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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA- EASTERN DIVISION

JAMAL AKBER, individual,

Plaintiff,

vs.

NCO FINANCIAL SYSTEMS, INC.,  
LLC,

Defendants.

} Case No: EDCV14-01388 VAP-DTB  
 }  
 } STIPULATED PROTECTIVE ORDER

Plaintiff Jamal Akber and Defendant NCO Financial Systems, Inc., hereby stipulate to the following Protective Order in this case:

1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from

1 use for any purpose other than this litigation. Thus, the Court enters this Protective  
2 Order. This Order does not confer blanket protections on all disclosures or  
3 responses to discovery, and the protection it gives from public disclosure and use  
4 extends only to the specific material entitled to confidential treatment under the  
5 applicable legal principles. This Order does not automatically authorize the filing  
6 under seal of material designated under this Order. Instead, the parties must  
7 comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does  
8 not govern the use at trial of material designated under this Order.

## 9 2. DESIGNATING PROTECTED MATERIAL

10 2.1 **Over-Designation Prohibited.** Any party or non-party who  
11 designates information or items for protection under this Order as  
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES  
13 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”)  
14 must only designate specific material that qualifies under the appropriate standards.  
15 To the extent practicable, only those parts of documents, items, or oral or written  
16 communications that require protection shall be designated. Designations with a  
17 higher confidentiality level when a lower level would suffice are prohibited. Mass,  
18 indiscriminate, or routinized designations are prohibited. Unjustified designations  
19 expose the designator to sanctions, including the Court’s striking all confidentiality  
20 designations made by that designator. Designation under this Order is allowed only  
21 if the designation is necessary to protect material that, if disclosed to persons not  
22 authorized to view it, would cause competitive or other recognized harm. Material  
23 may not be designated if it has been made public, or if designation is otherwise  
24 unnecessary to protect a secrecy interest. If a designator learns that information or  
25 items that it designated for protection do not qualify for protection at all or do not  
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1 qualify for the level of protection initially asserted, that designator must promptly  
2 notify all parties that it is withdrawing the mistaken designation.

3       **2.2 Manner and Timing of Designations.** Designation under this Order  
4 requires the designator to affix the applicable legend (“CONFIDENTIAL,”  
5 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY  
6 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected  
7 material. For testimony given in deposition or other proceeding, the designator  
8 shall specify all protected testimony and the level of protection being asserted. It  
9 may make that designation during the deposition or proceeding, or may invoke,  
10 on the record or by written notice to all parties on or before the next business day,  
11 a right to have up to 21 days from the deposition or proceeding to make its  
12 designation.

13               2.2.1 A party or non-party that makes original documents or  
14 materials available for inspection need not designate them for protection  
15 until after the inspecting party has identified which material it would like  
16 copied and produced. During the inspection and before the designation, all  
17 material shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY  
18 EYES ONLY. After the inspecting party has identified the documents it  
19 wants copied and produced, the producing party must designate the  
20 documents, or portions thereof, that qualify for protection under this Order.

21               2.2.2 Parties shall give advance notice if they expect a deposition or  
22 other proceeding to include designated material so that the other parties can  
23 ensure that only authorized individuals are present at those proceedings  
24 when such material is disclosed or used. The use of a document as an exhibit  
25 at a deposition shall not in any way affect its designation. Transcripts  
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1 containing designated material shall have a legend on the title page noting  
2 the presence of designated material, and the title page shall be followed by a  
3 list of all pages (including line numbers as appropriate) that have been  
4 designated, and the level of protection being asserted. The designator shall  
5 inform the court reporter of these requirements. Any transcript that is  
6 prepared before the expiration of the 21-day period for designation shall be  
7 treated during that period as if it had been designated HIGHLY  
8 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed.  
9 After the expiration of the 21-day period, the transcript shall be treated only  
10 as actually designated.

11 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to  
12 designate does not, standing alone, waive protection under this Order. Upon  
13 timely assertion or correction of a designation, all recipients must make reasonable  
14 efforts to ensure that the material is treated according to this Order.

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16 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 All challenges to confidentiality designations shall proceed under L.R. 37-1  
18 through L.R. 37-4.

19 **4. ACCESS TO DESIGNATED MATERIAL**

20 **4.1 Basic Principles.** A receiving party may use designated material  
21 only for this litigation. Designated material may be disclosed only to the  
22 categories of persons and under the conditions described in this Order.

23 **4.2 Disclosure of CONFIDENTIAL Material Without Further**  
24 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
25 designator, a receiving party may disclose any material designated  
26 CONFIDENTIAL only to:  
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1           **4.2.1** The receiving party’s outside counsel of record in this action  
2 and employees of outside counsel of record to whom disclosure is  
3 reasonably necessary;

4           **4.2.2** The officers, directors, and employees of the receiving party to  
5 whom disclosure is reasonably necessary, and who have signed the  
6 Agreement to Be Bound (Exhibit A);

7           **4.2.3** Experts retained by the receiving party’s outside counsel of  
8 record to whom disclosure is reasonably necessary, and who have signed  
9 the Agreement to Be Bound (Exhibit A);

10           **4.2.4** The Court and its personnel;

11           **4.2.5** Outside court reporters and their staff, professional jury or trial  
12 consultants, and professional vendors to whom disclosure is reasonably  
13 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

14           **4.2.6** During their depositions, witnesses in the action to whom  
15 disclosure is reasonably necessary and who have signed the Agreement to  
16 Be Bound (Exhibit A); and

17           **4.2.7** The author or recipient of a document containing the  
18 material, or a custodian or other person who otherwise possessed or  
19 knew the information.  
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22 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**  
23 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material**  
24 **Without Further Approval.** Unless permitted in writing by the designator, a  
25 receiving party may disclose material designated HIGHLY CONFIDENTIAL –  
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1 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE  
2 without further approval only to:

3           **4.3.1** The receiving party’s outside counsel of record in this action  
4 and employees of outside counsel of record to whom it is reasonably  
5 necessary to disclose the information;

6           **4.3.2** The Court and its personnel;

7           **4.3.3** Outside court reporters and their staff, professional jury or trial  
8 consultants, and professional vendors to whom disclosure is reasonably  
9 necessary, and who have signed the Agreement to Be Bound (Exhibit A);  
10 and  
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12           **4.3.4** The author or recipient of a document containing the  
13 material, or a custodian or other person who otherwise possessed or  
14 knew the information.

15           **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**  
16 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**  
17 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**  
18 **Experts.** Unless agreed to in writing by the designator:

19           **4.4.1** A party seeking to disclose to in-house counsel any material  
20 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must  
21 first make a written request to the designator providing the full name of the  
22 in-house counsel, the city and state of such counsel’s residence, and such  
23 counsel’s current and reasonably foreseeable future primary job duties and  
24 responsibilities in sufficient detail to determine present or potential  
25 involvement in any competitive decision-making. In-house counsel are not  
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1 authorized to receive material designated HIGHLY CONFIDENTIAL –  
2 SOURCE CODE.

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4 **4.4.2** A party seeking to disclose to an expert retained by outside counsel of  
5 record any information or item that has been designated HIGHLY  
6 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
7 CONFIDENTIAL – SOURCE CODE must first make a written request to  
8 the designator that (1) identifies the general categories of HIGHLY  
9 CONFIDENTIAL-ATTORNEY EYES ONLY or HIGHLY  
10 CONFIDENTIAL – SOURCE CODE information that the receiving party  
11 seeks permission to disclose to the expert, (2) sets forth the full name of the  
12 expert and the city and state of his or her primary residence, (3) attaches a  
13 copy of the expert’s current resume, (4) identifies the expert’s current  
14 employer(s), (5) identifies each person or entity from whom the expert has  
15 received compensation or funding for work in his or her areas of expertise  
16 (including in connection with litigation) in the past five years, and (6)  
17 identifies (by name and number of the case, filing date, and location of  
18 court) any litigation where the expert has offered expert testimony, including  
19 by declaration, report, or testimony at deposition or trial, in the past five  
20 years. If the expert believes any of this information at (4) - (6) is subject to a  
21 confidentiality obligation to a third party, then the expert should provide  
22 whatever information the expert believes can be disclosed without violating  
23 any confidentiality agreements, and the party seeking to disclose the  
24 information to the expert shall be available to meet and confer with the  
25 designator regarding any such confidentiality obligations.  
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1           **4.4.3** A party that makes a request and provides the information  
2 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material  
3 to the identified in-house counsel or expert unless, within seven days of  
4 delivering the request, the party receives a written objection from the  
5 designator providing detailed grounds for the objection.

6           **4.4.4** All challenges to objections from the designator shall  
7 proceed under L.R. 37-1 through L.R. 37-4.

8 **5. SOURCE CODE**

9           **5.1 Designation of Source Code.** If production of source code is  
10 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE  
11 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

12           **5.2 Location and Supervision of Inspection.** Any HIGHLY  
13 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made  
14 available for inspection, in a format allowing it to be reasonably reviewed and  
15 searched, during normal business hours or at other mutually agreeable times, at an  
16 office of the designating party’s counsel or another mutually agreeable location.  
17 The source code shall be made available for inspection on a secured computer in a  
18 secured room, and the inspecting party shall not copy, remove, or otherwise  
19 transfer any portion of the source code onto any recordable media or recordable  
20 device. The designator may visually monitor the activities of the inspecting  
21 party’s representatives during any source code review, but only to ensure that  
22 there is no unauthorized recording, copying, or transmission of the source code.  
23

24           **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may  
25 request paper copies of limited portions of source code that are reasonably  
26 necessary for the preparation of court filings, pleadings, expert reports, other  
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1 papers, or for deposition or trial. The designator shall provide all such source code  
2 in paper form, including Bates numbers and the label “HIGHLY  
3 CONFIDENTIAL – SOURCE CODE.”

4 **5.4 Access Record.** The inspecting party shall maintain a record of any  
5 individual who has inspected any portion of the source code in electronic or paper  
6 form, and shall maintain all paper copies of any printed portions of the source code  
7 in a secured, locked area. The inspecting party shall not convert any of the  
8 information contained in the paper copies into any electronic format other than for  
9 the preparation of a pleading, exhibit, expert report, discovery document,  
10 deposition transcript, or other Court document. Any paper copies used during a  
11 deposition shall be retrieved at the end of each day and must not be left with a  
12 court reporter or any other unauthorized individual.

13 **6. PROSECUTION BAR**

14 Absent written consent from the designator, any individual who receives  
15 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
16 CONFIDENTIAL - SOURCE CODE information shall not be involved in the  
17 prosecution of patents or patent applications concerning the field of the invention  
18 of the patents-in-suit for the receiving party or its acquirer, successor, predecessor,  
19 or other affiliate during the pendency of this action and for one year after its  
20 conclusion, including any appeals. “Prosecution” means drafting, amending,  
21 advising on the content of, or otherwise affecting the scope or content of patent  
22 claims or specifications. These prohibitions shall not preclude counsel from  
23 participating in reexamination or *inter partes* review proceedings to challenge or  
24 defend the validity of any patent, but counsel may not participate in the drafting of  
25 amended claims in any such proceedings.  
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1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2 **PRODUCED IN OTHER LITIGATION**

3 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-  
4 compliance with a lawful subpoena or court order. The purpose of the duties  
5 described in this section is to alert the interested parties to the existence of this  
6 Order and to give the designator an opportunity to protect its confidentiality  
7 interests in the court where the subpoena or order issued.

8 **7.2 Notification Requirement.** If a party is served with a subpoena or a  
9 court order issued in other litigation that compels disclosure of any information or  
10 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –  
11 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,  
12 that party must:

13 **7.2.1** Promptly notify the designator in writing. Such  
14 notification shall include a copy of the subpoena or court order;

15 **7.2.2** Promptly notify in writing the party who caused the subpoena  
16 or order to issue in the other litigation that some or all of the material  
17 covered by the subpoena or order is subject to this Order. Such notification  
18 shall include a copy of this Order; and

19 **7.2.3** Cooperate with all reasonable procedures sought by the  
20 designator whose material may be affected.

21 **7.3 Wait For Resolution of Protective Order.** If the designator timely  
22 seeks a protective order, the party served with the subpoena or court order shall not  
23 produce any information designated in this action as CONFIDENTIAL, HIGHLY  
24 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –  
25 SOURCE CODE before a determination by the court where the subpoena or order  
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1 issued, unless the party has obtained the designator's permission. The designator  
2 shall bear the burden and expense of seeking protection of its confidential material  
3 in that court.

4 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

5 If a receiving party learns that, by inadvertence or otherwise, it has  
6 disclosed designated material to any person or in any circumstance not authorized  
7 under this Order, it must immediately (1) notify in writing the designator of the  
8 unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized  
9 copies of the designated material, (3) inform the person or persons to whom  
10 unauthorized disclosures were made of all the terms of this Order, and (4) use  
11 reasonable efforts to have such person or persons execute the Agreement to Be  
12 Bound (Exhibit A).  
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15 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
16 **OTHERWISE PROTECTED MATERIAL**

17 When a producing party gives notice that certain inadvertently produced  
18 material is subject to a claim of privilege or other protection, the obligations of the  
19 receiving parties are those set forth in Federal Rule of Civil Procedure  
20 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
21 established in an e-discovery order that provides for production without prior  
22 privilege review pursuant to Federal Rule of Evidence 502(d) and (e).  
23

24 **10. FILING UNDER SEAL**

25 Without written permission from the designator or a Court order, a party  
26 may not file in the public record in this action any designated material. A party  
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1 seeking to file under seal any designated material must comply with L.R. 79-5.1.  
2 Filings may be made under seal only pursuant to a court order authorizing the  
3 sealing of the specific material at issue. The fact that a document has been  
4 designated under this Order is insufficient to justify filing under seal. Instead,  
5 parties must explain the basis for confidentiality of each document sought to be  
6 filed under seal. Because a party other than the designator will often be seeking to  
7 file designated material, cooperation between the parties in preparing, and in  
8 reducing the number and extent of, requests for under seal filing is essential. If a  
9 *receiving party's* request to file designated material under seal pursuant to L.R.  
10 79-5.1 is denied by the Court, then the receiving party *may file the material in the*  
11 *public record* unless (1) *the designator* seeks reconsideration within four days of  
12 the denial, or (2) as otherwise instructed by the Court.

#### 14 **11. FINAL DISPOSITION**

15 Within 60 days after the final disposition of this action, each party shall  
16 return all designated material to the designator or destroy such material, including  
17 all copies, abstracts, compilations, summaries, and any other format reproducing  
18 or capturing any designated material. The receiving party must submit a written  
19 certification to the designator by the 60-day deadline that (1) identifies (by  
20 category, where appropriate) all the designated material that was returned or  
21 destroyed, and (2) affirms that the receiving party has not retained any copies,  
22 abstracts, compilations, summaries, or any other format reproducing or capturing  
23 any of the designated material. This provision shall not prevent counsel from  
24 retaining an archival copy of all pleadings, motion papers, trial, deposition, and  
25 hearing transcripts, legal memoranda, correspondence, deposition and trial  
26 exhibits, expert reports, attorney work product, and consultant and expert work  
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1 product, even if such materials contain designated material. Any such archival  
2 copies remain subject to this Order.

3  
4 **IT IS SO STIPULATED.**

5 Dated: January 13, 2015

6 Respectfully submitted,

7 */s/ Jessica F. Anvar*

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16 *Attorneys for Plaintiff Jamal Akber*

17 Dated: January 13, 2015

18 Respectfully submitted,

19 */s/ Damian P. Richard*

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27 *Attorneys for NCO Financial Systems,*  
28 *Inc.*

29 **IT IS SO ORDERED.**

30 DATED January 26, 2015



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United States District Judge/Magistrate Judge

Stipulated Protective Order

**EXHIBIT A**  
**AGREEMENT TO BE BOUND**

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3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under  
5 penalty of perjury that I have read in its entirety and understand the Protective  
6 Order that was issued by the United States District Court for the Central District of  
7 California on \_\_\_\_\_ [date] in the case of *Jamal Akber v. NCO Financial*  
8 *Systems, Inc.*, No. 5:14-cv-01388-VAP-DTB (C.D. Cal. July 8, 2014). I agree to  
9 comply with and to be bound by all the terms of this Protective Order, and I  
10 understand and acknowledge that failure to so comply could expose me to  
11 sanctions and punishment for contempt. I solemnly promise that I will not disclose  
12 in any manner any information or item that is subject to this Protective Order to  
13 any person or entity except in strict compliance with this Order.  
14

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

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone  
20 number] as my California agent for service of process in connection with this  
21 action or any proceedings related to enforcement of this Order.  
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