

1 STROOCK & STROOCK & LAVAN LLP
 2 JULIA B. STRICKLAND (State Bar No. 083013)
 3 LISA M. SIMONETTI (State Bar No. 165996)
 4 KRISTINA DEL VECCHIO (State Bar No. 283782)
 5 ARJUN P. RAO (State Bar No. 265347)
 6 2029 Century Park East
 7 Los Angeles, CA 90067-3086
 8 Telephone: 310-556-5800
 9 Facsimile: 310-556-5959
 10 Email: *lacalendar@stroock.com*

11 Attorneys for Defendants
 12 HSBC CARD SERVICES INC. and HSBC
 13 TECHNOLOGY & SERVICES (USA) INC.

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 TERRY J. FANNING and TATIANA
 17 JABBAR, each individually and on
 18 behalf of all others similarly situated,

19 Plaintiffs,

20 vs.

21 HSBC CARD SERVICES INC. and
 22 HSBC TECHNOLOGY & SERVICES
 23 (USA) INC.,

24 Defendants.

Case No. 8:12-CV-00885-JVS-RNB

[Assigned to the Hon. James V. Selna]

~~PROPOSED~~ **PROTECTIVE
 ORDER GOVERNING USE AND
 DISSEMINATION OF
 CONFIDENTIAL DOCUMENTS
 AND MATERIALS**

Action Filed: June 4, 2012

[Stipulation Re Protective Order
 Governing Use and Dissemination of
 Confidential Documents and Materials
 filed concurrently]

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RECITALS

A. The parties in the above-captioned action may seek discovery that the responding parties assert may contain certain highly sensitive, confidential, trade secret information and documents.

B. The protective order sought herein ("Protective Order") is warranted under the circumstances and is sufficiently tailored to avoid unduly hindering the public's access to the Court's records and files in this matter.

CONFIDENTIALITY ORDER

Upon stipulation of the parties, and good cause appearing for the entry of this Protective Order,

IT IS HEREBY ORDERED that:

I. DEFINITIONS

1. As used in this Protective Order:

a. "Action" means the above-captioned action presently pending in the United States District Court for the Central District of California.

b. "Confidential Material" means Material designated as Confidential in this Action in accordance with the terms of this Protective Order.

c. "Discovering Counsel" means counsel for a Discovering Party in this Action.

d. "Discovering Party" means the Party or Parties to whom Material is being provided, produced, or made available for inspection by a Producing Party or Producing Person in this Action.

e. "Material" means any document or part of a document, testimony or information in any form or medium whatsoever, including, without limitation, any written or printed matter provided, produced or made available for inspection through discovery in this Action by any Party or Person before or after the date of this Protective Order.

1 f. "Trade Secret," as used in this Protective Order means information,
2 including a formula, pattern, compilation, program, design, device, method,
3 technique or process that:

4 (1) Derives independent economic value, actual or potential, from not
5 being generally known to the public or to other persons who can obtain economic
6 value from its disclosure or use; and

7 (2) Is the subject of efforts that are reasonable under the
8 circumstances to maintain its secrecy.

9 g. "Party" or "Parties" means Plaintiffs, Defendants HSBC Card Services
10 Inc., and HSBC Technology & Services (USA) Inc. (collectively, "Defendants"), and
11 any future parties in this Action.

12 h. "Person" means any individual, corporation, partnership, unincorporated
13 association, governmental agency, or other business or governmental entity, whether
14 a party or not, including non-Parties, from whom discovery is sought in this Action.

15 i. "Producing Party" means any Party who provides, produces, or makes
16 available for inspection Material during the course of this Action. "Producing
17 Person" means any person who provides, produces, or makes available for inspection
18 Material during the course of this Action.

19 **II. SCOPE AND PURPOSE OF PROTECTIVE ORDER**

20 2. This Protective Order shall govern all Confidential Material in whatever
21 form, including documents, data, information, interrogatory responses, live
22 deposition testimony, deposition transcripts, responses to requests for admission, and
23 any other Confidential Material provided, produced, or made available for inspection
24 in response to any method of discovery conducted in this Action.

25 3. All Confidential Material received from another Party or Person in this
26 Action shall be used for the purpose of the prosecution or defense of this Action and
27 not for any business or other purpose. All Materials designated as Confidential in
28 this Action or otherwise deemed Confidential pursuant to this Protective Order shall

1 not be disclosed to any Person except as provided herein. The use of information or
2 Material that was lawfully in the possession of a Party prior to being designated
3 Confidential Material, was obtained from a third party having the apparent right to
4 disclose such information, or has become public, other than in violation of this
5 Protective Order, shall not be subject to these restrictions.

6 **III. CONFIDENTIAL MATERIAL**

7 **A. Confidential Designation**

8 4. A Producing Party or Producing Person may designate as Confidential
9 any Material that said party or person has the good faith belief constitutes: (a) Trade
10 Secret Material; (b) confidential information of other Persons to whom a duty of
11 confidentiality is owed and designated in such manner as described below; (c) any
12 Material that contains confidential information and, if disclosed to the general public
13 or competitors of any Party or Producing Person, could reasonably be expected to
14 cause competitive harm in the marketplace to a Party or Producing Person; or (d) any
15 other Material that contains confidential information and that the Party or Producing
16 Person has a lawful basis other than as set forth above to prevent the disclosure of
17 this Material to individuals or entities who are not Parties to this Action.

18 5. Materials designated Confidential consistent with Paragraph 4 of this
19 Protective Order are subject to the provisions of this Protective Order, and shall be
20 protected, used, handled and disposed of in accordance with the provisions of this
21 Protective Order.

22 6. A Producing Party or Producing Person may designate the following
23 Material and Confidential Material for protection under this Protective Order by one
24 of the following methods:

25 a. By marking any documentary Material as Confidential prior to its
26 production. Such Confidential Material shall be marked by the Producing Party with
27 a legend bearing the word "CONFIDENTIAL" and an identifying document control
28 number prefixed with one or more letters identifying the Producing Party or

1 Producing Person. In cases where Material to be produced is in a form other than
2 paper, including, without limitation, audiotape, videotape computer tape, computer
3 card, computer disc, compact disc, microfilm or microfiche, the Producing Party or
4 Producing Person shall affix to the Material itself or to its container a stamp or other
5 clear designation bearing the word "CONFIDENTIAL."

6 b. By marking or identifying any Material as Confidential prior to making
7 such documents available for inspection by the Discovering Party;

8 c. By stating in writing, at or prior to the time of the inspection of things or
9 premises, that Confidential Material will be disclosed by the inspection. Such
10 writing shall specify, if reasonably practicable, those parts of things or those areas of
11 the premises in which its Confidential Material will be revealed; and

12 d. By stating orally on the record during the course of a deposition upon
13 oral examination or pursuant to subpoena that all deposition testimony, or any part
14 thereof, is Confidential. Notwithstanding the foregoing, except as otherwise agreed,
15 all information disclosed during a deposition shall be deemed Confidential for ten
16 (10) days after delivery of the transcript to the witness or counsel for the witness
17 unless otherwise agreed, whether or not portions of the transcript have previously
18 been designated Confidential. Upon the expiration of the foregoing period, testimony
19 shall be deemed Confidential Material only if the Material is or has been designated
20 as Confidential Material and the Producing Party specifies in writing those portions
21 of the testimony containing Confidential Material. In the case of a non-party
22 witness, testimony can be designated as containing Confidential Material either by
23 Party or the non-party witness.

24 7. Confidential Material does not lose its designation merely because it is
25 contained in any summary, digest, or analysis.

26 8. The Parties may agree in writing to modify the foregoing designation
27 procedures where compliance with them proves impracticable or unduly
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1 burdensome. The Court may modify the terms of this Stipulation and Order based on
2 the application by any Party, the needs of public policy or other considerations.

3 **B. Restriction on Use of Confidential Material**

4 9. All Confidential Material shall be kept secure by the Discovering Party
5 and access to Confidential Material shall be limited to Persons authorized pursuant to
6 Paragraph 10 of this Protective Order.

7 10. Except with the prior written consent of the Producing Party or
8 Producing Person, Confidential Material and information derived therefrom may be
9 disclosed to the Court and its officers and personnel and to qualified Persons only,
10 but only to the extent reasonably required for such individuals to assist in the
11 litigation of this Action or in any settlement negotiations or technical discussions
12 between the parties. For purposes of this Protective Order, qualified Persons are
13 defined to consist exclusively of:

14 a. Any Party to this Action (including their insurers and counsel to their
15 insurers);

16 b. Counsel of record, their associated attorneys, paralegals, assistants,
17 secretaries and support staff participating in this Action;

18 c. Counsel who are employed by either Party as "in-house counsel" and
19 such in-house counsel's employees who are assisting in the prosecution and/or
20 defense of this Action, including paralegals, assistants, secretaries, and clerical staff;

21 d. Court reporters, notaries and their staff retained by the Parties for the
22 purpose of recording witness testimony in this Action;

23 e. Experts and consultants (including their secretarial, technical and
24 clerical employees) retained by the Parties or their counsel with respect to this
25 Action;

26 f. Officers, directors and other current employees of the Parties, as well as
27 former employees of the Parties who were identified as authors or recipients of the
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1 Confidential Material while they were employed, who are reviewing the Confidential
2 Material in order to assist in connection with the Action;

3 g. Outside service personnel for the purposes of photocopying or assisting
4 in the photocopying or delivery of documents or the retrieval of electronically stored
5 information in connection with this Action;

6 h. Any witness and the witness's counsel (if any), if the party deems
7 disclosure necessary for the purpose of the prosecution and/or defense of this Action;
8 and

9 i. Any other persons agreed to in writing by the Parties, either as to all or
10 any Confidential Material.

11 **C. Certification to Be Bound by Protective Order**

12 11. Before the Discovering Party may disclose Confidential Material to any
13 Person described in subparagraphs 10(d), 10(e), 10(g), and 10(h), the Person to
14 whom disclosure is to be made shall read a copy of this Protective Order, and shall
15 evidence his or her agreement to be bound by its terms, conditions, and restrictions
16 by signing a copy of the certification attached as Exhibit A hereto; provided,
17 however, that if an expert or consultant is to be shown Confidential Material for the
18 first time at deposition, at trial or at a hearing, the requirements of this paragraph will
19 be satisfied if the expert or a consultant first declares under oath and on the record
20 that he or she has received a copy of the Protective Order and agrees to be bound by
21 its provisions. Confidential Material may be disclosed to a witness who will not sign
22 the Certification, or will not declare under oath that he or she will be bound by the
23 provisions of this Protective Order, only in a deposition at which the Producing Party
24 is represented, and provided that any such witness will not be permitted to retain a
25 copy of any Confidential Material that is shown to him or her.

26 12. Counsel for the Party who disclosed Confidential Material to any person
27 listed in subparagraphs 10(d), 10(e), 10(g), and 10(h) in connection with a signed
28 certification shall maintain a file of such certifications. Such certifications shall be

1 provided to an opposing Party or the Producing Party within five court days of
2 signing the certification.

3 **D. Use of Confidential Material in Pleadings and Other Court Papers**

4 13. No items will be filed under seal without a prior application to, and
5 order from, the judge presiding over the hearing or trial. No Party or other person
6 subject to this Order shall file any Confidential or "Confidential -Attorneys' Eyes
7 Only" Material with the Court without first informing the Producing Party in writing
8 of its intention to do so and providing a reasonable opportunity for the Producing
9 Party to request by way of motion or ex parte application (if circumstances warrant
10 such an emergency application) that such material be filed under seal. Only when
11 the judge presiding over the hearing or trial permits filing an item or items under seal
12 may confidential material filed with the Court be filed in a sealed envelope or other
13 container marked on the outside with the caption of this action and the following
14 statement: "CONFIDENTIAL -SUBJECT TO PROTECTIVE ORDER." If any
15 person fails to file protected documents or information under seal, any party to this
16 lawsuit may request that the Court place the filing under seal.

17 14. In the event of an Emergency Filing, within the meaning of L.R. 77-1,
18 or any other filing by counsel herein which contains or otherwise includes
19 Confidential or "Confidential -Attorneys' Eyes Only" Material, and which filing is
20 subject to a deadline under the Court's Scheduling Order, under the Federal Rules of
21 Civil Procedure, or the Local Rules of the Central District of California, and for
22 which said counsel is unable, in good faith, to provide the Producing Party a
23 reasonable time to consider a challenge to the public filing of such Confidential or
24 "Confidential -Attorneys' Eyes Only" Material, then in such circumstances the
25 proposed filing shall be accompanied by an application to file the papers or the
26 portion thereof containing the protected information (if such portion is segregable)
27 under seal; and such application shall be directed to the judge to whom the papers are
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1 directed. In the event the filing in question is a motion, the filing party shall further
2 file a redacted version of the motion and supporting papers.

3 15. Whenever the Court grants a party permission to file an item under seal,
4 a duplicate disclosing all non-confidential information shall be filed and made part of
5 the public record. The item may be redacted to eliminate confidential material from
6 the public document. The public document shall be titled to show that it corresponds
7 to an item filed under seal, e.g., "Redacted Copy of Sealed Declaration of John Smith
8 in Support of Motion for Summary Judgment." The sealed and redacted documents
9 shall be filed simultaneously.

10 **E. Objections to Designation**

11 16. The following procedures shall govern any challenges to confidentiality
12 designations:

13 a. If a party reasonably believes that information should not be designated
14 as Confidential, it must specify to the Producing Person or Producing Party in
15 writing (i) the information at issue and (ii) the grounds for questioning the
16 confidentiality designation. The Producing Person or Producing Party must respond
17 in writing within ten business days, or within such different time agreed to by
18 counselor or as ordered by the Court. If no response is received by that time, the
19 Confidential designation shall be deemed withdrawn.

20 b. If agreement cannot be reached, the party challenging the confidential
21 designation may move the court to lift the designation. Central District of California
22 Local Rules 37-1 and 37-2 shall apply to any motion requesting that the confidential
23 designation be lifted. Until the Court rules, the confidential designation shall remain
24 in effect. Nothing in this Order shall be deemed to allocate or reallocate any
25 substantive burdens with respect to confidentiality; the party claiming confidentiality
26 shall have the burden to establish that the challenged documents are entitled to
27 confidential treatment.

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1 **F. “Attorneys' Eyes Only” Confidentiality of Certain Materials**
2 **Produced**

3 17. Certain Materials produced by the Parties and/or other Producing Person
4 may be designated as "Confidential-Attorneys' Eyes Only." A Party or Producing
5 Person shall only designate Materials that fall into this category if the information
6 designated consists of sensitive and confidential information that, if disclosed to third
7 parties including a Party or Producing Person's competitors, would likely cause
8 significant competitive injury or disadvantage to a Party or Producing Person. Such
9 Materials are not only deemed to be "Confidential Material" as described herein and
10 treated as such, but these Materials are also restricted and protected in that they may
11 only be viewed by the Court as set forth herein and the following: (a) the attorneys
12 for the Parties in this action, their office staff, in-house counsel for the Parties, and
13 the Parties' independent, retained expert witnesses provided they have executed an
14 undertaking in the form attached as Attachment A; and (b) any witness(es) in
15 deposition or at a hearing in this action so long as the viewing witness(es) has
16 previously seen and/or are familiar with the Materials pursuant to circumstances
17 where the witness(es) either prepared or reviewed the Material at the time of its
18 preparation in the ordinary course of business and the witness has executed an
19 undertaking in the form attached as Attachment A.

20 18. If any Party objects to the designation of any Materials as Confidential-
21 Attorneys' Eyes Only as compared to some other designation, the Parties or
22 Producing Persons shall utilize the provisions for objecting to such designation (as
23 compared to some other level of designation or not at all) set forth in Paragraph 16.

24 **G. Return of Confidential Material**

25 19. Within ninety (90) calendar days after the settlement or termination of
26 this Action becomes final, Discovering Counsel shall return or destroy, at
27 Discovering Counsel's option, all Confidential Material provided by a Producing
28 Party, and all copies thereof, except to the extent that any Confidential Material has

1 been filed with the Court in this Action, in which event (a) Discovering Counsel may
2 retain such Confidential Material in the form in which it has been filed with the
3 Court but may not disclose the Confidential Material to any other persons in a
4 manner inconsistent with this Order and (b) the Producing Party or Producing Person
5 may petition the Court for the return of the Confidential Materials. The Discovering
6 Counsel may also retain any attorney-client or attorney work product information,
7 but shall delete any Confidential Material therefrom. Outside counsel for the
8 Discovering Party shall promptly provide a written certification to the Producing
9 Party that all Confidential Materials that are required to be returned or destroyed
10 under the provisions of this paragraph have been so returned or so destroyed. Upon
11 written request from the Producing Party, any documents filed under seal may be
12 returned by the Court to the counsel who filed such documents.

13 **H. Other Provisions**

14 20. Before trial of this Action or any hearing involving Confidential
15 Materials or information derived therefrom, the Parties, through counsel, shall confer
16 in an attempt to agree on an appropriate form of order to submit to the Court
17 regarding the Confidential status, if any, to be afforded documents, testimony or
18 other information to be disclosed during the course of the trial or hearing. Nothing in
19 this Protective Order shall be construed to affect in any way the admissibility of any
20 documents, testimony or other evidence at trial, nor constitute a waiver of any
21 objection thereto.

22 21. Nothing in this Protective Order shall require production of information
23 that a Party contends is protected from disclosure by the attorney-client privilege, the
24 work product doctrine, or any other applicable privilege.

25 22. Nothing herein shall be construed to prevent a Producing Party and/or
26 Producing Person from reviewing, using, or disclosing its own Confidential Material
27 in any manner that it deems appropriate, provided however that the manner in which
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1 such information is used or disclosed may be used by a Discovering Party as a basis
2 for challenging the designation of Confidential Material.

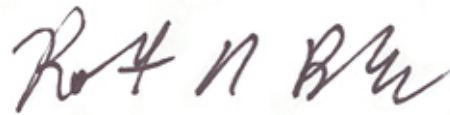
3 23. If at any time any Confidential Material protected by this Protective
4 Order is subpoenaed from the Discovering Party by any Court, administrative or
5 legislative body, or is requested by any other Person purporting to have authority to
6 require the production of such Material, the Party to whom the subpoena or other
7 request is directed shall within five (5) business days from receipt of such subpoena
8 or request, unless a shorter time is required under the circumstances, give written
9 notice thereof to the Producing Party or Producing Person with respect to
10 Confidential Material sought. However, nothing contained in this Protective Order is
11 intended or should be construed as authorizing or encouraging a party in this action
12 to disobey a lawful subpoena issued in another action.

13 24. The fact of designation or failure to designate Materials as Confidential
14 pursuant to this Protective Order shall not be admissible for any purpose in a trial on
15 the merits or at any other proceeding other than at a proceeding arising from or
16 related to this Protective Order.

17 25. The confidentiality obligations of this Protective Order shall continue
18 during the pendency of, and shall survive the conclusion of, this Action, unless
19 modified by further order of the Court.

20 IT IS SO ORDERED.

21
22 Dated: April 15, 2013



23
24 United States Magistrate Judge Robert N. Block

1 Attachment A

2 **NONDISCLOSURE AGREEMENT**

3 The undersigned hereby acknowledges that (he)(she) has been advised of the
4 terms or has read the PROTECTIVE ORDER GOVERNING USE AND
5 DISSEMINATION OF CONFIDENTIAL DOCUMENTS AND MATERIALS
6 ("Order") entered in the following action: Terry J. Fanning and Tatiana Jabbar, both
7 individually and on behalf of all others similarly situated v. HSBC Card Services Inc.
8 and HSBC Technology & Services (USA) Inc., Case No. 8:12-CV-00885-JVS-RNB.

9 I agree to be bound by the terms of said Order, to be subject to the jurisdiction
10 of the appropriate court solely for purposes of any disputes arising with respect to the
11 terms of the Order or performance thereunder, and, pursuant to the terms of the
12 Order, agree to maintain in strict confidence all Materials designated Confidential
13 Materials and/or Confidential-Attorneys' Eyes Only as defined therein. I understand
14 that this material and its subject matter is to remain in my personal custody and shall
15 not be disclosed to any persons other than those bound by the terms of this Order
16 until I have completed my assigned duties, whereupon such information is to be
17 returned to counsel who provided it to me. I further agree to notify any personnel
18 assisting me of the terms of said Order and to obtain an agreement from such
19 personnel to be bound by it to the same extent that I am bound.

20
21 Dated: _____