individuals not expressly permitted to receive information designated as "Confidential" or "Highly

Confidential,” whether at home or at work, all copies of any materials I receive which have been designated as “Confidential” or “Highly Confidential,” and that I will carefully maintain such materials in a container, drawer, room or other safe place in a manner consistent with the Order. I acknowledge that the return or destruction of “Confidential” or “Highly Confidential” material shall not relieve me from any other continuing obligations imposed upon me by the Order.

6. I acknowledge and agree that I am aware that by receiving materials designated as “Confidential” or “Highly Confidential” (a) I may be receiving material non-public information about TOUSA, Inc. and (b) there exist laws, including federal securities laws, that may restrict or eliminate the sale or purchase of securities and debt of the Company as a result of the receipt of such information.

7. I stipulate to the jurisdiction of this Court solely with respect to the provisions of the Order.

Date: _____

(Signature)