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

National Real Estate Solutions,  
Plaintiff,  
v.  
U.S. Bank National Association, et al.,  
Defendants.

Case No. 2:16-CV-06972-RGK-SK  
**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**  
Judge: Hon. R. Gary Klausner  
[Discovery Document: Referred to  
Magistrate Judge Steve Kim]

1 1. A. PURPOSES AND LIMITATIONS

2  
3 Discovery in this action is likely to involve production of confidential,  
4 proprietary, or private information for which special protection from public  
5 disclosure and from use for any purpose other than prosecuting this litigation may  
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
7 enter the following Stipulated Protective Order. The parties acknowledge that this  
8 Order does not confer blanket protections on all disclosures or responses to  
9 discovery and that the protection it affords from public disclosure and use extends  
10 only to the limited information or items that are entitled to confidential treatment  
11 under the applicable legal principles. The parties further acknowledge, as set forth  
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
14 procedures that must be followed and the standards that will be applied when a  
15 party seeks permission from the court to file material under seal.

16  
17 B. GOOD CAUSE STATEMENT

18  
19 This action is likely to involve trade secrets, customer and pricing lists and  
20 other valuable commercial, financial, and/or proprietary information for which  
21 special protection from public disclosure and from use for any purpose other than  
22 prosecution of this action is warranted. Such confidential and proprietary materials  
23 and information consist of, among other things, confidential business or financial  
24 information, information regarding confidential business practices, or other  
25 confidential commercial information (including information implicating privacy  
26 rights of third parties, such as financial account numbers), information otherwise  
27 generally unavailable to the public, or which may be privileged or otherwise  
28 protected from disclosure under state or federal statutes, court rules, case decisions,

1 or common law. Accordingly, to expedite the flow of information, to facilitate the  
2 prompt resolution of disputes over confidentiality of discovery materials, to  
3 adequately protect information the parties are entitled to keep confidential, to  
4 ensure that the parties are permitted reasonable necessary uses of such material in  
5 preparation for and in the conduct of trial, to address their handling at the end of the  
6 litigation, and serve the ends of justice, a protective order for such information is  
7 justified in this matter. It is the intent of the parties that information will not be  
8 designated as confidential for tactical reasons and that nothing be so designated  
9 without a good faith belief that it has been maintained in a confidential, non-public  
10 manner, and there is good cause why it should not be part of the public record of  
11 this case.

12

13 2. DEFINITIONS

14 2.1 Action: this pending federal lawsuit, entitled *National Real Estate*  
15 *Solutions v. U.S. Bank National Association, et al.*, 2:16-CV-06972-RGK-SK..

16 2.2 Challenging Party: a Party or Non-Party that challenges the  
17 designation of information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
19 how it is generated, stored or maintained) or tangible things that qualify for  
20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
21 the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or  
25 items that it produces in disclosures or in responses to discovery as  
26 “CONFIDENTIAL.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless  
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced  
2 or generated in disclosures or responses to discovery in this matter.

3       2.7 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
5 an expert witness or as a consultant in this Action.

6       2.8 House Counsel: attorneys who are employees of a party to this Action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9       2.9 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11       2.10 Outside Counsel of Record: attorneys who are not employees of a  
12 party to this Action but are retained to represent or advise a party to this Action and  
13 have appeared in this Action on behalf of that party or are affiliated with a law firm  
14 which has appeared on behalf of that party, and includes support staff.

15       2.11 Party: any party to this Action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and their  
17 support staffs).

18       2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this Action.

20       2.13 Professional Vendors: persons or entities that provide litigation  
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
23 and their employees and subcontractors.

24       2.14 Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL.”

26       2.15 Receiving Party: a Party that receives Disclosure or Discovery  
27 Material from a Producing Party.

28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the  
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations  
11 imposed by this Order shall remain in effect until a Designating Party agrees  
12 otherwise in writing or a court order otherwise directs. Final disposition shall be  
13 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
14 with or without prejudice; and (2) final judgment herein after the completion and  
15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
16 including the time limits for filing any motions or applications for extension of time  
17 pursuant to applicable law.

18

19 5. DESIGNATING PROTECTED MATERIAL

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

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

28 Mass, indiscriminate, or routinized designations are prohibited. Designations

1 that are shown to be clearly unjustified or that have been made for an improper  
2 purpose (e.g., to unnecessarily encumber the case development process or to  
3 impose unnecessary expenses and burdens on other parties) may expose the  
4 Designating Party to sanctions.

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in  
9 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
10 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
11 under this Order must be clearly so designated before the material is disclosed or  
12 produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic  
15 documents, but excluding transcripts of depositions or other pretrial or trial  
16 proceedings), that the Producing Party affix at a minimum, the legend  
17 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
18 contains protected material. If only a portion or portions of the material on a page  
19 qualifies for protection, the Producing Party also must clearly identify the protected  
20 portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection  
22 need not designate them for protection until after the inspecting Party has indicated  
23 which documents it would like copied and produced. During the inspection and  
24 before the designation, all of the material made available for inspection shall be  
25 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
26 documents it wants copied and produced, the Producing Party must determine  
27 which documents, or portions thereof, qualify for protection under this Order. Then,  
28 before producing the specified documents, the Producing Party must affix the

1 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
2 portion or portions of the material on a page qualifies for protection, the Producing  
3 Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party identify  
6 the Disclosure or Discovery Material on the record, before the close of the  
7 deposition all protected testimony.

8 (c) for information produced in some form other than documentary and  
9 for any other tangible items, that the Producing Party affix in a prominent place on  
10 the exterior of the container or containers in which the information is stored the  
11 legend “CONFIDENTIAL.” If only a portion or portions of the information  
12 warrants protection, the Producing Party, to the extent practicable, shall identify the  
13 protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
15 failure to designate qualified information or items does not, standing alone, waive  
16 the Designating Party’s right to secure protection under this Order for such  
17 material. Upon timely correction of a designation, the Receiving Party must make  
18 reasonable efforts to assure that the material is treated in accordance with the  
19 provisions of this Order.

20  
21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
23 designation of confidentiality at any time that is consistent with the Court’s  
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
26 resolution process under Local Rule 37.1 et seq.

27 6.3 The burden of persuasion in any such challenge proceeding shall be on  
28 the Designating Party. Frivolous challenges, and those made for an improper

1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
2 parties) may expose the Challenging Party to sanctions. Unless the Designating  
3 Party has waived or withdrawn the confidentiality designation, all parties shall  
4 continue to afford the material in question the level of protection to which it is  
5 entitled under the Producing Party's designation until the Court rules on the  
6 challenge.

7  
8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
10 disclosed or produced by another Party or by a Non-Party in connection with this  
11 Action only for prosecuting, defending, or attempting to settle this Action. Such  
12 Protected Material may be disclosed only to the categories of persons and under the  
13 conditions described in this Order. When the Action has been terminated, a  
14 Receiving Party must comply with the provisions of section 13 below (FINAL  
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a  
17 location and in a secure manner that ensures that access is limited to the persons  
18 authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
20 otherwise ordered by the court or permitted in writing by the Designating Party, a  
21 Receiving Party may disclose any information or item designated  
22 "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
24 well as employees of said Outside Counsel of Record to whom it is reasonably  
25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of  
27 the Receiving Party to whom disclosure is reasonably necessary for this Action;

28 (c) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the  
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

5 (f) professional jury or trial consultants, mock jurors, and Professional  
6 Vendors to whom disclosure is reasonably necessary for this Action and who have  
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

10 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
11 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
12 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they  
13 will not be permitted to keep any confidential information unless they sign the  
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
15 agreed by the Designating Party or ordered by the court. Pages of transcribed  
16 deposition testimony or exhibits to depositions that reveal Protected Material may  
17 be separately bound by the court reporter and may not be disclosed to anyone  
18 except as permitted under this Stipulated Protective Order; and

19 (i) any mediator or settlement officer, and their supporting personnel,  
20 mutually agreed upon by any of the parties engaged in settlement discussions.

21  
22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
23 IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation  
25 that compels disclosure of any information or items designated in this Action as  
26 “CONFIDENTIAL,” that Party must:

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

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

5 (c) cooperate with respect to all reasonable procedures sought to be  
6 pursued by the Designating Party whose Protected Material may be affected. If the  
7 Designating Party timely seeks a protective order, the Party served with the  
8 subpoena or court order shall not produce any information designated in this action  
9 as “CONFIDENTIAL” before a determination by the court from which the  
10 subpoena or order issued, unless the Party has obtained the Designating Party’s  
11 permission. The Designating Party shall bear the burden and expense of seeking  
12 protection in that court of its confidential material and nothing in these provisions  
13 should be construed as authorizing or encouraging a Receiving Party in this Action  
14 to disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a  
18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
19 produced by Non-Parties in connection with this litigation is protected by the  
20 remedies and relief provided by this Order. Nothing in these provisions should be  
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to  
23 produce a Non-Party’s confidential information in its possession, and the Party is  
24 subject to an agreement with the Non-Party not to produce the Non-Party’s  
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non Party  
27 that some or all of the information requested is subject to a confidentiality  
28 agreement with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated  
2 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
3 specific description of the information requested; and

4 (3) make the information requested available for inspection by the  
5 Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within  
7 14 days of receiving the notice and accompanying information, the Receiving Party  
8 may produce the Non-Party's confidential information responsive to the discovery  
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
10 not produce any information in its possession or control that is subject to the  
11 confidentiality agreement with the Non-Party before a determination by the court.  
12 Absent a court order to the contrary, the Non-Party shall bear the burden and  
13 expense of seeking protection in this court of its Protected Material.

14  
15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
17 Protected Material to any person or in any circumstance not authorized under this  
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
19 writing the Designating Party of the unauthorized disclosures, (b) use its best  
20 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
21 person or persons to whom unauthorized disclosures were made of all the terms of  
22 this Order, and (d) request such person or persons to execute the "Acknowledgment  
23 and Agreement to Be Bound" that is attached hereto as Exhibit A.

24  
25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain  
28 inadvertently produced material is subject to a claim of privilege or other

1 protection, the obligations of the Receiving Parties are those set forth in Federal  
2 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
3 whatever procedure may be established in an e-discovery order that provides for  
4 production without prior privilege review.

5  
6 (a) The inadvertent disclosure or production of any information or  
7 document that is subject to an objection on the basis of attorney-client privilege or  
8 work-product immunity, including but not limited to information or documents that  
9 may be considered confidential information or otherwise protected under this  
10 Stipulated Protective Order, will not be deemed to waive a Party's claim to its  
11 privileged or protected nature or estop that Party or the privilege holder from  
12 designating the information or document as attorney-client privileged or subject to  
13 the work product doctrine at a later date.

14 (b) Any Party receiving any such information or document shall return or  
15 destroy it upon request from the Producing Party. Upon receiving such a request as  
16 to specific information or documents, the Receiving Party shall return or destroy the  
17 information or documents to the Producing Party within five (5) business days,  
18 regardless of whether the Receiving Party agrees with the claim of privilege and/or  
19 work product protection.

20 (c) Disclosure of the information or document by the other Party prior to  
21 such later designation shall not be deemed a violation of the provisions of this  
22 Stipulated Protective Order.

23 (d) This clawback provision shall be governed by Rule 502(d) of the  
24 Federal Rules of Evidence.

25  
26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
28 person to seek its modification by the Court in the future.

1           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no Party waives any right it otherwise would have to object to  
3 disclosing or producing any information or item on any ground not addressed in  
4 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
5 any ground to use in evidence of any of the material covered by this Protective  
6 Order.

7           12.3 Filing Protected Material. A Party that seeks to file under seal any  
8 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
9 may only be filed under seal pursuant to a court order authorizing the sealing of the  
10 specific Protected Material at issue. If a Party's request to file Protected Material  
11 under seal is denied by the court, then the Receiving Party may file the information  
12 in the public record unless otherwise instructed by the court.

13  
14 13. FINAL DISPOSITION

15           After the final disposition of this Action, as defined in paragraph 4, within 60  
16 days of a written request by the Designating Party, each Receiving Party must  
17 return all Protected Material to the Producing Party or destroy such material. As  
18 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
19 compilations, summaries, and any other format reproducing or capturing any of the  
20 Protected Material. Whether the Protected Material is returned or destroyed, the  
21 Receiving Party must submit a written certification to the Producing Party (and, if  
22 not the same person or entity, to the Designating Party) by the 60 day deadline that  
23 (1) identifies (by category, where appropriate) all the Protected Material that was  
24 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
25 copies, abstracts, compilations, summaries or any other format reproducing or  
26 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
27 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
28 deposition, and hearing transcripts, legal memoranda, correspondence, deposition

1 and trial exhibits, expert reports, attorney work product, and consultant and expert  
2 work product, even if such materials contain Protected Material. Any such archival  
3 copies that contain or constitute Protected Material remain subject to this Protective  
4 Order as set forth in Section 4 (DURATION).

5

6 14. Any violation of this Order may be punished by any and all appropriate  
7 measures including, without limitation, contempt proceedings and/or monetary  
8 sanctions.

9

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11

12 DATED April 27, 2017

13

14 s/ Michael S. Wildermuth

15 Attorneys for Plaintiff

16

17 DATED: April 27, 2017

18

19 s/ Eric R. Sherman

20 Attorneys for Defendant

21

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23

24 DATED: May 2, 2017

25

26   
\_\_\_\_\_

27 Honorable Steve Kim  
28 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
6 that I have read in its entirety and understand the Stipulated Protective Order that  
7 was issued by the United States District Court for the Central District of California  
8 on [date] in the case of *National Real Estate Solutions v. U.S. Bank National*  
9 *Association, et al.*, 2:16-CV-06972-RGK-SK. I agree to comply with and to be  
10 bound by all the terms of this Stipulated Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and  
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in  
13 any manner any information or item that is subject to this Stipulated Protective  
14 Order to any person or entity except in strict compliance with the provisions of this  
15 Order. I further agree to submit to the jurisdiction of the United States District  
16 Court for the Central District of California for the purpose of enforcing the terms of  
17 this Stipulated Protective Order, even if such enforcement proceedings occur after  
18 termination of this action. I hereby appoint \_\_\_\_\_ [print  
19 or type full name] of \_\_\_\_\_ [print or type  
20 full address and telephone number] as my California agent for service of process in  
21 connection with this action or any proceedings related to enforcement of this  
22 Stipulated Protective Order.

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25  
26 Printed name: \_\_\_\_\_

27  
28 Signature: \_\_\_\_\_