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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

STEPHANIE SHEPPARD,) Case No. 2:16-cv-02847-GHW
)
Plaintiff,) HONORABLE GEORGE H. WU
)
v.) **PROTECTIVE ORDER**
)
CHASE BANK,)
) Action Filed: December 2, 2016
)
Defendant.)
)
)

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and Civil Local Rule 141.1,
2 plaintiff Stephanie Sheppard and defendant JPMorgan Chase Bank, N.A., erroneously sued as Chase
3 Bank, stipulate to the issuance of a protective order as follows:

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

5 Discovery in this action is likely to involve confidential, proprietary, or private information
6 requiring special protection from public disclosure and from use for any purpose other than this
7 litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket
8 protections on all disclosures or responses to discovery, and the protection it gives from public
9 disclosure and use extends only to the specific material entitled to confidential treatment under the
10 applicable legal principles. This Order does not automatically authorize the filing under seal of
11 material designated under this Order. Instead, the parties must comply with L.R. 141 if they seek
12 to file anything under seal. This Order does not govern the use at trial of material designated under
13 this Order.

14 **2. DESIGNATING PROTECTED MATERIAL**

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

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

10 **2.2.1** A party or non-party that makes original documents or materials available for
11 inspection need not designate them for protection until after the inspecting party has identified
12 which material it would like copied and produced. During the inspection and before the
13 designation, all material shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES
14 ONLY. After the inspecting party has identified the documents it wants copied and produced, the
15 producing party must designate the documents, or portions thereof, that qualify for protection under
16 this Order.

17 **2.2.2** Parties shall give advance notice if they expect a deposition or other
18 proceeding to include designated material so that the other parties can ensure that only authorized
19 individuals are present at those proceedings when such material is disclosed or used. The use of a
20 document as an exhibit at a deposition shall not in any way affect its designation. Transcripts
21 containing designated material shall have a legend on the title page noting the presence of
22 designated material, and the title page shall be followed by a list of all pages (including line
23 numbers as appropriate) that have been designated, and the level of protection being asserted. The
24 designator shall inform the court reporter of these requirements. Any transcript that is prepared
25 before the expiration of the 21-day period for designation shall be treated during that period as if it
26 had been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise
27 agreed. After the expiration of the 21-day period, the transcript shall be treated only as actually
28 designated.

1 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate does not,
2 standing alone, waive protection under this Order. Upon timely assertion or correction of a
3 designation, all recipients must make reasonable efforts to ensure that the material is treated
4 according to this Order.

5 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 All challenges to confidentiality designations shall proceed under L.R. 141.

7 **4. ACCESS TO DESIGNATED MATERIAL**

8 **4.1 Basic Principles.** A receiving party may use designated material only for this
9 litigation. Designated material may be disclosed only to the categories of persons and under the
10 conditions described in this Order.

11 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.** Unless
12 otherwise ordered by the Court or permitted in writing by the designator, a receiving party may
13 disclose any material designated CONFIDENTIAL only to:

14 **4.2.1** The receiving party's outside counsel of record in this action and employees
15 of outside counsel of record to whom disclosure is reasonably necessary;

16 **4.2.2** The officers, directors, and employees of the receiving party to whom
17 disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit A);

18 **4.2.3** Experts retained by the receiving party's outside counsel of record to whom
19 disclosure is reasonably necessary, and who have signed the Agreement to Be Bound (Exhibit A);

20 **4.2.4** The Court and its personnel;

21 **4.2.5** Outside court reporters and their staff, professional jury or trial consultants,
22 and professional vendors to whom disclosure is reasonably necessary, and who have signed the
23 Agreement to Be Bound (Exhibit A);

24 **4.2.6** During their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the Agreement to Be Bound (Exhibit A); and

26 **4.2.7** The author or recipient of a document containing the material, or a custodian
27 or other person who otherwise possessed or knew the information.

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1 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**

2 **Material Without Further Approval.** Unless permitted in writing by the designator, a receiving
3 party may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY
4 without further approval only to:

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

7 **4.3.2** The Court and its personnel;

8 **4.3.3** Outside court reporters and their staff, professional jury or trial consultants,
9 and professional vendors to whom disclosure is reasonably necessary, and who have signed the
10 Agreement to Be Bound (Exhibit A); and

11 **4.3.4** The author or recipient of a document containing the material, or a custodian
12 or other person who otherwise possessed or knew the information.

13 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
14 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel or Experts.**

15 Unless agreed to in writing by the designator:

16 **4.4.1** A party seeking to disclose to in-house counsel any material designated
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written request to the
18 designator providing the full name of the in-house counsel, the city and state of such counsel’s
19 residence, and such counsel’s current and reasonably foreseeable future primary job duties and
20 responsibilities in sufficient detail to determine present or potential involvement in any competitive
21 decision-making.

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

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

10 **4.4.3** A party that makes a request and provides the information specified in
11 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-house counsel or
12 expert unless, within seven days of delivering the request, the party receives a written objection
13 from the designator providing detailed grounds for the objection.

14 **4.4.4** All challenges to objections from the designator shall proceed under L.R.
15 251.

16 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

18 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-compliance
19 with a lawful subpoena or court order. The purpose of the duties described in this section is to alert
20 the interested parties to the existence of this Order and to give the designator an opportunity to
21 protect its confidentiality interests in the court where the subpoena or order issued.

22 **5.2 Notification Requirement.** If a party is served with a subpoena or a court order
23 issued in other litigation that compels disclosure of any information or items designated in this
24 action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, that party
25 must:

26 **5.2.1** Promptly notify the designator in writing. Such notification shall include a
27 copy of the subpoena or court order;

28

1 **5.2.2** Promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or order is
3 subject to this Order. Such notification shall include a copy of this Order; and

4 **5.2.3** Cooperate with all reasonable procedures sought by the designator whose
5 material may be affected.

6 **5.3 Wait For Resolution of Protective Order.** If the designator timely seeks a
7 protective order, the party served with the subpoena or court order shall not produce any
8 information designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL –
9 ATTORNEY EYES ONLY before a determination by the court where the subpoena or order
10 issued, unless the party has obtained the designator’s permission. The designator shall bear the
11 burden and expense of seeking protection of its confidential material in that court.

12 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

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

19 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

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

26 **8. FILING UNDER SEAL**

27 Without written permission from the designator or a Court order, a party may not file in the
28 public record in this action any designated material. A party seeking to file under seal any

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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 Eastern District of California on _____ [date] in the case of Stephanie Sheppard v. Chase Bank, Case No. 2:16-cv-2847-GHW. 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 Eastern 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]