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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALFREDO HERNANDEZ,
GRACIELA HERNANDEZ,

Plaintiffs,

vs.

DITECH FINANCIAL LLC,
SPECIALIZED LOAN SERVICING
LLC, EXPERIAN INFORMATION
SOLUTIONS, INC., EQUIFAX
INFORMATION SERVICES LLC,
TRANS UNION LLC, and DOES 1-10,

Defendants.

Case No. 2:17-cv-04294 GW (JEMx)

Hon. John E. McDermott, Crtrm. 640

**[PROPOSED] PROTECTIVE
ORDER**

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge, as set forth
5 in Section 11.3, below, that this Stipulated Protective Order does not entitle them to
6 file confidential information under seal; Civil Local Rule 79-5 sets forth the
7 procedures that must be followed and the standards that will be applied when a party
8 seeks permission from the court to file material under seal.

9 1.2 GOOD CAUSE STATEMENT

10 The Parties seek confidential protection for all documents, testimony,
11 transcripts or other materials in this action produced by any party or non-party and
12 the information contained therein. The documents to be produced by Defendants
13 contain critical information regarding their computer systems involved in credit
14 reporting. These defendants’ credit-reporting businesses rely on the use of their
15 computer hardware and software. Defendants have worked hard and incurred great
16 cost to update their computer hardware and software to create the best possible
17 credit-reporting systems.

18 Moreover, documents to be produced by Ditech Financial LLC and/or
19 Specialized Loan Servicing LLC may include those related to those confidential and
20 proprietary business systems and mechanisms or other information generally
21 unavailable to the public.

22 In order to operate national credit reporting services, defendants Experian
23 Information Solutions, Inc. (“Experian”), Equifax Information Services LLC
24 (“Equifax”), and Trans Union LLC (“Trans Union”) had to design unique computer
25 systems to process information received from tens of thousands of diverse lenders
26 and other entities involved in the credit industry, from the public record and from
27 other sources. Extremely sophisticated and unique computer software design was
28 necessary to allow these defendants to process that information in the form of credit

1 reports as accurately as possible when a customer applies for credit. These
2 defendants have spent hundreds of millions of dollars and countless hours of
3 employee time developing their unique and sophisticated computer systems.

4 The sophistication of Experian, Equifax, and Trans Union’s computer systems
5 are a major advantage for each in the marketplace. Were information about their
6 highly sophisticated computer systems to get into the hands of competitors, it would
7 enable the competitors to enhance their own systems and, in so doing, remove the
8 marketing edge currently enjoyed by each of them. Similarly, were information
9 about the design and workings of those systems to get into the hands of a would-be
10 competitor, it would greatly facilitate that would-be competitor's efforts to develop
11 its own sophisticated computer system. Each of these would have a serious
12 financial impact on these defendants. Were this same type of information to get into
13 criminal hands, it would facilitate the efforts of those who seek to improperly access
14 these defendants’ files on consumers and perpetrate identity fraud. It would also
15 facilitate the efforts of those who seek to make changes to information in
16 consumers’ files. In addition to impairing the privacy of consumers, such actions
17 could lead to a loss of confidence in these defendants. This loss of confidence,
18 critical in the credit reporting business, could put these defendants out of business.

19 Finally, Plaintiffs and Defendants will be disclosing Plaintiffs’ sensitive
20 personal information, and confidential information of other individuals may also be
21 disclosed. It is extremely important that this information remain protected and not
22 be readily available due to the dangers of identity theft.

23 2. DEFINITIONS

24 2.1 Action: *Alfredo Hernandez, et al. v. Ditech Financial LLC, et al.*,
25 pending in the United States District Court for the Central District of California,
26 Western Division – Los Angeles, bearing Case No. 2:17-cv-04294-GW-JEM.

27 2.2 Challenging Party: a Party or Non-Party that challenges the designation
28 of information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
4 the Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
6 their support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless
11 of the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced or
13 generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as
16 an expert witness or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a
23 party to this Action but are retained to represent or advise a party to this Action and
24 have appeared in this Action on behalf of that party or are affiliated with a law firm
25 which has appeared on behalf of that party, and includes support staff.

26 2.11 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 3. SCOPE

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

17 Any use of Protected Material at trial will be governed by the orders of the
18 trial judge. This Order does not govern the use of Protected Material at trial.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order will remain in effect until a Designating Party agrees
22 otherwise in writing or a court order otherwise directs. Final disposition will be
23 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
24 or without prejudice; and (2) final judgment herein after the completion and
25 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
26 including the time limits for filing any motions or applications for extension of time
27 pursuant to applicable law.

28

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating
14 Party to sanctions.

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

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix at a minimum, the legend
27 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
28 contains protected material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection will be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which
9 documents, or portions thereof, qualify for protection under this Order. Then,
10 before producing the specified documents, the Producing Party must affix the
11 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
12 portion or portions of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins).

15 (b) for testimony given in depositions or in other pretrial proceedings, that
16 the Designating Party identify the Disclosure or Discovery Material (i) on the
17 record, before the close of the deposition, hearing, or other proceeding, all protected
18 testimony; or (ii) in writing, within 21 days of receipt of the transcript of the
19 testimony from the deposition, hearing, or other proceeding.

20 (c) for information produced in some form other than documentary and for
21 any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information is stored the legend
23 “CONFIDENTIAL.” If only a portion or portions of the information warrants
24 protection, the Producing Party, to the extent practicable, will identify the protected
25 portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party's right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court’s
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party will initiate the dispute
9 resolution process under Local Rule 37.1 et seq.

10 6.3 If the dispute cannot be resolved, the Challenging Party may seek
11 appropriate relief from this Court. The burden of persuasion in any such challenge
12 proceeding will be on the Designating Party. Frivolous challenges, and those made
13 for an improper purpose (e.g., to harass or impose unnecessary expenses and
14 burdens on other parties) may expose the Challenging Party to sanctions. Unless the
15 Designating Party has waived or withdrawn the confidentiality designation, all
16 parties will continue to afford the material in question the level of protection to
17 which it is entitled under the Producing Party’s designation until the Court rules on
18 the challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending, or attempting to settle this Action. Protected
23 Material and all information derived therefrom (including, but not limited to, all
24 testimony, deposition, or otherwise, that refers, reflects or otherwise discusses any
25 information designated “CONFIDENTIAL”), shall not be used, directly or
26 indirectly, by any person, including other defendants, for any business, commercial
27 or competitive purposes or for any purpose whatsoever other than in accordance
28 with the provisions of this Order. Such Protected Material may be disclosed only to

1 the categories of persons and under the conditions described in this Order. When
2 the Action has been terminated, a Receiving Party must comply with the provisions
3 of section 12 below (FINAL DISPOSITION).

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

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

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

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

17 (c) Experts (as defined in this Order) of the Receiving Party to
18 whom disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the Court and its personnel;

21 (e) court reporters and their staff;

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

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

28

1 (h) during their depositions, witnesses, and attorneys for witnesses,
2 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing
3 party requests that the witness sign the form attached as Exhibit A hereto; (2) the
4 witness will not be permitted to keep any confidential information unless otherwise
5 agreed by the Designating Party or ordered by the court; and (3) no former
6 employees of the Designating Party shall be shown documents prepared after the
7 date of his or her departure. Pages of transcribed deposition testimony or exhibits to
8 depositions that reveal Protected Material may be separately bound by the court
9 reporter and may not be disclosed to anyone except as permitted under this
10 Stipulated Protective Order; and

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

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
15 IN OTHER LITIGATION

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

19 (a) promptly notify in writing the Designating Party. Such
20 notification will include a copy of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or
22 order to issue in the other litigation that some or all of the material covered by the
23 subpoena or order is subject to this Protective Order. Such notification will include
24 a copy of this Stipulated Protective Order; and

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

27 If the Designating Party timely seeks a protective order, the Party served with
28 the subpoena or court order will not produce any information designated in this

1 action as “CONFIDENTIAL” before a determination by the court from which the
2 subpoena or order issued, unless the Party has obtained the Designating Party’s
3 permission. The Designating Party will bear the burden and expense of seeking
4 protection in that court of its confidential material and nothing in these provisions
5 should be construed as authorizing or encouraging a Receiving Party in this Action
6 to disobey a lawful directive from another court.

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

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

14 (b) In the event that a Party is required, by a valid discovery request,
15 to produce a Non-Party’s confidential information in its possession, and the Party is
16 subject to an agreement with the Non-Party not to produce the Non-Party’s
17 confidential information, then the Party will:

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

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

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

26 (c) If the Non-Party fails to seek a protective order from this court
27 within 14 days of receiving the notice and accompanying information, the Receiving
28 Party may produce the Non-Party’s confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the Receiving
2 Party will not produce any information in its possession or control that is subject to
3 the confidentiality agreement with the Non-Party before a determination by the
4 court.

5 Absent a court order to the contrary, the Non-Party will bear the burden and
6 expense of seeking protection in this court of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 Protected Material to any person or in any circumstance not authorized under this
10 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
11 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
12 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
13 persons to whom unauthorized disclosures were made of all the terms of this Order,
14 and (d) request such person or persons to execute the “Acknowledgment and
15 Agreement to Be Bound” that is attached hereto as Exhibit A.

16 11. MISCELLANEOUS

17 11.1 Right to Further Relief. Nothing in this Order abridges the right of any
18 person to seek its modification by the Court in the future.

19 11.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Protective Order no Party waives any right it otherwise would have to object to
21 disclosing or producing any information or item on any ground not addressed in this
22 Stipulated Protective Order. Similarly, no Party waives any right to object on any
23 ground to use in evidence of any of the material covered by this Protective Order.

24 11.3 Filing Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
26 only be filed under seal pursuant to a court order authorizing the sealing of the
27 specific Protected Material at issue. If a Party’s request to file Protected Material
28 under seal is denied by the court, then the Receiving Party may file the information

1 in the public record unless otherwise instructed by the court.

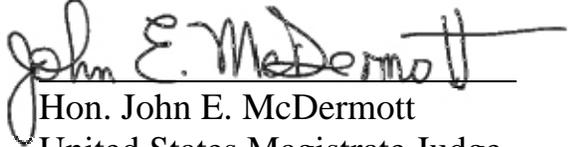
2 12. FINAL DISPOSITION

3 Within 60 days after the final disposition of this Action, as defined in
4 paragraph 4, each Receiving Party must return all Protected Material to the
5 Producing Party or destroy such material. As used in this subdivision, “all Protected
6 Material” includes all copies, abstracts, compilations, summaries, and any other
7 format reproducing or capturing any of the Protected Material. Whether the
8 Protected Material is returned or destroyed, the Receiving Party must submit a
9 written certification to the Producing Party (and, if not the same person or entity, to
10 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
11 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
12 that the Receiving Party has not retained any copies, abstracts, compilations,
13 summaries or any other format reproducing or capturing any of the Protected
14 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
15 copy of attorney work product, and consultant and expert work product, even if such
16 materials contain Protected Material. Any such archival copies that contain or
17 constitute Protected Material remain subject to this Protective Order as set forth in
18 Section 4 (DURATION).

19 13. Any willful violation of this Order may be punished by civil or criminal
20 contempt proceedings, financial and/or evidentiary sanctions, reference to
21 disciplinary authorities, or other appropriate action at the discretion of the Court.

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23
24 Dated: November 6, 2017


25 Hon. John E. McDermott
26 United States Magistrate Judge
27
28

1 **EXHIBIT "A"**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [full name] of _____

4 _____ [full address], declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____ in the case of *Alfredo Hernandez, et al. v.*
8 *Ditech Financial LLC, et al.*, pending in the United States District Court for the
9 Central District of California, Western Division – Los Angeles, bearing Case No.
10 2:17-cv-04294 GW (JEMx). I agree to comply with and to be bound by all the
11 terms of this Stipulated Protective Order and I understand and acknowledge that
12 failure to so comply could expose me to sanctions and punishment in the nature of
13 contempt. I solemnly promise that I will not disclose in any manner any
14 information or item that is subject to this Stipulated Protective Order to any person
15 or entity except in strict compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Central District of California for the purpose of enforcing the terms of this
18 Stipulated Protective Order, even if such enforcement proceedings occur after
19 termination of this action.

20 I hereby appoint _____ [full name] of _____

21 _____ [full address and telephone
22 number] as my California agent for service of process in connection with this action
23 or any proceedings related to enforcement of this Stipulated Protective Order.

24 Date: _____

25 City and State where signed: _____

26 Printed name: _____

27 Signature: _____

28 _____