



1           **1.     PURPOSE AND LIMITS OF THIS ORDER**

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

12           **2.     DESIGNATING PROTECTED MATERIAL**

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

1 protection initially asserted, that designator must promptly notify all parties that it is  
2 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 shall  
8 specify all protected testimony and the level of protection being asserted. The  
9 designator may make that designation during the deposition or proceeding, or may  
10 invoke, on the record or by written notice to all parties, a right to have up to 30 days  
11 from the deposition or proceeding to make its designation.

12       **2.2.1.** A party or non-party that makes original documents or materials  
13 available for inspection need not designate them for protection until after the  
14 inspecting party has identified which material it would like copied and  
15 produced. During the inspection and before the designation, all material shall  
16 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.  
17 After the inspecting party has identified the documents it wants copied and  
18 produced, the producing party must designate the documents, or portions  
19 thereof, that qualify for protection under this Order.

20       **2.2.2.** Parties shall give advance notice if they expect a deposition or  
21 other proceeding to include designated material so that the other parties can  
22 ensure that only authorized individuals are present at those proceedings when  
23 such material is disclosed or used. The use of a document as an exhibit at a  
24 deposition shall not in any way affect its designation. Transcripts containing  
25 designated material shall have a legend on the title page noting the presence  
26 of designated material, and the title page shall be followed by a list of all  
27 pages (including line numbers as appropriate) that have been designated, and  
28 the level of protection being asserted. The designator shall inform the court

1 reporter of these requirements. Any transcript that is prepared before the  
2 expiration of the 30-day period for designation shall be treated during that  
3 period as if it had been designated HIGHLY CONFIDENTIAL –  
4 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of  
5 the 30-day period, the transcript shall be treated only as actually designated.

6 **2.3. Inadvertent Failures to Designate.** An inadvertent failure to designate  
7 does not, standing alone, waive protection under this Order. Upon timely assertion  
8 or correction of a designation, all recipients must make reasonable efforts to ensure  
9 that the material is treated according to this Order.

10 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

13 **4. ACCESS TO DESIGNATED MATERIAL**

14 **4.1. Basic Principles.** A receiving party may use designated material only  
15 for this litigation. Designated material may be disclosed only to the categories of  
16 persons and under the conditions described in this Order.

17 **4.2. Disclosure of CONFIDENTIAL Material Without Further**  
18 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
19 designator, a receiving party may disclose any material designated CONFIDENTIAL  
20 only to:

21 **4.2.1.** The receiving party's outside counsel of record in this action  
22 and employees of outside counsel of record to whom disclosure is reasonably  
23 necessary;

24 **4.2.2.** The officers, directors, and employees of the receiving party to  
25 whom disclosure is reasonably necessary, and who have signed the  
26 Agreement to Be Bound (Exhibit A);

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1           **4.2.3.** Experts retained by the receiving party’s outside counsel of  
2 record to whom disclosure is reasonably necessary, and who have signed the  
3 Agreement to Be Bound (Exhibit A);

4           **4.2.4.** The Court and its personnel;

5           **4.2.5.** Outside court reporters and their staff, professional jury or trial  
6 consultants, and professional vendors to whom disclosure is reasonably  
7 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

8           **4.2.6.** During their depositions, witnesses in the action to whom  
9 disclosure is reasonably necessary and who have signed the Agreement to Be  
10 Bound (Exhibit A); and

11           **4.2.7.** The author or recipient of a document containing the material,  
12 or a custodian or other person who otherwise possessed or knew the  
13 information.

14           **4.3. Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**  
15 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**  
16 **Further Approval.** Unless permitted in writing by the designator, a receiving party  
17 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES  
18 ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further approval  
19 only to:

20           **4.3.1.** The receiving party’s outside counsel of record in this action  
21 and employees of outside counsel of record to whom it is reasonably  
22 necessary to disclose the information;

23           **4.3.2.** The Court and its personnel;

24           **4.3.3.** Outside court reporters and their staff, professional jury or trial  
25 consultants, and professional vendors to whom disclosure is reasonably  
26 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

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1                   **4.3.4.** The author or recipient of a document containing the material,  
2 or a custodian or other person who otherwise possessed or knew the  
3 information.

4                   **4.4. Procedures for Approving or Objecting to Disclosure of HIGHLY**  
5 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL**  
6 **– SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in  
7 writing by the designator:

8                   **4.4.1.** A party seeking to disclose to in-house counsel any material  
9 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must  
10 first make a written request to the designator providing the full name of the  
11 in-house counsel, the city and state of such counsel’s residence, and such  
12 counsel’s current and reasonably foreseeable future primary job duties and  
13 responsibilities in sufficient detail to determine present or potential  
14 involvement in any competitive decision-making. In-house counsel are not  
15 authorized to receive material designated HIGHLY CONFIDENTIAL –  
16 SOURCE CODE.

17                   **4.4.2.** A party seeking to disclose to an expert retained by outside  
18 counsel of record any information or item that has been designated HIGHLY  
19 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
20 CONFIDENTIAL – SOURCE CODE must first make a written request to the  
21 designator that (1) identifies the general categories of HIGHLY  
22 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
23 CONFIDENTIAL – SOURCE CODE information that the receiving party  
24 seeks permission to disclose to the expert, (2) sets forth the full name of the  
25 expert and the city and state of his or her primary residence, (3) attaches a  
26 copy of the expert’s current resume, (4) identifies the expert’s current  
27 employer(s), (5) identifies each person or entity from whom the expert has  
28 received compensation or funding for work in his or her areas of expertise

1 (including in connection with litigation) in the past five years, and  
2 (6) identifies (by name and number of the case, filing date, and location of  
3 court) any litigation where the expert has offered expert testimony, including  
4 by declaration, report, or testimony at deposition or trial, in the past five  
5 years. If the expert believes any of this information at (4) - (6) is subject to a  
6 confidentiality obligation to a third party, then the expert should provide  
7 whatever information the expert believes can be disclosed without violating  
8 any confidentiality agreements, and the party seeking to disclose the  
9 information to the expert shall be available to meet and confer with the  
10 designator regarding any such confidentiality obligations.

11 **4.4.3.** A party that makes a request and provides the information  
12 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to  
13 the identified in-house counsel or expert unless, within seven days of  
14 delivering the request, the party receives a written objection from the  
15 designator providing detailed grounds for the objection.

16 **4.4.4.** All challenges to objections from the designator shall proceed  
17 under L.R. 37-1 through L.R. 37-4.

18 **5. SOURCE CODE**

19 **5.1. Designation of Source Code.** If production of source code is  
20 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE  
21 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

22 **5.2. Location and Supervision of Inspection.** Any HIGHLY  
23 CONFIDENTIAL – SOURCE CODE material produced in discovery shall be made  
24 available for inspection, in a format allowing it to be reasonably reviewed and  
25 searched, during normal business hours or at other mutually agreeable times, at an  
26 office of the designating party's counsel or another mutually agreeable location. The  
27 source code shall be made available for inspection on a secured computer in a  
28 secured room, and the inspecting party shall not copy, remove, or otherwise transfer

1 any portion of the source code onto any recordable media or recordable device. The  
2 designator may visually monitor the activities of the inspecting party's  
3 representatives during any source code review, but only to ensure that there is no  
4 unauthorized recording, copying, or transmission of the source code.

5 **5.3. Paper Copies of Source Code Excerpts.** The inspecting party may  
6 request paper copies of limited portions of source code that are reasonably necessary  
7 for the preparation of court filings, pleadings, expert reports, other papers, or for  
8 deposition or trial. The designator shall provide all such source code in paper form,  
9 including Bates numbers and the label "HIGHLY CONFIDENTIAL – SOURCE  
10 CODE."

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

20 **6. PROSECUTION BAR**

21 Absent written consent from the designator, any individual who receives  
22 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
23 CONFIDENTIAL – SOURCE CODE information shall not be involved in the  
24 prosecution of patents or patent applications concerning the field of the invention of  
25 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or  
26 other affiliate during the pendency of this action and for one year after its conclusion,  
27 including any appeals. "Prosecution" means drafting, amending, advising on the  
28 content of, or otherwise affecting the scope or content of patent claims or



1 specifications. These prohibitions shall not preclude counsel from participating in  
2 reexamination or *inter partes* review proceedings to challenge or defend the validity  
3 of any patent, but counsel may not participate in the drafting of amended claims in  
4 any such proceedings.

5 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
6 **PRODUCED IN OTHER LITIGATION**

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

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

17 **7.2.1.** Promptly notify the designator in writing. Such notification  
18 shall include a copy of the subpoena or court order;

19 **7.2.2.** Promptly notify in writing the party who caused the subpoena or  
20 order to issue in the other litigation that some or all of the material covered by  
21 the subpoena or order is subject to this Order. Such notification shall include  
22 a copy of this Order; and

23 **7.2.3.** Cooperate with all reasonable procedures sought by the  
24 designator whose material may be affected.

25 **7.3. Wait For Resolution of Protective Order.** If the designator timely  
26 seeks a protective order, the party served with the subpoena or court order shall not  
27 produce any information designated in this action as CONFIDENTIAL, HIGHLY  
28 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –

1 SOURCE CODE before a determination by the court where the subpoena or order  
2 issued, unless the party has obtained the designator's permission. The designator  
3 shall bear the burden and expense of seeking protection of its confidential material in  
4 that court.

5 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED**  
6 **MATERIAL**

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

14 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
15 **OTHERWISE PROTECTED MATERIAL**

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

22 **10. FILING UNDER SEAL**

23 Without written permission from the designator or a Court order, a party may  
24 not file in the public record in this action any designated material. A party seeking to  
25 file under seal any designated material must comply with L.R. 79-5.1. Filings may  
26 be made under seal only pursuant to a court order authorizing the sealing of the  
27 specific material at issue. The fact that a document has been designated under this  
28 Order is insufficient to justify filing under seal. Instead, parties must explain the

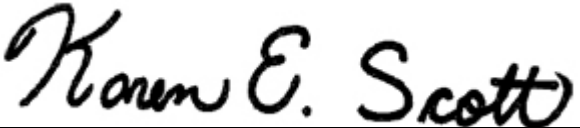
1 basis for confidentiality of each document sought to be filed under seal. A party  
2 other than the designator will often seek to file designated material, cooperation  
3 between the parties in preparing, and in reducing the number and extent of, requests  
4 for under seal filing is essential. If a *receiving party's* request to file designated  
5 material under seal pursuant to L.R. 79-5.1 is denied by the Court, then the receiving  
6 party *may file the material in the public record* unless (1) *the designator* seeks  
7 reconsideration within four days of the denial, or (2) as otherwise instructed by the  
8 Court.

9 **11. FINAL DISPOSITION**

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

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24 IT IS SO ORDERED.

25 Dated: June 12, 2017



26 Karen E. Scott  
27 United States Magistrate Judge  
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**EXHIBIT A**  
**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 Protective Order  
that was issued by the United States District Court for the Central District of  
California on \_\_\_\_\_ [date] in the case of Robert J. Neely v.  
JP Morgan Chase Bank, N.A., Case No. 8:16-cv-01924-AG (KESx). I agree to  
comply with and to be bound by all the terms of this Protective Order, and I  
understand and acknowledge that failure to so comply could expose me to sanctions  
and punishment for contempt. I solemnly promise that I will not disclose in any  
manner any information or item that is subject to this Protective Order to any person  
or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing this 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 Order.

Date: \_\_\_\_\_  
City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]

STROOCK & STROOCK & LAVAN LLP  
2029 Century Park East  
Los Angeles, California 90067-3086

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2017, a copy of the foregoing **[PROPOSED] PROTECTIVE ORDER FOR CONFIDENTIALITY OF DISCOVERY MATERIAL** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court’s CM/ECF System.

*/s/ Benjamin G. Diehl*  
\_\_\_\_\_  
Benjamin G. Diehl