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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHAHROOZ SABZEHROO,
individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

CAPITAL ONE BANK (USA), N.A.
and DOES 1 through 10 inclusive,

Defendants.

CASE NO. 2:20-cv-10615-FMO-GJS

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER¹

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Gail J. Standish’s Procedures.

1 Plaintiff Shahrooz Sabzehroo (“Plaintiff”) and Defendant Capital One Bank
2 (USA), N.A. (“Defendant”) (collectively, the “Parties”), in order to facilitate the
3 exchange of information and documents that may be subject to confidentiality
4 limitations on disclosure due to federal laws, state laws, and privacy rights, and in
5 order to secure the entry of a protective order limiting the review, copying,
6 dissemination and filing of confidential and/or proprietary documents and
7 information to be produced by the Parties and their respective counsel or by any non-
8 party in the course of discovery in this matter to the extent set forth below, through
9 their respective counsel of record, hereby provide the following Stipulated Protective
10 Order as follows:

11 1. A. PURPOSES AND LIMITATIONS

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

21 B. GOOD CAUSE STATEMENT

22 This action is likely to involve Defendant’s confidential account records, which
23 include Plaintiff’s non-public personally identifiable information, proprietary system
24 notes and other valuable commercial, financial, technical and/or trade secret
25 information for which special protection from public disclosure and from use for any
26 purpose other than prosecution of this action is warranted. Such confidential and
27 proprietary materials and information consist of, among other things, confidential
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1 business or financial information, information regarding confidential business
2 practices or commercial information (including information implicating privacy
3 rights of third parties), information otherwise generally unavailable to the public, or
4 which may be privileged or otherwise protected from disclosure under state or federal
5 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
6 flow of information, to facilitate the prompt resolution of disputes over confidentiality
7 of discovery materials, to adequately protect information the parties are entitled to
8 keep confidential, to ensure that the parties are permitted reasonable necessary uses
9 of such material in preparation for and in the conduct of trial, to address their handling
10 at the end of the litigation, and serve the ends of justice, a protective order for such
11 information is justified in this matter. It is the intent of the parties that information
12 will not be designated as confidential for tactical reasons and that nothing be so
13 designated without a good faith belief that it has been maintained in a confidential,
14 non-public manner, and there is good cause why it should not be part of the public
15 record of this case.

16 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

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

22 There is a strong presumption that the public has a right of access to judicial
23 proceedings and records in civil cases. In connection with non-dispositive motions,
24 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
25 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
26 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,
27 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
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1 cause showing), and a specific showing of good cause or compelling reasons with
2 proper evidentiary support and legal justification, must be made with respect to
3 Protected Material that a party seeks to file under seal. The parties' mere designation
4 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
5 submission of competent evidence by declaration, establishing that the material
6 sought to be filed under seal qualifies as confidential, privileged, or otherwise
7 protectable—constitute good cause.

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

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

23 2. DEFINITIONS

24 2.1 Action: this pending federal lawsuit in the United States District Court
25 for the Central District of California titled *Shahrooz Sabzehroo v. Capital One Bank*
26 *(USA)*, N.A., Case No. 2:20-cv-10615-FMO-GJS.

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

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

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

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

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

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

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

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

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

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

3 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this Action.

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

9 2.14 Protected Material: any Disclosure or Discovery Material that is
10 designated as "CONFIDENTIAL."

11 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 3. SCOPE

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

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

21 4. DURATION

22 FINAL DISPOSITION of the action is defined as the conclusion of any
23 appellate proceedings, or, if no appeal is taken, when the time for filing of an appeal
24 has run. Except as set forth below, the terms of this protective order apply through
25 FINAL DISPOSITION of the action. The parties may stipulate that they will be
26 contractually bound by the terms of this agreement beyond FINAL DISPOSITION,
27 but will have to file a separate action for enforcement of the agreement once all
28 proceedings in this case are complete.

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

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

25 If it comes to a Designating Party’s attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.
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1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

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

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

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

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

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

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is

1 disclosed or produced by another Party or by a Non-Party in connection with this
2 Action only for prosecuting, defending or attempting to settle this Action. Such
3 Protected Material may be disclosed only to the categories of persons and under the
4 conditions described in this Order. When the Action has been terminated, a Receiving
5 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

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

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

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff;

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

26 (g) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information;
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1 (h) during their depositions, witnesses, and attorneys for witnesses, in the
2 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
3 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
4 not be permitted to keep any confidential information unless they sign the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
6 agreed by the Designating Party or ordered by the court. Pages of transcribed
7 deposition testimony or exhibits to depositions that reveal Protected Material may be
8 separately bound by the court reporter and may not be disclosed to anyone except as
9 permitted under this Stipulated Protective Order; and

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

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
13 OTHER LITIGATION

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

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with
26 the subpoena or court order shall not produce any information designated in this action
27 as “CONFIDENTIAL” before a determination by the court from which the subpoena
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1 or order issued, unless the Party has obtained the Designating Party's permission. The
2 Designating Party shall bear the burden and expense of seeking protection in that court
3 of its confidential material and nothing in these provisions should be construed as
4 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
5 directive from another court.

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

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

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

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

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

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

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

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

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

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

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

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

15 13. FINAL DISPOSITION

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

7 14. VIOLATION

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: July 14, 2021

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5 THE LAW OFFICES OF AMIR J. GOLDSTEIN, ESQ.

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/s/ Amir J. Goldstein

Amir J. Goldstein

Attorneys for Plaintiff Shahrooz Sabzehroo

DATED: July 14, 2021

MCGUIREWOODS LLP

/s/ Deleyla A. Lawrence

Bryan A. Fratkin

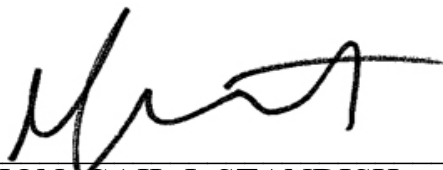
Seth A. Schaeffer

Deleyla A. Lawrence

Attorneys for Defendant Capital One
Bank (USA), N.A.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: July 16, 2021



HON. GAIL J. STANDISH
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that
6 I have read in its entirety and understand the Stipulated Protective Order that was
7 issued by the United States District Court for the Central District of California on
8 _____ in the case of *Shahrooz Sabzehroo v. Capital One Bank (USA), N.A.*,
9 Case No. 2:20-cv-10615-FMO-GJS. I agree to comply with and to be bound by all
10 the terms of this Stipulated Protective Order and I understand and acknowledge that
11 failure to so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any information
13 or item that is subject to this Stipulated Protective Order to any person or entity except
14 in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____