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 18 NAVIENT SOLUTIONS, INC.

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

21 JOVAN JOHNSON, an Individual,
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 23 Plaintiff,
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 25 vs.
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 27 CAPITAL ONE, N.A.; NAVIENT
 28 SOLUTIONS, INC.; and EQUIFAX
 INFORMATION SERVICES, LLC,
 Defendants.

Case No. 2:18-CV-02109-ODW-RAO
 (Honorable Otis D. Wright, II)

**STIPULATED PROTECTIVE
 ORDER¹**

Hearing Date: TBA
 Hearing Time: TBA
 Courtroom: 10D

Complaint Filed: 3/13/17
 Discovery Cut-off: 6/17/19
 Pre-Trial Conference: 9/9/19
 Trial: 10/1/19

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Rozella A. Oliver’s Procedures.

1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve confidential business, financial, technical,
13 proprietary and/or personal information for which special protection from public
14 disclosure and from use for any purpose other than prosecution of this action is
15 warranted. Such confidential and proprietary materials and information consist of,
16 among other things: (1) confidential business information; (2) proprietary business
17 methods or practices; (3) personal information, including personal financial
18 information about customers or applicants, third parties, the parties, or an employee
19 of any party to this action; (4) personal information regarding any individual's
20 banking or lending relationships, including, without limitation, information
21 regarding any individual's loan or credit history; and (5) information otherwise
22 generally unavailable to the public, or which may be privileged or otherwise
23 protected from disclosure under state or federal statutes, court rules, case decisions,
24 or common law. Accordingly, to expedite the flow of information, to facilitate the
25 prompt resolution of disputes over confidentiality of discovery materials, to
26 adequately protect information the parties are entitled to keep confidential, to ensure
27 that the parties are permitted reasonable necessary uses of such material in
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1 preparation for and in the conduct of trial, to address their handling at the end of the
2 litigation, and serve the ends of justice, a protective order for such information is
3 justified in this matter. It is the intent of the parties that information will not be
4 designated as confidential for tactical reasons and that nothing be so designated
5 without a good faith belief that it has been maintained in a confidential, non-public
6 manner, and there is good cause why it should not be part of the public record of this
7 case.

8 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that this
10 Stipulated Protective Order does not entitle them to file confidential information
11 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
12 and the standards that will be applied when a party seeks permission from the court
13 to file material under seal.

14 There is a strong presumption that the public has a right of access to judicial
15 proceedings and records in civil cases. In connection with non-dispositive motions,
16 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
17 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
18 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics,*
19 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
20 require good cause showing), and a specific showing of good cause or compelling
21 reasons with proper evidentiary support and legal justification, must be made with
22 respect to Protected Material that a party seeks to file under seal. The parties’ mere
23 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
24 without the submission of competent evidence by declaration, establishing that the
25 material sought to be filed under seal qualifies as confidential, privileged, or
26 otherwise protectable—constitute good cause.

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1 Further, if a party requests sealing related to a dispositive motion or trial, then
2 compelling reasons, not only good cause, for the sealing must be shown, and the
3 relief sought shall be narrowly tailored to serve the specific interest to be protected.
4 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
5 each item or type of information, document, or thing sought to be filed or introduced
6 under seal in connection with a dispositive motion or trial, the party seeking
7 protection must articulate compelling reasons, supported by specific facts and legal
8 justification, for the requested sealing order. Again, competent evidence supporting
9 the application to file documents under seal must be provided by declaration.

10 Any document that is not confidential, privileged, or otherwise protectable in
11 its entirety will not be filed under seal if the confidential portions can be redacted. If
12 documents can be redacted, then a redacted version for public viewing, omitting
13 only the confidential, privileged, or otherwise protectable portions of the document,
14 shall be filed. Any application that seeks to file documents under seal in their
15 entirety should include an explanation of why redaction is not feasible.

16 2. DEFINITIONS

17 2.1. Action: *Jovan Johnson v. Capital One, Inc., et al.*, Case No. 2:18-CV-
18 02109-ODW-RAO.

19 2.2. Challenging Party: a Party or Non-Party that challenges the designation
20 of information or items under this Order.

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

25 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as
26 their support staff).

1 2.5. Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6. Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7. Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 2.8. House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9. Non-Party: any natural person, partnership, corporation, association or
15 other legal entity not named as a Party to this action.

16 2.10. Outside Counsel of Record: attorneys who are not employees of a party
17 to this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm that
19 has appeared on behalf of that party, and includes support staff.

20 2.11. Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13. Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.14. Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
6 from a Producing Party.

7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material. Any
13 use of Protected Material at trial shall be governed by the orders of the trial judge.
14 This Order does not govern the use of Protected Material at trial.

15 4. DURATION

16 Once a case proceeds to trial, information that was designated as
17 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
18 as an exhibit at trial becomes public and will be presumptively available to all
19 members of the public, including the press, unless compelling reasons supported by
20 specific factual findings to proceed otherwise are made to the trial judge in advance
21 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
22 showing for sealing documents produced in discovery from “compelling reasons”
23 standard when merits-related documents are part of court record). Accordingly, the
24 terms of this protective order do not extend beyond the commencement of the trial.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1. Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under
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1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items or oral or written
4 communications that qualify so that other portions of the material, documents, items
5 or communications for which protection is not warranted are not swept unjustifiably
6 within the ambit of this Order.

7 Mass, indiscriminate or routinized designations are prohibited. If it comes to a
8 Designating Party's attention that information or items that it designated for
9 protection do not qualify for protection, that Designating Party must promptly notify
10 all other Parties that it is withdrawing the inapplicable designation.

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

16 Designation in conformity with this Order requires:

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

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

9 (b) for testimony given in depositions that the Designating Party
10 identifies the Disclosure or Discovery Material on the record, before the close of the
11 deposition all protected testimony.

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

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

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.

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1 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 *et seq.*

3 6.3. The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party’s designation until the Court rules on the
10 challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

22 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 “CONFIDENTIAL” only to:

1 (a) the Receiving Party’s Outside Counsel of Record in this Action,
2 as well as employees of said Outside Counsel of Record to whom it is reasonably
3 necessary to disclose the information for this Action;

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

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

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

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

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

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

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

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

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

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

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission.

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

21 The terms of this Order are applicable to information produced by a Non-
22 Party in this Action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the
24 remedies and relief provided by this Order. Nothing in these provisions should be
25 construed as prohibiting a Non-Party from seeking additional protections.
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1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

22 12. MISCELLANEOUS

23 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 12.2. Right to Assert Other Objections. By stipulating to the entry of this
26 Protective Order, no Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in this
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1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3. Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. If a Party’s request to file Protected Material
7 under seal is denied by the court, then the Receiving Party may file the information
8 in the public record unless otherwise instructed by the court.

9 13. FINAL DISPOSITION

10 Within 60 days of the final disposition of this Action, each Receiving Party
11 must return all Protected Material to the Producing Party or destroy such material.
12 As used in this subdivision, “all Protected Material” includes all copies, abstracts,
13 compilations, summaries, and any other format reproducing or capturing any of the
14 Protected Material. Whether the Protected Material is returned or destroyed, the
15 Receiving Party must submit a written certification to the Producing Party (and, if
16 not the same person or entity, to the Designating Party) by the 60 day deadline that
17 (1) identifies (by category, where appropriate) all the Protected Material that was
18 returned or destroyed and (2) affirms that the Receiving Party has not retained any
19 copies, abstracts, compilations, summaries or any other format reproducing or
20 capturing any of the Protected Material.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: April 11, 2019

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/s/ WAYNE SINNETT
WAYNE SINNETT
SINNETT LAW, APC
Attorneys for Plaintiff
JOVAN JOHNSON

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8 DATED: April 11, 2019

/s/ ASHLEY M. BRETTFINGEN
DENNIS N. LUECK, JR.
ASHLEY M. BRETTFINGEN
HINSHAW & CULBERTSON LLP
Attorneys for Defendant
NAVIENT SOLUTIONS, LLC
f/k/a NAVIENT SOLUTIONS, INC.

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15 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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17 DATED: April 11, 2019

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Rozella A. Oliver

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HON. ROZELLA A. OLIVER
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], 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 [date] in the case of *Jovan Johnson v. Capital One, Inc., et al.*, Case No. 2:18-
CV-02109-ODW-RAO. 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 enforcing the terms of this Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and
telephone number] 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: _____