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13 Attorneys for Defendant EQUIFAX INFORMATION
 SERVICES, LLC

14 UNITED STATES DISTRICT COURT
 15 EASTERN DISTRICT OF CALIFORNIA
 16

17 DANIEL BRUNO, Individually and on behalf
 18 of others similarly situated,

19 Plaintiff,

20 v.

21 EQUIFAX INFORMATION SERVICES,
 22 LLC; GENEVA FINANCIAL SERVICES,
 INC.; JOHN MCGINLEY, ANDY
 23 MITCHELL, and REBS SUPPLY, INC.

24 Defendants.
 25
 26
 27
 28

Case No. 2:17-cv-00327-WBS-EFB

STIPULATED PROTECTIVE ORDER OF
 CONFIDENTIALITY AND TO PROTECT
 PRIVILEGED MATERIALS

1 This matter is before the court on plaintiff Daniel Bruno’s motion for a protective order
2 pursuant to Federal Rule of Civil Procedure 26(c).¹ ECF No. 106. Plaintiff, defendants Equifax
3 Information Services, LLC, and defendant John McGinley have stipulated to the entry of the
4 proposed protective order submitted with plaintiff’s motion. See ECF No. 106-1. Having
5 considered plaintiff’s motion and the proposed stipulated protected order, the court hereby
6 ORDERS that plaintiff Daniel Bruno, defendant Equifax Information Services, LLC, defendant
7 John McGinley, and their counsel in above-styled case are subject to this Stipulated Protective
8 Order of Confidentiality and to Protect Privileged Materials (the “Order”), which limits the use
9 of confidential information.
10

11 **1. PURPOSE AND LIMITATIONS**

12 1.1 Disclosure and discovery activity in this Action are likely to involve production of
13 confidential, proprietary, or private information for which special protection from public
14 disclosure and from use for any purpose other than prosecuting this Action may be warranted.
15 Accordingly, the Parties hereby stipulate to and petition the United States District Court for the
16 Eastern District of California (the “Court”) to enter the following Stipulated Protective Order
17 (the “Order”). The parties acknowledge that this Order does not confer blanket protections on all
18 disclosures or responses to discovery and that the protection it affords from public disclosure or
19 use extends only to the limited information or items that are entitled to confidential treatment
20 under the applicable legal principles. The parties further acknowledge, as set forth in Section
21 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
22 information under seal; Local Rule 141 sets forth the procedures that must be followed and the
23 standards that will be applied when a party seeks permission from the Court to file material
24 under seal.
25
26

27 _____
28 ¹ The court has determined that oral argument would not materially assist in resolution of the motion, and the hearing noticed for February 21, 2018, ECF No. 109, is hereby vacated. E.D. Cal. L.R. 230(g).

1 1.2 The purpose of this Order is to facilitate the production of discovery material,
2 facilitate the prompt resolution of disputes over confidentiality and privilege, protect material to
3 be kept confidential and/or privileged, and ensure that protection is afforded only to material
4 entitled to such treatment, pursuant to the Court’s inherent authority, its authority under Federal
5 Rules of Civil Procedure 16 and 26, the judicial opinions interpreting such Rules, and any other
6 applicable law.

7 1.3 Through this Order, the Parties seek to reduce the time, expense, and other
8 burdens associated with discovery, and to better define their obligations with respect to
9 information and materials produced during discovery.

10 1.4 This Order and all subsequent Protective Orders shall be binding on all Parties
11 and their counsel in this Action, and any other persons or entities who become bound by this
12 Order by signifying their assent through execution of the “Acknowledgment and Agreement to Be
13 Bound” attached as Exhibit A hereto.

14 **2. DEFINITIONS**

15 The following definitions apply for purposes of this Order:

16 2.1 Action: This lawsuit and all related actions that have been or will be originally
17 filed in, transferred to, or removed to this Court and assigned thereto.

18 2.2 Challenging Party: A Party or Non-Party that challenges the designation of
19 information or items under this Order.

20 2.3 Confidential Information: Discovery Material (regardless of how it is generated,
21 stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil
22 Procedure 26(c).

23 2.4 Counsel: Attorneys who are employees of a Party to this Action in addition to
24 Attorneys who are not employees of a Party to this Action but have been retained to represent or
25 advise a Party to this Action and have appeared in this Action on behalf of that Party or are
26 affiliated with a law firm which has appeared on behalf of that Party, as well as their employees
27 and support staff.

1 2.5 Designating Party: A Party or Non-Party that designates documents, information
2 or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

3 2.6 Disclosed Privileged Material: All Discovery Material that a Party or Non-Party
4 discloses that it thereafter claims to be Privileged Material.

5 2.7 Disclosing Party: A Party or Non-Party that discloses Disclosed Privileged
6 Material in this Action.

7 2.8 Discovery Material: All items or information, regardless of the medium or
8 manner in which it is generated, stored, or maintained (including, among other things, testimony,
9 transcripts, answers to interrogatories, documents, responses to requests for admissions, tangible
10 things, and informal exchanges of information), that are produced or generated in connection
11 with any discovery in this Action, whether formally or informally.

12 2.9 Expert: A person retained by a Party or its Counsel to serve as an expert witness
13 or consultant or technical advisor in this Action (as well as his or her employees and support
14 staff).

15 2.10 Non-Party: Any natural person, partnership, corporation, association, or other
16 legal entity not named as a Party to this Action, and their counsel.

17 2.11 Party: Any party to this Action.

18 2.12 Privileged Material: Discovery Material protected from disclosure under the
19 attorney-client privilege, work product doctrine, or any other privilege or protection afforded or
20 recognized by Rule 26 of the Federal Rules of Civil Procedure or Rule 501 of the Federal Rules
21 of Evidence, including any such privilege or protection under applicable U.S. or foreign law,
22 regulation or statute.

23 2.13 Producing Party: A Party or Non-Party that produces Discovery Material in this
24 Action.

25 2.14 Professional Vendors: Persons or entities that provide litigation support services
26 (e.g., photocopying, videotaping, graphic support services, coding, translating, preparing exhibits
27 or demonstrations, document review, and organizing, storing, or retrieving data in any form or
28 medium) and their employees and subcontractors.

1 2.15 Protected Material: Any Discovery Material that is designated as
2 “CONFIDENTIAL.”

3 2.16 Receiving Party: A Party that receives Discovery Material from a Producing
4 Party.

5 **3. SCOPE**

6 3.1 The protections conferred by this Order apply to Protected Material (as defined
7 above) and also: (1) any information copied or extracted from Protected Material; (2) all copies,
8 excerpts, summaries, translations, or compilations of Protected Material; and (3) any oral,
9 written, or electronic communications, testimony or presentations, including for purposes of
10 settlement, by Parties or their Counsel that might reveal Protected Material. The protections
11 conferred by this Order, however, do not cover information that is in the public domain at the
12 time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure
13 to a Receiving Party as a result of publication not involving a violation of this Order.

14 3.2 This Order and its protections apply for pre-trial purposes only. The Parties will
15 meet and confer at the appropriate time regarding any use of Protected Material at trial, which
16 use shall be governed by a separate agreement or order.

17 **4. DURATION**

18 4.1 Even after final disposition of this Action, the confidentiality obligations imposed
19 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
20 court order otherwise directs. Final disposition shall be deemed to be the later of: (1) dismissal of
21 all claims and defenses in this action, with or without prejudice; or (2) final judgment herein
22 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
23 action, including the time limits for filing any motions or applications for extension of time
24 pursuant to applicable law.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designation Material for Protection. Each party
27 or Non-Party that designates information or items for protection under this Order must take care
28 to limit any such designation to specific material that qualifies under the appropriate standards.

1 The Designating Party must designate for protection only those parts that are material,
2 documents, items, or oral or written communications that qualify — so that other portions of the
3 material, documents, items, or communications for which protection is not warranted are not
4 swept unjustifiably within the ambit of this Order. If it comes to a Designating Party’s attention
5 that information or items that it designated for protection do not qualify for protection, that
6 Designating Party must promptly notify all other Parties that it is withdrawing the mistaken
7 designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
9 (*see, e.g.*, Section 5.3.4 below), or as otherwise stipulated or ordered, Discovery Material that
10 qualifies for protection under this Order must be so designated at the time the material is
11 disclosed or produced.

12 5.3 Designation in conformity with this Order requires the following:

13 5.3.1 *Marking.* All or any part of a document, discovery response, or pleading
14 disclosed, produced, or filed by a Producing Party may be designated Confidential by marking
15 the appropriate legend (“CONFIDENTIAL”) on the face of the document and each page so
16 designated. With respect to tangible items, the appropriate legend shall be marked on the face of
17 the tangible item, if practicable, or by written notice to the Receiving Party at the time of
18 disclosure, production or filing that such tangible item is Confidential or contains such
19 information. With respect to documents produced in native format, the Electronically Stored
20 Information Protocol, or ESI Protocol, to be entered in this Action shall govern the form and
21 method for marking such documents as Confidential.

22 5.3.2 A Designating Party may request of a court reporter that transcript pages
23 containing Confidential Information be separately bound with the appropriate legend
24 (“CONFIDENTIAL”) affixed to the relevant pages. Any additional court reporter charges for
25 this treatment of the transcript shall be borne by the Designating Party.

26 5.3.3 A Receiving Party shall exercise good faith efforts to ensure that any
27 copies, print-outs of natively produced documents or data, translations, excerpts, summaries, or
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1 compilations include a confidentiality legend that matches the confidentiality designation the
2 Designating Party applied to the document, discovery response, transcript, or pleading.

3 5.3.4 *Timing.* Except as otherwise provided herein, documents and other
4 objects must be designated before disclosure or production. In the event that a Producing Party
5 designates some or all of a witness’s deposition or other pre-trial testimony (or related exhibits)
6 Confidential, such designation may be made on the record of the deposition or hearing or within
7 thirty (30) calendar days after receipt of the final transcript of such deposition or hearing. The
8 specific page and line designations over which confidentiality is claimed must be provided to all
9 counsel of record within thirty (30) calendar days of receipt of the transcript in final form from
10 the court reporter.

11 5.3.5 For information produced in some form other than documentary and for
12 any other tangible items, the Producing Party shall affix in a prominent place on the exterior of
13 the container or containers in which the information or item is stored the legend
14 “CONFIDENTIAL.” If the Protected Material is produced in an electronic form with a load file,
15 the Designating Party shall note that there is Protected Material in the load file. If only a portion
16 or portions of the information or item warrant protection, the Producing Party, to the extent
17 practicable, shall identify the protected portion(s).

18 5.4 Inadvertent Failures to Designate. If timely corrected, an accidental or
19 inadvertent failure to designate information as “Confidential” does not, standing alone, waive the
20 Designating Party’s right to secure protection under this Order for such material. Upon timely
21 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
22 material is treated in accordance with the provisions of this Order.

23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. A challenge to a designation of confidentiality may be
25 made at any time. Unless a prompt challenge to a Designating Party’s confidentiality
26 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
27 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
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1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 confidentiality designation is made.

3 6.2 Meet and Confer. The Challenging Party shall object to the propriety of the
4 designation of specific material as Confidential by providing written notice to the Designating
5 Party of each designation it is challenging and describing the basis for each challenge. To avoid
6 ambiguity as to whether a challenge has been made, the written notice must recite that the
7 challenge to confidentiality is being made in accordance with this specific Section of this Order.
8 Within fourteen (14) calendar days of the date of service of notice, the Parties shall attempt to
9 resolve each challenge in good faith by conferring directly (in voice to voice dialogue; other
10 forms of communication are not sufficient). In conferring, the Designating Party or its counsel
11 shall either: (i) agree to remove the designation; or (ii) state the reasons for such designation.

12 6.3 Meet and Confer. If the Challenging Party continues to dispute the designation(s)
13 at issue, it shall notify the Designating Party in writing within seven (7) calendar days thereafter.
14 Counsel may agree to reasonable extensions. The Parties shall attempt to resolve each challenge
15 in good faith by conferring directly (in voice-to-voice dialogue; other forms of communication
16 are not sufficient). A Challenging Party may proceed to the next stage of the challenge process
17 only if it has engaged in this meet-and-confer process first or establishes that the Designating
18 Party is unwilling to participate in the meet-and-confer process in a timely manner.

19 6.4 Judicial Intervention. If the Parties cannot resolve a challenge without court
20 intervention, the Designating Party shall file and serve a motion to retain confidentiality ~~under~~
21 ~~Civil Local Rule 7~~ within 21 days of the initial notice of challenge or within 14 days of the
22 parties agreeing that the meet and confer process will not resolve their dispute, whichever is
23 earlier. Each such motion must be accompanied by a competent declaration affirming that the
24 movant has complied with the meet and confer requirements imposed in the preceding
25 paragraph. Failure by the Designating Party to make such a motion including the required
26 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
27 confidentiality designation for each challenged designation. In addition, the Challenging Party
28 may file a motion challenging a confidentiality designation at any time if there is good cause for

1 doing so, including a challenge to the designation of a deposition transcript or any portions
2 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
3 declaration affirming that the movant has complied with the meet and confer requirements
4 imposed by the preceding paragraph.

5 6.5 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. While a challenge is pending, all Parties shall continue to afford the material
7 in question the level of protection to which it is entitled under the Designating Party's
8 designation until the Court orders otherwise.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
11 or produced by another Party or by a Non-Party in this Action only for prosecuting, defending, or
12 attempting to settle this Action, including any appeal(s), so long as such use is permitted herein.
13 Any Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in this Order. After the final disposition of the Action, a Receiving Party
15 must comply with the provisions of Section 13 below (FINAL DISPOSITION).

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

18 7.2 Restrictions on Use of "Confidential" Information. Unless otherwise ordered by
19 the Court or permitted in writing by the Designating Party, and a Receiving Party may disclose
20 any information or item designated "CONFIDENTIAL" only to:

21 7.2.1 the Receiving Party's Counsel;

22 7.2.2 the officers, directors, and employees of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action;

24 7.2.3 Experts retained by the Receiving Party or the Receiving Party's Counsel
25 to whom disclosure is reasonably necessary for this Action and who have signed the
26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 7.2.4 the Court and its personnel, and any appellate court or other court (and
28 their personnel) before which the Parties appear in this Action;

1 7.2.5 special masters or discovery referees appointed by the Court;

2 7.2.6 mediators and their staff, provided such persons have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 7.2.7 court reporters and their staff, professional jury or trial consultants, mock
5 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and
6 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 7.2.8 potential or actual witnesses in the Action to whom disclosure is
8 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
9 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. If a
10 potential or actual witness refuses to sign Exhibit A, the witness shall be permitted to see
11 Protected Material, but will not be permitted to retain such material. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
13 bound by the court reporter and may not be disclosed to anyone except as permitted under this
14 Order;

15 7.2.9 the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information;

17 7.2.10 any other person to whom the Designating Party, in writing, authorizes
18 disclosure.

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
20 **PRODUCED IN OTHER LITIGATION**

21 8.1 If a Party is served with a subpoena or a court order issued in other litigation that
22 compels disclosure of any Protected Material, that Party must:

23 8.1.1 promptly notify in writing the Designating Party unless prohibited by law
24 from doing so. Such notification shall include a copy of the subpoena or court order;

25 8.1.2 promptly notify in writing the party who caused the subpoena or order to
26 issue in the other litigation that some or all of the material covered by the subpoena or order is
27 subject to this Order. Such notification shall include a copy of this Order; and

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1 8.1.3 cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected.

3 8.2 If the Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any Protected Material before a determination by the
5 court from which the subpoena or order issued, unless the Party has obtained the Designating
6 Party's permission. The Designating Party shall bear the burden and expense of seeking
7 protection of its Protected Material, and nothing in these provisions should be construed as
8 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from
9 another court.

10 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
11 **THIS ACTION**

12 9.1 The terms of this Order are applicable to Protected Material produced by a Non-
13 Party in this Action. Such information produced by Non-Parties in connection with this Action
14 is protected by the remedies and relief provided by this Order. Nothing in these provisions
15 should be construed as prohibiting a Non-Party from seeking additional protections. Any Party
16 issuing a subpoena to a Non-Party shall enclose a copy of this Order.

17 9.2 For a period of seven (7) calendar days following production by a Non-Party, that
18 production shall be deemed Confidential Information even if not so designated by the Non-Party,
19 to provide the Parties an adequate opportunity to designate information as Confidential. The
20 inadvertent failure by any Party to designate information produced by Non-Parties as
21 "CONFIDENTIAL" within that seven (7) day period shall not waive a Party's right to later so
22 designate such information with prospective effect, so long as the designation correction is made
23 in a timely fashion, consistent with Section 5.3 of this Order.

24 9.3 In the event that a Party is required, by a valid discovery request, to produce a
25 Non-Party's confidential information in the Party's possession, and the Party is subject to an
26 agreement with the Non-Party not to produce such information, then the Party shall:

27 9.3.1 promptly notify in writing the Party requesting the information that some
28 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

1 9.3.2 promptly provide the Non-Party with a copy of this Order, the relevant
2 discovery request(s), and a reasonably specific description of the information requested; and

3 9.3.3 make the information requested available for inspection by the Non-Party.

4 9.4 If the Non-Party fails to object or seek a protective order from the appropriate
5 court within fourteen (14) calendar days of receiving the notice and accompanying information
6 pursuant to Section 9.2, the Receiving Party may produce the Non-Party's confidential
7 information responsive to the discovery request, and such information shall be produced with the
8 same designation as the one made by the Non-Party. If the Non-Party timely seeks a protective
9 order, the Receiving Party shall not produce any information in its possession or control that is
10 subject to the confidentiality agreement with the Non-Party before a determination by the court.
11 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
12 protection in an appropriate court of its confidential information.

13 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 10.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this Order, the
16 Receiving Party must immediately: (a) notify in writing the Designating Party of the
17 unauthorized disclosures; (b) inform the person or persons to whom unauthorized disclosures
18 were made of all the terms of this Order; and (c) make all reasonable efforts to retrieve all
19 unauthorized copies of the Protected Material.

20 **11. PROTECTION OF PRIVILEGES**

21 11.1 The provisions in Federal Rule of Evidence 502(b) apply to the disclosure of
22 Discovery Material in this Action. When a Disclosing Party gives notice to a Receiving Party
23 that certain inadvertently produced material is subject to a claim of privilege or other protection,
24 the obligations of the Receiving Party and Disclosing Party are those set forth in Federal Rule of
25 Civil Procedure 26(b)(5)(B).

26 11.2 Except as otherwise provided herein, pursuant to Rule 502(d) of the Federal Rules
27 of Evidence, if, in connection with this Action, a Party or Non-Party (the "Disclosing Party")
28 discloses Privileged Material, the disclosure of the Privileged Material shall not constitute or be

1 deemed, either in this Action or any other action, investigation or proceeding, a waiver or
2 forfeiture of any claim of any privilege or protection, including without limitation the attorney-
3 client privilege, the work product doctrine or the deliberative process privilege, that the
4 Disclosing Party would otherwise be entitled to assert with respect to the Disclosed Privileged
5 Material and its subject matter. The Parties shall not argue, in this forum or any other, that any
6 privilege or protection was waived as a result of disclosure in this Action, regardless of the
7 procedures used to identify Privileged Material prior to production.

8 11.3 Notice of Disclosed Privileged Material. If a Disclosing Party determines that it
9 has produced Disclosed Privileged Material, the Disclosing Party shall, within seven (7) calendar
10 days of making such determination, provide written notice to all counsel of record and
11 identifying the Disclosed Privileged Material (by date of production and production number or
12 range, if applicable) (“Disclosure Notice”).

13 11.4 Any Party, or Non-Party **that has signed the “Acknowledgment and Agreement to**
14 **Be Bound,”** that receives a Disclosure Notice must: (a) immediately cease reviewing and using
15 the Disclosed Privileged Material; and (b) within fourteen (14) calendar days of receipt of the
16 Disclosure Notice: (i) return, sequester, or destroy all copies of the Disclosed Privileged
17 Material; (ii) upon request of the Disclosing Party, provide to the Disclosing Party a certification
18 of counsel that all of the Disclosed Privileged Material has been returned, sequestered or
19 destroyed; and (iii) notify any Party or Non-Party to whom the Receiving Party has provided the
20 Disclosed Privileged Material that he, she, or it must comply with the obligations set forth in this
21 Section, including, upon request of the Disclosing Party, to provide to the Disclosing Party a
22 certification of counsel that all of the Disclosed Privileged Material has been returned,
23 sequestered or destroyed. Copies of Disclosed Privileged Material that have been stored on
24 electronic media that is not reasonably accessible, such as disaster recovery backup media, are
25 adequately sequestered as long as they are not restored. If such data is restored, the Receiving
26 Party must take steps to re-sequester the restored Disclosed Privileged Material.

27 11.5 Nothing in this Order is intended to create an obligation for a Party to conduct a
28 privilege review of another Party’s Discovery Material. If a Party identifies Discovery Material

1 that appears on its face to be Disclosed Privileged Material belonging to another Party or Non-
2 Party, however, the identifying Party is under a good-faith obligation to notify that other Party or
3 Non-Party. Such notification shall not waive the identifying Party's ability to subsequently
4 contest any assertion of privilege or protection with respect to the identified Discovery Material.
5 If the Party or Non-Party to which the Disclosed Privileged Material belongs wishes to assert a
6 claim of privilege or protection, that Party or Non-Party shall provide a Disclosure Notice within
7 seven (7) calendar days of receiving such notification. Nothing in this Order overrides any
8 attorney's ethical responsibilities to refrain from examining or disclosing materials that the
9 attorney knows or reasonably should know to be Privileged Material and to inform the
10 Disclosing Party that such Privileged Material has been produced.

11 11.6 Contesting a Claim of Privilege. A Party wishing to contest a claim of privilege
12 (the "Contesting Party") shall provide written notice to the Party or Non-Party asserting privilege
13 of each such claim it is contesting (the "Contestation Notice"). Any Contestation Notice shall
14 expressly refer to this Section of this Order, and shall describe the basis for the contestation.
15 Within seven (7) calendar days of the date of service of the Contestation Notice, the parties shall
16 attempt to resolve each contestation in good faith by conferring directly (in voice to voice
17 dialogue; other forms of communication are not sufficient). In conferring, the Party or Non-
18 Party asserting privilege or its counsel shall either: (i) agree to withdraw the claim of privilege;
19 or (ii) state the reasons for such privilege. A Contesting Party may proceed to the next stage of
20 the challenge process only if it has engaged in this meet-and-confer process first or establishes
21 that the Party or Non-Party asserting the privilege is unwilling to participate in the meet-and-
22 confer process in a timely manner. If the relevant Parties or Non-Parties cannot resolve a
23 contestation without court intervention, the Contesting Party may, within seven (7) calendar days
24 of impasse, move the Court for an order withdrawing the designation as to the specific claims on
25 which the Contesting Party and the Party or Non-Party asserting privilege could not agree
26 ("Contestation Motion"). ~~Such Contestation Motion must be filed under seal in accordance with~~
27 ~~the local rules.~~ The Contesting Party must not assert, as a ground for compelling disclosure, the
28 fact or circumstances of the disclosure of the Discovery Material in this Action. The Party or

1 Non-Party asserting privilege retains the burden, upon contestation, of establishing the
2 applicability of the claimed privilege and bears the burden of making the claimed privileged
3 material available to the Court for in camera review.

4 11.7 While a Contestation Motion is pending, all Parties and Non-Parties shall
5 continue to follow the procedures described herein, and no Party or Non-Party shall use the
6 Disclosed Privileged Material for any other purpose nor disclose it to any person other than those
7 required by law to be served with a copy of the sealed motion. Nothing herein shall limit the
8 right of any Party or Non-Party to petition the Court for an in camera review of Disclosed
9 Privileged Material. Privileged Material may not be filed in the public record in this Action.

10 11.8 Depositions. If, during a deposition, a Party or Non-Party claims that a document
11 being used in the deposition (e.g., marked as an exhibit, shown to the witness, or made the
12 subject of examination) contains its Privileged Material, that Party or Non-Party, at his, her or its
13 sole election, may (a) allow the document to be used during the deposition without waiver of his,
14 her or its claim of privilege or protection; or (b) instruct the witness not to answer questions
15 concerning the parts of the document containing Privileged Material pending a prompt resolution
16 of any disagreement concerning whether the document constitutes or contains Privileged
17 Material. If the Party or Non-Party allows the examination concerning the document to proceed
18 on a non-waiver basis, the Parties and any Non-Parties shall sequester all copies of the
19 purportedly privileged or protected document. Immediately following the deposition, the Parties
20 and any Non-Parties will commence the procedure, including the notice and log requirements,
21 outlined in Sections 11.3 - 11.6 (as applicable), to address the claim of privilege or other
22 protection and any related disputes. Until any such disputes are resolved, all Parties and Non-
23 Parties who have access to the transcript of such deposition shall treat the relevant portion of the
24 transcript as Privileged Material. If any Party or Non-Party instructs the witness not to answer
25 questions concerning the document on grounds of privilege, the Parties will cooperate in
26 promptly following the procedures outlined in Sections 11.3 - 11.6, as applicable. If the
27 document is ultimately determined not to be privileged or subject to protection, the Party or Non-
28 Party asserting the claim of privilege or protection will be responsible for ensuring that the

1 deposing party is given an opportunity to depose the witness about the document, which in the
2 case of Party-witnesses (or their current employees) or any former employees of a Party who are
3 represented by Counsel for such Party shall be at the earliest practicable time for the witness and
4 his, her or its counsel, not to exceed thirty (30) calendar days of said determination at the
5 expense of the Party or Non-Party claiming privilege or protection.

6 11.12 The Parties may stipulate, without the need for Court approval, to narrow or
7 extend the time periods specified in this Order.

8 11.13 This Order does not preclude a Party from voluntarily waiving any claims of
9 privilege or protection. The provisions of Rule 502(a) of the Federal Rules of Evidence apply
10 when a Party uses privileged or protected information to support a claim or defense.

11 **12. MISCELLANEOUS**

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
13 seek its modification by the Court in the future. Any Party, entity or person covered by this
14 Order may at any time apply to the Court for relief from any provision of this Order. Subject to
15 the agreement of the Parties or an order of the Court, other entities or persons may be included in
16 this Order by acceding to its provisions in a writing served upon all counsel of record, with such
17 writings to be filed with the Court if so directed.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no
19 Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Order. Similarly, no Party waives any
21 right to object on any ground to use as evidence any of the material covered by this Order.

22 12.3 Filing Protected Material. Without written permission from the Designating Party
23 or a court order secured after appropriate notice to all interested persons, a Party may not file in
24 the public record in this Action any Protected Material. A Party that seeks to file under seal any
25 Protected Material must comply with Local Rule 141. Protected Material may only be filed
26 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
27 issue. Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing
28 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise

1 entitled to protection under the law. If a Receiving Party's request to file Protected Material
2 under seal pursuant to Local Rule 141 is denied by the Court, then the Receiving Party may file
3 the information in the public record pursuant to Local Rule 141 unless otherwise instructed by
4 the Court.

5 12.4 Hearings and Appeals

6 12.4.1 In the event that a Receiving Party intends to utilize Protected Material
7 during a pre-trial hearing, such Receiving Party shall provide written notice no less than five (5)
8 calendar days prior to the hearing, to the Producing Party and/or the Designating Party and to the
9 Court, except that shorter notice may be provided if the Receiving Party could not reasonably
10 anticipate the need to use the document at the hearing five (5) calendar days in advance, in which
11 event notice shall be given immediately upon identification of that need. The use of such
12 Protected Material during the pre-trial hearing shall be determined by agreement of the relevant
13 Parties or by Order of the Court.

14 12.4.2 In the event that any Protected Material is used in any court proceeding in
15 this Action or any appeal in connection with this Action, except for the use of Protected Material
16 during trial, the manner of which shall be determined pursuant to Section 3.2, such Protected
17 Material shall not lose its protected status through such use. Counsel shall comply with all
18 applicable local rules and shall confer on such procedures that are necessary to protect the
19 confidentiality of any documents, information, and transcripts used in the course of any court
20 proceedings, including petitioning the Court to close the courtroom.

21 12.5 Reservations. Entering into, agreeing to or complying with the provisions of this
22 Order shall not: (1) operate as admission that any particular material contains Protected Material;
23 or (2) prejudice any right to seek a determination by the Court (a) whether particular material
24 should be produced, or (b) if produced, whether such material should be subject to the provisions
25 of this Order.

26 **13. FINAL DISPOSITION**

27 13.1 Within sixty (60) calendar days after the final disposition of this Action, as
28 defined in Section 4, each Receiving Party, including its employees, attorneys, consultants and

1 experts, must use commercially reasonable efforts to destroy or return to the Producing Party all
2 Protected Material, except: (1) backup tapes or other disaster recovery systems that are routinely
3 deleted or written over in accordance with an established routine system maintenance practice; or
4 (2) documents that must be preserved as federal records or in compliance with other statutory,
5 regulatory or legal authorities. As used in this Section, "all Protected Material" includes all
6 originals, copies, abstracts, compilations, summaries, and any other format reproducing or
7 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
8 upon request of the Producing Party, the Receiving Party must submit a written certification to
9 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 90-
10 day deadline that: (1) states that commercially reasonable efforts have been made to assure that
11 all Protected Material has been returned or destroyed; and (2) affirms that the Receiving Party
12 has not retained any originals, copies, abstracts, compilations, summaries or any other format
13 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel
14 are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
15 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product (including all emails attaching or referring to Protected
17 Materials), and consultant and expert work product, even if such materials contain Protected
18 Material. Any such archival copies that contain or constitute Protected Material remain subject to
19 this Order as set forth in Section 4 (DURATION).

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21

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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DATED: 1/11/18 /s/ Joseph S. Messer
Counsel for Plaintiff

DATED: 1/3/18 /s/ Meryl W. Roper
Counsel for Defendant Equifax Information Services, LLC

DATED: _____

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Counsel for Defendant Geneva Financial Services, Inc.

DATED: 1/17/18

/s/ Rebecca Wester
Counsel for Defendant John McGinley

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 7, 2018

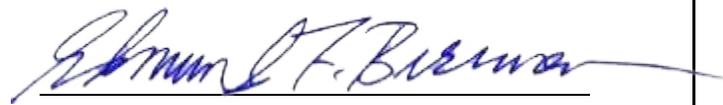

Edmund F. Bierman
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by The United States District Court
6 for the Eastern District of California on _____ in the case *Bruno v. Equifax Information*
7 *Services, LLC, et al.*, Case No. 2:17-cv-00327-WBS-EFB. I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge
9 that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
10 I solemnly promise that I will not disclose in any manner any information or item that is subject
11 to this Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.
13

14 I further agree to submit to the jurisdiction of The United States District Court for the
15 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this Action.
17

18
19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____
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