

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STUART FARBER, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

Case No. 2:16-cv-06417-MWF-FFM

**PROTECTIVE ORDER
PURSUANT TO STIPULATION**

17 1. As used herein, “Confidential Information” shall mean information which,
18 in the reasonable opinion of the designating person, or the designating person’s
19 counsel, constitutes, reflects or discloses confidential, competitively sensitive,
20 proprietary and/or trade secret information of a party, and which that party wishes to
21 maintain in confidence. In connection with the production of documents in this action,
22 any designating person may stamp, mark or otherwise designate any document
23 comprising, containing or referring to Confidential Information produced or to be
24 produced by it in connection with this litigation as “Confidential Information” or may
25 designate the document in a writing addressed to opposing counsel at or before the
26 time of production. In connection with responses to interrogatories, requests for
27 admission, expert reports or any other type of discovery response, any designating
28 person may stamp, mark or otherwise designate any such discovery response

1 comprising, containing or referring to Confidential Information produced or to be
2 produced by it in connection with this litigation as “Confidential Information” or may
3 designate the response in a writing addressed to opposing counsel at or before the time
4 of production.

5 2. As used herein the term “Document” shall mean and refer to all items
6 within the scope of Federal Rule of Civil Procedure 33 and shall also include the
7 original and all non-identical copies of any “writing”, defined as handwriting,
8 typewriting, printing, photostatting, photographing, photocopying, transmitting by
9 electronic mail or facsimile, and every other means of recording upon any tangible
10 thing, any form of communication or representation, including letters, words, pictures,
11 sounds, or symbols, or combination thereof, and any record thereby created, regardless
12 of the manner in which the record has been stored. As used herein, “documents” shall
13 refer to any “writings” or “recordings” as those terms are defined in Rule 1001 of the
14 Federal Rules of Evidence, and include, without limitation, both hard-copy information
15 (such as conventional letters, memoranda, spreadsheets, drawings, drafts, notes,
16 calendars and diaries) and electronically recorded information (including, but not
17 limited to, e-mail and any information stored on computer hard drives, processing
18 cards or tapes, memory banks, floppy disks, high capacity removable storage disks,
19 CD-ROMS, DVDs or DATs), and any drafts or copies that differ from the original.
20 “Documents” also include photographs, objects, archived voicemail messages, and any
21 other forms of potential evidence. As used herein, the term “Document” is not limited
22 to hard-copy documents. It refers to all types of materials.

23 3. In the event that Confidential Information is produced by a third party,
24 any designating person may stamp, mark or otherwise designate any such document or
25 information produced by such third party comprising, containing or referring to
26 Confidential Information produced as “Confidential Information” in a writing
27 addressed to opposing counsel within fifteen (15) days of the production of such
28 documents or information to the objecting counsel by such third party. Except as

1 provided herein, the receiving counsel shall not show or discuss such information with
2 his client or any other party until such fifteen day period has expired.

3 4. Except as otherwise provided by order of the Court, no document
4 containing Confidential Information, including information contained therein, shall be
5 furnished, shown, or disclosed to any person except: (1) attorneys of record for the
6 parties to this action and their support staff, including paralegal and clerical personnel
7 who are employed by such attorneys of record and who are involved in the preparation
8 and trial of this case; (2) independent experts and consultants not employed by a party
9 who are assisting said attorneys in preparation and/or trial; and (3) potential or actual
10 witnesses (and their counsel) who may be called to testify at depositions or trial; (4)
11 representatives of the Parties having responsibility for managing the defense or the
12 prosecution of the case; and the Court and its staff.

13 5. As used herein, "Attorneys' Eyes Only Information" shall mean
14 information which, in the reasonable opinion of the designating person, or the
15 designating person's counsel, constitutes, reflects or discloses confidential,
16 competitively sensitive, proprietary and/or trade secret information of a party, and
17 which that party wishes to maintain in strictest confidence. In connection with the
18 production of documents in this action, any designating person may stamp, mark or
19 otherwise designate any document or any other discovery response comprising,
20 containing or referring to Attorneys' Eyes Only Information produced or to be
21 produced by it in connection with this litigation as "Attorneys' Eyes Only
22 Information." In the event that "Attorneys' Eyes Only Information" is produced by a
23 third party, the document or information shall be designated in accordance with
24 provisions of paragraph 3 of this Stipulation. All expert reports and similar
25 documentation and information produced by an expert for an opposing party shall be
26 deemed to be "Attorneys' Eyes Only Information."

27 6. Except as otherwise provided by order of the Court, no document
28 containing Attorneys' Eyes Only Information, including information contained therein,

1 shall be furnished, shown, or disclosed to any person except: (1) attorneys of record
2 for the parties to this action and their support staff, including paralegal and clerical
3 personnel who are employed by such attorneys of record and who are involved in the
4 preparation and trial of this case; (2) independent experts and consultants not
5 employed by a party who are assisting said attorneys in preparation and/or trial; and
6 the Court and its staff.

7 7. Confidential Information and Attorneys' Eyes Only Information are
8 hereinafter referred to collectively as "Confidential Material." The references in this
9 Protective Order to Confidential Material shall also be deemed to include, and to apply
10 to, copies, duplicates, extracts, and/or summaries, and to all materials and documents
11 derived from Confidential Material. Any party to the above-captioned action may
12 designate any document alleged to contain confidential, competitively sensitive,
13 proprietary and/or trade secret information as Confidential Material.

14 8. As used herein, "designating person" shall mean the party, or third person
15 or entity who designates documents, testimony or information as Confidential Material
16 under this Order.

17 9. All documents or information produced or to be produced by any party or
18 designated as Confidential Material by any party in connection with this litigation shall
19 be used only for the purpose of this litigation, including trial preparation and trial, and
20 shall not be used for any other litigation, matter, or for any other purpose. 10.

21 The inadvertent disclosure or production of any information or document that is
22 subject to an objection on the basis of attorney-client privilege or work-product
23 protection, including but not limited information or documents that may be considered
24 Confidential Material, will not be deemed to waive a party's claim to its privileged or
25 protected nature or estop that party or the privilege holder from designating the
26 information or document as attorney-client privileged or subject to the work product
27 doctrine at a later date. Any party receiving any such information or document shall
28 return it upon request from the producing party. Upon receiving such a request as to

1 specific information or documents, the receiving party shall return the information or
2 documents to the producing party within five (5) business days, regardless of whether
3 the receiving party agrees with the claim of privilege and/or work-product protection.

4 11. Each person to whom Confidential Material is disclosed by counsel shall
5 be advised that the information and/or documents are being disclosed pursuant to the
6 terms of this Stipulation and Protective Order and that they are bound by this Order,
7 the terms of which shall be described to them. Counsel shall maintain a list of each
8 person outside his firm to whom Confidential Material is disclosed, including the
9 specific Confidential Material disclosed and the date of disclosure. At the close of this
10 litigation, upon request, each party shall provide such list to the opposing parties.

11 12. In connection with the taking of any deposition in this action:

12 (a) The party who noticed or requested the deposition shall, prior to the
13 commencement of testimony at such deposition, serve a copy of this Order upon the
14 officer reporting the deposition. Such officer shall acknowledge service of a copy of
15 this Order, and shall agree that he/she, his/her employees, and his/her agents shall be
16 bound by the terms of this Order, and shall make no use or disclosure of Confidential
17 Material unless expressly permitted by the terms of this Order, or by the express
18 consent of all parties and any designating person who are or may become subject to the
19 provisions of this Order. Such officer shall provide copies of the deposition transcript
20 or deposition exhibits containing information designated as Confidential only to
21 attorneys for the parties and, if the deposition is of a third person or entity, to that
22 deponent or his/her attorney. Depositions at which Confidential Material is to be
23 disclosed shall be attended only by persons authorized hereunder to have access to
24 such material.

25 (b) In the event that documents or testimony designated as “Attorneys’
26 Eyes Only Information” will be used at any deposition, if so requested by a party, all
27 persons, other than attorneys, the court reporter and the deponent, must leave the room

28 ///

1 only for that portion of the deposition in which such Attorneys' Eyes Only Information
2 is disclosed.

3 (c) Counsel for any party hereto may, either during any such deposition
4 or within twenty (20) days of receipt of the transcript, designate the deposition
5 transcript along with the deposition exhibits, or any portion thereof, as Confidential
6 Information or Attorneys' Eyes Only Information. If the deposition is of a third person
7 or entity not joined herein, that third person or entity may use the same designation
8 process set forth in this Paragraph.

9 (d) Notwithstanding the provisions of this paragraph 11, where counsel
10 do not anticipate that the witness will testify about matters covered by this Protective
11 Order, this Order does not need to be marked as an exhibit under paragraph 12(a).
12 However, if during the deposition the witness does testify about confidential matters
13 covered by this protective Order, the party noticing or requesting the deposition shall
14 provide a copy of this Order upon the officer reporting the deposition. Such officer
15 shall acknowledge service of a copy of this Order, and shall agree that he/she, his/her
16 employees, and his/her agents shall be bound by the terms of this Order, and shall
17 make no use or disclosure of Confidential Material unless expressly permitted by the
18 terms of this Order, or by the express consent of all parties and any designating person
19 who are or may become subject to the provisions of this Order. Such officer shall
20 provide copies of the deposition transcript or deposition exhibits only to attorneys for
21 the parties and, if the deposition is of a third person or entity, to that deponent or
22 his/her attorney. Since depositions at which Confidential Material is to be disclosed
23 shall be attended only by persons authorized hereunder to have access to such material,
24 all non-authorized person be excluded from the deposition.

25 13. If a party is served with a subpoena or a court order issued in other
26 litigation that compels disclosure of any Confidential Material, that party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or
3 order is subject to this Protective Order. Such notification shall include a copy of this
4 Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by
6 the Designating Party whose Protected Material may be affected.

7 If the designating person timely seeks a protective order, the party served with
8 the subpoena or court order shall not produce any information designated in this action
9 as Confidential Information or Attorneys' Eyes Only Information before a
10 determination by the court from which the subpoena or order issued, unless the party
11 has obtained the designating person's permission. The designating person shall bear
12 the burden and expense of seeking protection in that court of its confidential material
13 and nothing in these provisions should be construed as authorizing or encouraging any
14 party in this Action to disobey a lawful directive from another court.

15 14. When a party to this Order designates the testimony (including proposed
16 testimony) of a person being deposed as Confidential Information or Attorneys' Eyes
17 Only Information, and objection is made to such designation, such designation shall
18 not be withheld because such objection has been made to the Confidential Information
19 or Attorneys' Eyes Only Information designation. Such testimony shall be treated as
20 Confidential Information or Attorneys' Eyes Only Information until a stipulation or
21 order on motion that it should not be so treated.

22 15. Any part or parts of this Order may be amended at any time by court order
23 pursuant to written stipulation of the parties hereto or by order of this Court for good
24 cause shown.

25 16. If a party to this Order objects to the designation of any Confidential
26 Material, that party shall so notify the designating party in writing of such objection,
27 identifying the Confidential Material as to which objection is made. The designating
28 party shall respond within ten (10) business days from receipt of such notice. If the

1 designating party fails to timely respond, the material subject to the objection will no
2 longer be subject to the restrictions imposed by this order. If the designating party
3 timely responds to the objection and the parties cannot agree with respect to the
4 treatment to be accorded the material that has been designated as Confidential
5 Material, the objecting party may seek a ruling from the Court with respect to the
6 objected designation(s) within ten (10) days of the parties' inability to reach
7 agreement. The designating party shall bear the burden of establishing that
8 Confidential status is warranted. Pending the Court's ruling, the provisions of this
9 Order shall remain in force.

10 17. A party that seeks to file under seal any Confidential Material must
11 comply with Civil Local Rule 79-5. Confidential Material may only be filed under seal
12 pursuant to a Court order authorizing the sealing of the specific Confidential Material
13 at issue. If a party's request to file Confidential Material under seal is denied by the
14 Court, then the Receiving Party may file the information in the public record unless
15 otherwise instructed by the Court.

16 18. The execution of this Order shall not, in itself, operate as an admission
17 against or otherwise prejudice any contention of any part on any motion provided for
18 herein, or in any other proceeding or trial in this action, nor shall this Order be taken to
19 constitute a waiver of any party's right to seek relief from the Court from any or all
20 provisions of this Order.

21 19. This Order shall not prevent or limit any party from using Confidential
22 Material in discovery or at trial. If any party to this lawsuit intends at trial to introduce
23 into evidence (or otherwise place in the public record) any Confidential Material, that
24 party will give reasonable written notice to the Stipulating Party that produced the
25 Confidential Material of its intention to do so, so that if the Stipulating Party producing
26 the Confidential Material objects to the intended use, said party may have a
27 meaningful opportunity to seek relief from the trial court.

28 ///

1 20. The terms of this Order shall remain in full force and effect and shall not
2 cease to be in effect because of final adjudication of this litigation. Upon resolution of
3 this action in the trial court, all Confidential Material shall be held by counsel pending
4 final resolution of this litigation by appeal or otherwise. Within ninety (90) days after
5 such final resolution, all documents containing Confidential Material, including all
6 copies, summaries, and compilations, shall be destroyed or, at the request of producing
7 counsel, be returned. Each party responsible for such return or destruction shall certify
8 to all other counsel of record that such destruction or return in fact took place.

9 21. Notwithstanding Paragraph 19 above, counsel are not required to destroy
10 legal memoranda or opinion letters and other attorney-client privilege or work product
11 document that may contain references to or information extracted from said
12 documents, and all such memos and correspondence may be retained in the attorney's
13 files. However, the confidentiality of documents and information is otherwise to be
14 protected in accordance with the terms of this Order.

15 22. If documents subject to a claim of attorney-client privilege, attorney work
16 product or any other ground on which production of such information should not be
17 made to any party is nevertheless inadvertently produced to such party, such
18 production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as
19 to, any claim of privilege, work product or other ground for withholding production to
20 which the producing party or other producing person would otherwise be entitled. If a
21 claim of inadvertent production is made, pursuant to this Paragraph, with respect to
22 documents then in the custody of another party, such party shall promptly return to the
23 claiming party or person that material as to which the claim of inadvertent production
24 has been made. The party returning such material may then move the Court for an
25 Order compelling production of the material, but said motion shall not assert as a
26 ground for entering such an order the facts or circumstances of the inadvertent
27 production.

28 ///

