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6 UNITED STATES DISTRICT COURT
 7 CENTRAL DISTRICT OF CALIFORNIA

10 Green Payment Solutions, LLC,
 11 Plaintiff,
 12 v.
 13 First Data Merchant Services
 Corporation; Wells Fargo Bank, N.A.;
 14 and Does 1 to 100,
 15 Defendants.

Case No. 2:18-cv-1463 DSF (ASx)

STIPULATED PROTECTIVE ORDER

Judge: Hon. Dale S. Fischer

Magistrate Judge: Hon. Alka Sagar

16
 17 First Data Merchant Services LLC and
 Wells Fargo Bank, N.A.,
 18 Counter-Plaintiffs,
 19 v.
 20 Green Payment Solutions, LLC
 21 Counter-Defendant.

24 1. A. PURPOSES AND LIMITATIONS

25 Discovery in this action is likely to involve production of confidential,
 26 proprietary, or private information for which special protection from public
 27 disclosure and from use for any purpose other than prosecuting this litigation may
 28 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to

1 enter the following Stipulated Protective Order. The parties acknowledge that this
2 Order does not confer blanket protections on all disclosures or responses to
3 discovery and that the protection it affords from public disclosure and use extends
4 only to the limited information or items that are entitled to confidential treatment
5 under the applicable legal principles. The parties further acknowledge, as set forth
6 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
7 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
8 procedures that must be followed and the standards that will be applied when a
9 party seeks permission from the court to file material under seal.

10 **B. GOOD CAUSE STATEMENT**

11 This action is likely to involve non-public, confidential, proprietary,
12 financial, technical, or commercially or legally sensitive or protected information
13 for which special protection from public disclosure and from use for any purpose
14 other than prosecution of this action is warranted. Such confidential and
15 proprietary materials and information consist of, among other things, confidential
16 business or financial information, information regarding confidential business
17 practices, or other confidential research, development, or commercial information
18 (including information implicating privacy rights of third parties), information
19 otherwise generally unavailable to the public, or which may be privileged or
20 otherwise protected from disclosure under state or federal statutes, court rules, case
21 decisions, or common law. Accordingly, to expedite the flow of information, to
22 facilitate the prompt resolution of disputes over confidentiality of discovery
23 materials, to adequately protect information the parties are entitled to keep
24 confidential, to ensure that the parties are permitted reasonable necessary uses of
25 such material in preparation for and in the conduct of trial, to address their
26 handling at the end of the litigation, and serve the ends of justice, a protective order
27 for such information is justified in this matter. It is the intent of the parties that
28 information will not be designated as confidential for tactical reasons and that

1 nothing be so designated without a good faith belief that it has been maintained in
2 a confidential, non-public manner, and there is good cause why it should not be
3 part of the public record of this case.

4 2. DEFINITIONS

5 2.1 Action: this pending federal law suit, styled *Green Payment Solutions,*
6 *LLC v. First Data Merchant Services Corp.* et al., Case No. 2:18-cv-1463 DSF
7 (ASx).

8 2.2 Challenging Party: a Party or Non-Party that challenges the
9 designation of information or items under this Order.

10 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
11 how it is generated, stored or maintained) or tangible things that qualify for
12 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
13 the Good Cause Statement.

14 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
15 their support staff).

16 2.5 Designating Party: a Party or Non-Party that designates information
17 or items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 2.6 Disclosure or Discovery Material: all items or information, regardless
20 of the medium or manner in which it is generated, stored, or maintained (including,
21 among other things, testimony, transcripts, and tangible things), that are produced
22 or generated in disclosures or responses to discovery in this matter.

23 2.7 Expert: a person with specialized knowledge or experience in a
24 matter pertinent to the litigation who has been retained by a Party or its counsel to
25 serve as an expert witness or as a consultant in this Action.

26 2.8 House Counsel: attorneys who are employees of a party to this
27 Action. House Counsel does not include Outside Counsel of Record or any other
28 outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a
4 party to this Action but are retained to represent or advise a party to this Action
5 and have appeared in this Action on behalf of that party or are affiliated with a law
6 firm which has appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 3. SCOPE

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

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

28 4. DURATION

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

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

11 Each Party or Non-Party that designates information or items for protection
12 under this Order must take care to limit any such designation to specific material
13 that qualifies under the appropriate standards. The Designating Party must
14 designate for protection only those parts of material, documents, items, or oral or
15 written communications that qualify so that other portions of the material,
16 documents, items, or communications for which protection is not warranted are not
17 swept unjustifiably within the ambit of this Order.

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

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

26 5.2 Manner and Timing of Designations. Except as otherwise provided in
27 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
28 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix at a minimum, the legend
7 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
8 contains protected material. If only a portion or portions of the material on a page
9 qualifies for protection, the Producing Party also must clearly identify the
10 protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a prominent place on
28 the exterior of the container or containers in which the information is stored the

1 legend “CONFIDENTIAL.” If only a portion or portions of the information
2 warrants protection, the Producing Party, to the extent practicable, shall identify
3 the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such
7 material. Upon timely correction of a designation, the Receiving Party must make
8 reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be
17 on the Designating Party. Frivolous challenges, and those made for an improper
18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
19 parties) may expose the Challenging Party to sanctions. Unless the Designating
20 Party has waived or withdrawn the confidentiality designation, all parties shall
21 continue to afford the material in question the level of protection to which it is
22 entitled under the Producing Party’s designation until the Court rules on the
23 challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that
26 is disclosed or produced by another Party or by a Non-Party in connection with
27 this Action only for prosecuting, defending, or attempting to settle this Action.
28 Such Protected Material may be disclosed only to the categories of persons and

1 under the conditions described in this Order. When the Action has been
2 terminated, a Receiving Party must comply with the provisions of section 13
3 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,
9 a 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, as
12 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 Counsel) of
15 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

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

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

26 (h) during their depositions, witnesses, and attorneys for witnesses, in the
27 Action to whom disclosure is reasonably necessary provided: (1) the deposing
28 party requests that the witness sign the form attached as Exhibit A hereto; and (2)

1 they will not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
3 agreed by the Designating Party or ordered by the court. Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal Protected Material may
5 be separately bound by the court reporter and may not be disclosed to anyone
6 except as permitted under this Stipulated Protective Order; and

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

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
10 IN OTHER LITIGATION

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

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

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

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

22 If the Designating Party timely seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated in
24 this action as “CONFIDENTIAL” before a determination by the court from which
25 the subpoena or order issued, unless the Party has obtained the Designating
26 Party’s permission. The Designating Party shall bear the burden and expense of
27 seeking protection in that court of its confidential material and nothing in these
28 provisions should be construed as authorizing or encouraging a Receiving Party in

1 this Action to disobey a lawful directive from another court.

2 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
3 PRODUCED IN THIS LITIGATION

4 (a) The terms of this Order are applicable to information produced by a
5 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
6 produced by Non-Parties in connection with this litigation is protected by the
7 remedies and relief provided by this Order. Nothing in these provisions should be
8 construed as prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party's confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party's
12 confidential information, then the Party shall:

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

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

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

21 (c) If the Non-Party fails to seek a protective order from this court within
22 14 days of receiving the notice and accompanying information, the Receiving
23 Party may produce the Non-Party's confidential information responsive to the
24 discovery request. If the Non-Party timely seeks a protective order, the Receiving
25 Party shall not produce any information in its possession or control that is subject
26 to the confidentiality agreement with the Non-Party before a determination by the
27 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
28 expense of seeking protection in this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or
21 work product protection, the parties may incorporate their agreement in the
22 stipulated protective order submitted to the court.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in

1 this Stipulated Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the material covered by this Protective
3 Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material
6 may only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in paragraph 4, within
12 60 days of a written request by the Designating Party, each Receiving Party must
13 return all Protected Material to the Producing Party or destroy such material. As
14 used in this subdivision, “all Protected Material” includes all copies, abstracts,
15 compilations, summaries, and any other format reproducing or capturing any of the
16 Protected Material. Whether the Protected Material is returned or destroyed, the
17 Receiving Party must submit a written certification to the Producing Party (and, if
18 not the same person or entity, to the Designating Party) by the 60 day deadline that
19 (1) identifies (by category, where appropriate) all the Protected Material that was
20 returned or destroyed and (2) affirms that the Receiving Party has not retained any
21 copies, abstracts, compilations, summaries or any other format reproducing or
22 capturing any of the Protected Material. Notwithstanding this provision, Counsel
23 are entitled to retain an archival copy of all pleadings, motion papers, trial,
24 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
25 and trial exhibits, expert reports, attorney work product, and consultant and expert
26 work product, even if such materials contain Protected Material. Any such archival
27 copies that contain or constitute Protected Material remain subject to this
28 Protective Order as set forth in Section 4 (DURATION).

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 DATED: July 3, 2018

7
8 /s/ Brianna Dahlberg
9 Attorneys for Plaintiff

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11 DATED: July 3, 2018

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13
14 /s/ John W. Peterson
15 Attorneys for Defendant

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17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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19 DATED: July 3, 2018

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23 /s/
24 Honorable Alka Sagar
25 United States Magistrate Judge

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Dated: July 3, 2018

POLSINELLI LLP

By: /s/ John W. Peterson
John W. Peterson

Attorneys for Defendants

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____,
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Central District of California on _____ in the case of *Green Payment
Solutions, LLC v. First Data Merchant Services Corp. et al.*, Case No. 2:18-cv-
1463 DSF (ASx). I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action. I hereby appoint _____
of _____ as my California agent for
service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____