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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW NYDEN, an Individual,
Plaintiff,
v.
FIRST ADVANTAGE BACKGROUND
SERVICES CORP., a corporation, et al.
Defendants.

Case No. 2:17-cv-08695-RGK-FFM

**PROTECTIVE ORDER
PURSUANT TO STIPULATION**

Plaintiff MATTHEW NYDEN and Defendants FIRST ADVANTAGE
BACKGROUND SERVICES CORP. and WELLS FARGO BANK, N.A., having
consented through their respective attorneys for the entry of this Agreed Protective Order
in order to protect the confidentiality of certain information and to facilitate discovery, IT
IS HEREBY ORDERED THAT:

Given the subject matter of this action, the parties reasonably expect that certain
discovery and/or testimony in this case might involve materials that are confidential,
subject to restrictions and/or confidentiality agreements, or otherwise subject to the
protections of Rule 26(c) of the Federal Rules of Civil Procedure. To facilitate the

1 orderly progress of discovery of these matters, the parties hereby stipulate and agree to
2 the entry of this Order.

3
4 1. This Order shall remain in effect for the duration of this action unless
5 otherwise ordered by the Court or agreed by the parties.

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7 2. This Order shall apply to the parties and any non-party from whom
8 discovery may be sought and who desires the protection of this Order.

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10 3. Designations of information as “Confidential” pursuant to this Order are
11 intended strictly for the purpose of facilitating the litigation of this action.

12
13 4. The parties hereby reserve their rights to challenge any party or non-party’s
14 claim that any information produced in this litigation is confidential or should be subject
15 to this Order. The parties further reserve their rights to continue making full and
16 appropriate use of any information that was lawfully in their possession before the date
17 the Complaint was filed in this action, and nothing in this Order shall restrict a party
18 from continuing to make use of said information simply because another party
19 subsequently designates any portion of that information for protection under this Order.

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21 5. As used herein:

22
23 a. “Producing Party” means any person or entity that produces documents or
24 information in connection with this action, including Defendants or any non-
25 party.

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1 b. “Receiving Party” means the person or entity to whom a Producing Party
2 produces any documents or other materials in connection with this action,
3 including Plaintiff and Defendants.
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5 c. “Designating Party” means: (i) any Producing Party that designates
6 documents or information as “Confidential” pursuant to the terms of this
7 Order; or (ii) any party that designates documents or information
8 subpoenaed from a non-party as “Confidential” pursuant to the terms of this
9 Order.
10

11 d. “Disclosure” or “to disclose” shall mean to divulge, reveal, describe,
12 summarize, paraphrase, quote, transmit, or otherwise provide or
13 communicate to any person or entity Confidential Materials, whether
14 pursuant to request, interrogatory, process, or otherwise, and whether in
15 accordance with the Federal Rules of Civil Procedure or otherwise.
16

17 6. Confidential Materials: Any Designating Party may designate documents
18 and other information produced in this action as “Confidential” if the Designating Party
19 has a good faith belief that the document or information so designated constitutes: (a)
20 non-public, proprietary or confidential research, development, or commercial
21 information, trade secrets or non-public intellectual property, or pricing or financial data
22 of the Designating Party or its affiliates, including policies and procedures, business
23 plans, advertising or marketing initiatives, budget data, pricing models, sales data, and
24 confidential tax data; (b) the personal information of consumers other than Plaintiff or of
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1 current and former employees of Defendants or their affiliates, including biographical
2 data, bank account data, health and drug testing data, public records data, background
3 reports, and other similar, sensitive personal information; or (c) other proprietary or
4 confidential information that would not be available to the public or non-parties outside
5 the context of this litigation, including information otherwise protected from disclosure
6 by statute or regulation. In any dispute regarding the propriety of designating any
7 material as confidential, the burden of establishing the proper designation of materials as
8 confidential shall be upon the designating party.
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12 7. Confidential Materials shall be used solely for the purpose of this action,
13 shall not be used for any other business, competitive, or other purpose, and shall not be
14 disclosed to any other person or entity other than:
15

- 16 a. The parties in this action;
- 17 b. Counsel for the parties in this action, including employees of such counsel to
18 the extent necessary to render professional services in this action;
- 19 c. The Court and persons employed by the Court working on this action;
- 20 d. Court reporters at the proceedings in this action;
- 21 e. Experts or consultants retained or consulted by the parties in connection with
22 this action, but only as set forth in Paragraphs 9 and 10 below; and
- 23 f. Deponents, trial witnesses, and potential witnesses in connection with this
24 action, but only as set forth in Paragraphs 9 and 10 below.
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1 8. Prior to making the disclosure of any Confidential Materials pursuant to
2 subsections (e) and (f) of Paragraph 7, counsel making such disclosure shall inform any
3 person to whom disclosure is being made that the information or documents to be
4 disclosed, or any portions thereof, may be used only for the purposes set forth in this
5 Order. In addition, such persons shall state their consent in writing (in the form of an
6 Acknowledgment attached hereto as Exhibit A) to be bound by the terms of this Order.
7 The signed Acknowledgment forms will be e-mailed by counsel to opposing counsel
8 immediately upon execution.
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12 9. In the event that any Confidential Materials are referred to or used in the
13 deposition of any person initiated by any party, the parties' counsel shall have the option,
14 during the deposition or within fourteen (14) days after the deposition, to require the
15 reporter to prepare the transcript or portions thereof and exhibits as "Confidential." Such
16 transcripts, excerpts, exhibits, and the information contained therein shall remain
17 protected under this Order regardless of whether the parties' counsel exercises the option
18 provided by this paragraph. Moreover, the parties may, at the deposition or after
19 receiving a copy of the deposition transcripts, designate deposition testimony or portions
20 thereof as "Confidential." A Designating Party may not over-designate deposition
21 transcripts and may only designate in any transcript those excerpts or portions or exhibits,
22 which are legitimately confidential.
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26 10. This Order does not limit the right of any party to object to the scope of
27 discovery or to any particular discovery request in this action.
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1 11. Within fourteen (14) days of the conclusion of this action, including any
2 appeals, as to all parties, Confidential Materials produced by the Producing Party, as well
3 as all copies, excerpts, or summaries thereof, shall be returned to the Producing Party or
4 destroyed. In the event counsel possesses attorney work product containing or referring
5 to Confidential Materials, such attorney work product shall remain subject to the
6 restrictions set forth in Paragraph 8 above or in the alternative may be destroyed.

9 12. Nothing in this Order shall prevent a party from any use of its own
10 Confidential Materials. Moreover, nothing in this Order shall limit the right of the parties
11 to use Confidential Materials for purposes of this action, including in any pleadings,
12 memoranda, briefs, exhibits, or other documents that may be prepared in connection with
13 this action. This Order does not provide prospectively for filing materials under seal.
14 Any party wishing to file, under seal, materials designated by another party as
15 Confidential Materials under this Order shall first file an application, memorandum,
16 proposed order including findings, and notice of hearing in compliance with Central
17 District of California Local Civil Rule 79-5.2.2 and the Court's Standing Order ¶ 16.

21 13. The inadvertent or unintentional disclosure of any Confidential Materials
22 shall not be construed to be a waiver, in whole or part, of any party's claim of
23 confidentiality, either as to the specific Confidential Materials disclosed or as to other
24 related information.

26 14. Subject to Paragraph 19, any party may apply to the Court seeking an order
27 that information designated as "Confidential" pursuant to this Order need not be treated
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1 as such. The party seeking relief from this Order shall specify which information
2 designated as “Confidential” by a Designating Party for which it disputes the designation
3 and the reasons for the dispute.
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5 15. Except as otherwise provided herein, no party shall disclose any information
6 designated as “Confidential” without the written consent of the Designating Party or the
7 express permission of the Court.
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9 16. Furnishing of consumer report information regarding Plaintiff for the
10 purposes of litigating this action is authorized by this Order pursuant to 15 U.S.C. §
11 1681b(a)(1).
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13 17. The inadvertent production or disclosure of any document or filing
14 otherwise protected by the attorney-client privilege or work product immunity shall not
15 constitute or be deemed as a waiver or forfeiture of any such privilege or immunity,
16 pursuant to Rule 502(d) of the Federal Rules of Evidence.
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18 18. If, after learning of the inadvertent production or disclosure, the Producing
19 Party wishes to assert its privilege or protection, it shall send to each Receiving Party a
20 written request for return of the inadvertently produced or disclosed document or thing.
21 Notwithstanding the procedures outlined in Paragraphs 19(a) to (d) below, a Receiving
22 Party shall not further review the inadvertently produced document or thing except as
23 necessary to identify it for return and destruction and, within five (5) business days of
24 receiving such a request, each Receiving Party shall return to the Producing Party all such
25 documents and things identified by the Producing Party as having been inadvertently
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1 produced, shall destroy any electronic copies such that they cannot in any way be
2 retrieved or reproduced, and shall not utilize the information contained in such
3 documents or things for any purpose.
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- 5 a. If the Receiving Party wishes to contest that any such document or thing is
6 protected by the attorney-client privilege or by work-product immunity, the
7 Receiving Party shall so notify the Producing Party in writing within five (5)
8 business days of when the document or thing is returned to the Producing
9 Party.
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11 b. Within five (5) business days after receiving such notification, the Producing
12 Party shall provide to the Receiving Party for each such document or thing a
13 privilege log describing the basis for the claim of privilege or immunity.
14
15 c. Within five (5) business days after receiving such description, if the
16 Receiving Party wishes to file a motion to compel production of such
17 documents and things, the Receiving Party shall follow the procedures set
18 forth in Paragraph 19. If such a motion is filed, the Producing Party shall
19 have the burden of proving that the documents and things in dispute are
20 protected by the attorney-client privilege or by work-product immunity.
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22 d. With respect to documents and things subsequently generated by a
23 Receiving Party, which documents and things contain information derived
24 from such inadvertently produced documents and things, if the Receiving
25 Party does not notify the Producing Party that the Receiving Party disputes
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1 the claims of attorney-client privilege or work-product immunity, the
2 Receiving Party shall either destroy the derivative documents and things or
3 redact from them all such derivative privilege or work-product information
4 in a manner such that the derivative information cannot in any way be
5 retrieved or reproduced.
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8 19. Before seeking relief from the Court due to an alleged violation of this
9 Order, the party seeking relief shall attempt to resolve the matter by agreement with the
10 other party. If, after the parties meet and confer, the matter remains in dispute, either
11 party may promptly present the matter to the Court by motion. Any such motion must
12 fully comply with Local Rule 37. During the pendency of such motion and unless the
13 Court rules otherwise, any Confidential Materials shall be handled according to their
14 designation.
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17 20. The terms of this Order are subject to modification, extension, or limitation
18 as may be hereinafter agreed to by all parties, subject to the Court's approval, or by Order
19 of the Court.
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21 21. The Court retains the right to allow disclosure of any subject covered by this
22 Order or to modify this Order at any time in the interest of justice.
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24 22. Any violation of the terms of this Order may, in the discretion of the Court,
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2 result in sanctions, an award of damages, or other appropriate relief as determined by the
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4 Court.

5 SO ORDERED this 22nd day of August, 2018.

7 /S/ FREDERICK F. MUMM
8 Frederick F. Mumm
9 United States Magistrate Judge

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1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, _____, of _____,
4 declare under penalty of perjury that I have read in its entirety and understand the Agreed Protective
5 Order (“Order”) that was issued by the United States District Court for the Central District of California
6 on _____, 2018 in the case of *Matthew Nyden v. First Advantage Background Services Corp., et*
7 *al.*, Case No. 2:17-cv-08695-RGK-FFM. I agree to comply with and be bound by all the terms of this
8 Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
10 information or item that is subject to this Order to any person or entity except in strict compliance with
11 the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Central
13 District of California for the purpose of enforcing the terms of this Order, even if such enforcement
14 proceedings occur after termination of this action.

15 I hereby appoint _____ of
16 _____ as my California agent for service of
17 process in connection with this action or any proceedings related to enforcement of this Order.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____
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