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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

FEREYDOUN SHORAKA,	}	Case No. 8:23-cv-00309-DOC-JDE
Plaintiff,	}	PROTECTIVE ORDER
v.	}	
BANK OF AMERICA, NA., et al.,	}	
Defendants.	}	

Based on the parties' representations in the Joint Stipulation re: Plaintiff's Motion to Compel (Dkt. 68-1) and supporting correspondence, and based on its own authority, the Court finds and orders as follows.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public

1 disclosure and use extends only to the limited information or items that are  
2 entitled to confidential treatment under the applicable legal principles.

3       2.     GOOD CAUSE STATEMENT

4       This action is likely to involve valuable commercial, financial, technical  
5 and/or proprietary information for which special protection from public  
6 disclosure and from use for any purpose other than prosecution of this action is  
7 warranted. Such confidential and proprietary materials and information  
8 consist of, among other things, confidential business or financial information,  
9 information regarding confidential business practices, or other confidential  
10 research, development, or commercial information (including information  
11 implicating privacy rights of third parties), information otherwise generally  
12 unavailable to the public, or which may be privileged or otherwise protected  
13 from disclosure under state or federal statutes, court rules, case decisions, or  
14 common law. Accordingly, to expedite the flow of information, to facilitate the  
15 prompt resolution of disputes over confidentiality of discovery materials, to  
16 adequately protect information the parties are entitled to keep confidential, to  
17 ensure that the parties are permitted reasonable necessary uses of such material  
18 in preparation for and in the conduct of trial, to address their handling at the  
19 end of the litigation, and serve the ends of justice, a protective order for such  
20 information is justified in this matter.  
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22       3.     UNDER SEAL FILING PROCEDURE

23       As set forth in Section 13.3, below, this Protective Order does not entitle  
24 the parties to file confidential information under seal; Local Civil Rule 79-5  
25 sets forth the procedures that must be followed and the standards that will be  
26 applied when a party seeks permission from the court to file material under  
27 seal. There is a strong presumption that the public has a right of access to  
28 judicial proceedings and records in civil cases. In connection with non-

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

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

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

3 4. DEFINITIONS

4 4.1 Action: This action.

5 4.2 Challenging Party: a Party or Non-Party that challenges the  
6 designation of information or items under this Order.

7 4.3 “CONFIDENTIAL” Information or Items: information  
8 (regardless of how it is generated, stored or maintained) or tangible things that  
9 qualify for protection under Federal Rule of Civil Procedure 26(c), and as  
10 specified above in the Good Cause Statement.

11 4.4 Counsel: Outside Counsel of Record and House Counsel (as well  
12 as their support staff).

13 4.5 Designating Party: a Party or Non-Party that designates  
14 information or items that it produces in disclosures or in responses to discovery  
15 as “CONFIDENTIAL.”

16 4.6 Disclosure or Discovery Material: all items or information,  
17 regardless of the medium or manner in which it is generated, stored, or  
18 maintained (including, among other things, testimony, transcripts, and tangible  
19 things), that are produced or generated in disclosures or responses to discovery.  
20

21 4.7 Expert: a person with specialized knowledge or experience in a  
22 matter pertinent to the litigation who has been retained by a Party or its  
23 counsel to serve as an expert witness or as a consultant in this Action.

24 4.8 House Counsel: attorneys who are employees of a party to this  
25 Action. House Counsel does not include Outside Counsel of Record or any  
26 other outside counsel.

27 4.9 Non-Party: any natural person, partnership, corporation,  
28 association or other legal entity not named as a Party to this action.

1           4.10 Outside Counsel of Record: attorneys who are not employees of a  
2 party to this Action but are retained to represent a party to this Action and  
3 have appeared in this Action on behalf of that party or are affiliated with a law  
4 firm that has appeared on behalf of that party, and includes support staff.

5           4.11 Party: any party to this Action, including all of its officers,  
6 directors, employees, consultants, retained experts, and Outside Counsel of  
7 Record (and their support staffs).

8           4.12 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this Action.

10           4.13 Professional Vendors: persons or entities that provide litigation  
11 support services (e.g., photocopying, videotaping, translating, preparing  
12 exhibits or demonstrations, and organizing, storing, or retrieving data in any  
13 form or medium) and their employees and subcontractors.

14           4.14 Protected Material: any Disclosure or Discovery Material that is  
15 designated as “CONFIDENTIAL.”

16           4.15 Receiving Party: a Party that receives Disclosure or Discovery  
17 Material from a Producing Party.

18  
19           5.     SCOPE

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

25           Any use of Protected Material at trial shall be governed by the orders of  
26 the trial judge and other applicable authorities. This Order does not govern the  
27 use of Protected Material at trial.

1           6.     DURATION

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

12           7.     DESIGNATING PROTECTED MATERIAL

13           7.1   Exercise of Restraint and Care in Designating Material for  
14           Protection. Each Party or Non-Party that designates information

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

22           Mass, indiscriminate or routinized designations are prohibited.  
23 Designations that are shown to be clearly unjustified or that have been made  
24 for an improper purpose (e.g., to unnecessarily encumber the case development  
25 process or to impose unnecessary expenses and burdens on other parties) may  
26 expose the Designating Party to sanctions.  
27

28           If it comes to a Designating Party’s attention that information or items

1 that it designated for protection do not qualify for protection, that Designating  
2 Party must promptly notify all other Parties that it is withdrawing the  
3 inapplicable designation.

4       7.2 Manner and Timing of Designations. Except as otherwise  
5 provided in this Order, or as otherwise stipulated or ordered, Disclosure of  
6 Discovery Material that qualifies for protection under this Order must be  
7 clearly so designated before the material is disclosed or produced.

8       Designation in conformity with this Order requires:

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

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

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

10 7.3 Inadvertent Failures to Designate. If timely corrected, an  
11 inadvertent failure to designate qualified information or items does not,  
12 standing alone, waive the Designating Party's right to secure protection under  
13 this Order for such material. Upon timely correction of a designation, the  
14 Receiving Party must make reasonable efforts to assure that the material is  
15 treated in accordance with the provisions of this Order.

## 16 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 8.1. Timing of Challenges. Any Party or Non-Party may challenge a  
18 designation of confidentiality at any time that is consistent with the Court's  
19 Scheduling Order.

20 8.2 Meet and Confer. The Challenging Party shall initiate the dispute  
21 resolution process under Local Rule 37-1 et seq.

22 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a  
23 joint stipulation pursuant to Local Rule 37-2.

24 8.4 The burden of persuasion in any such challenge proceeding shall be  
25 on the Designating Party. Frivolous challenges, and those made for an  
26 improper purpose (e.g., to harass or impose unnecessary expenses and burdens  
27 on other parties) may expose the Challenging Party to sanctions. Unless the  
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1 Designating Party has waived or withdrawn the confidentiality designation, all  
2 parties shall continue to afford the material in question the level of protection  
3 to which it is entitled under the Producing Party’s designation until the Court  
4 rules on the challenge.

5 9. ACCESS TO AND USE OF PROTECTED MATERIAL

6 9.1 Basic Principles. A Receiving Party may use Protected Material that  
7 is disclosed or produced by another Party or by a Non-Party in connection  
8 with this Action only for prosecuting, defending or attempting to settle this  
9 Action. Such Protected Material may be disclosed only to the categories of  
10 persons and under the conditions described in this Order. When the Action has  
11 been terminated, a Receiving Party must comply with the provisions of section  
12 15 below (FINAL DISPOSITION).

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

16 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
17 otherwise ordered by the court or permitted in writing by the Designating  
18 Party, a Receiving Party may disclose any information or item designated  
19 “CONFIDENTIAL” only to:

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

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

26 (c) Experts (as defined in this Order) of the Receiving Party to  
27 whom disclosure is reasonably necessary for this Action and who have signed  
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1 the “Acknowledgment and Agreement to Be Bound” to be negotiated by the  
2 parties (“Acknowledgment”).

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

5 (f) professional jury or trial consultants, mock jurors, and

6 Professional Vendors to whom disclosure is reasonably necessary for this  
7 Action and who have signed the Acknowledgment;

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

11 (h) during their depositions, witnesses, and attorneys for witnesses,  
12 in the Action to whom disclosure is reasonably necessary provided: (1) the  
13 deposing party requests that the witness sign the Acknowledgement; and (2)  
14 they will not be permitted to keep any confidential information unless they  
15 sign the Acknowledgment, unless otherwise agreed by the Designating Party or  
16 ordered by the court. Pages of transcribed deposition testimony or exhibits to  
17 depositions that reveal Protected Material may be separately bound by the  
18 court reporter and may not be disclosed to anyone except as permitted under  
19 this Protective Order; and  
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21 (i) any mediators or settlement officers and their supporting  
22 personnel, mutually agreed upon by any of the parties engaged in settlement  
23 discussions.

24 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
25 PRODUCED IN OTHER LITIGATION

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

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

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

7 (c) cooperate with respect to all reasonable procedures sought to be  
8 pursued by the Designating Party whose Protected Material may be affected. If  
9 the Designating Party timely seeks a protective order, the Party served with the  
10 subpoena or court order shall not produce any information designated in this  
11 action as “CONFIDENTIAL” before a determination by the court from which  
12 the subpoena or order issued, unless the Party has obtained the Designating  
13 Party’s permission. The Designating Party shall bear the burden and expense  
14 of seeking protection in that court of its confidential material and nothing in  
15 these provisions should be construed as authorizing or encouraging a  
16 Receiving Party in this Action to disobey a lawful directive from another court.  
17

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

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

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

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

6 (2) promptly provide the Non-Party with a copy of this Protective  
7 Order, the relevant discovery request(s), and a reasonably specific description  
8 of the information requested; and

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

11 (c) If the Non-Party fails to seek a protective order from this court  
12 within 14 days of receiving the notice and accompanying information, the  
13 Receiving Party may produce the Non-Party's confidential information  
14 responsive to the discovery request. If the Non-Party timely seeks a protective  
15 order, the Receiving Party shall not produce any information in its possession  
16 or control that is subject to the confidentiality agreement with the Non-Party  
17 before a determination by the court. Absent a court order to the contrary, the  
18 Non-Party shall bear the burden and expense of seeking protection in this court  
19 of its Protected Material.  
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21 12. UNAUTHORIZED DISCLOSURE OF PROTECTED  
22 MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has  
24 disclosed Protected Material to any person or in any circumstance not  
25 authorized under this Protective Order, the Receiving Party must immediately  
26 (a) notify in writing the Designating Party of the unauthorized disclosures, (b)  
27 use its best efforts to retrieve all unauthorized copies of the Protected Material,  
28 (c) inform the person or persons to whom unauthorized disclosures were made

1 of all the terms of this Order, and (d) request such person or persons to execute  
2 the Acknowledgment.

3 13. MISCELLANEOUS

4 13.1 Right to Further Relief. Nothing in this Order abridges the right of  
5 any person to seek its modification by the Court in the future.

6 13.2 Right to Assert Other Objections. By entry of this Order, no Party  
7 waives any right it otherwise would have to object to disclosing or producing  
8 any information or item on any ground not addressed in this Protective Order.  
9 Similarly, no Party waives any right to object on any ground to use in evidence  
10 of any of the material covered by this Protective Order.

11 13.3 Filing Protected Material. A Party that seeks to file under seal any  
12 Protected Material must comply with Local Civil Rule 79-5. Protected  
13 Material may only be filed under seal pursuant to a court order authorizing the  
14 sealing of the specific Protected Material. If a Party's request to file Protected  
15 Material under seal is denied by the court, then the Receiving Party may file  
16 the information in the public record unless otherwise instructed by the court.

17 14. FINAL DISPOSITION

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

10 15. VIOLATION

11 Any violation of this Order may be punished by appropriate measures  
12 including, without limitation, contempt proceedings and/or monetary  
13 sanctions.  
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16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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18 DATED: November 13, 2023

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21 \_\_\_\_\_  
22 JOHN D. EARLY  
23 United States Magistrate Judge  
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