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7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10

11 JACQUELINE ANDERSON,
 12
 Plaintiff,
 13
 vs.
 14 CHARLES SCHWAB AND COMPANY, INC.,
 15 and DOES 1 through 100, inclusive,
 16 Defendants.

No.: 3:12-cv-01682-MMC

ORDER APPROVING
STIPULATION AND ~~[PROPOSED]~~
~~ORDER FOR PROTECTIVE ORDER RE:~~
CONFIDENTIAL INFORMATION

Hon. Maxine M. Chesney

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

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 21 Plaintiff JACQUELINE ANDERSON and Defendant CHARLES SCHWAB & CO., INC.,
 22 by and through their respective counsel, hereby stipulate as follows:

23 WHEREAS, in connection with discovery in this case, the Parties have sought and/or
 24 anticipate seeking certain documents and/or information that the others contend is private, highly
 25 confidential, and/or proprietary;

26 WHEREAS, the Parties desire to protect the confidentiality of such documents and
 27 information consistent with applicable law, to ensure that they can obtain and pursue discovery with
 28 a minimum of delay and expense;

1 Whereas the Parties acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords from public disclosure and use
3 extends only to the limited information or items that are entitled to confidential treatment under the
4 applicable legal principles;

5 Whereas, with the entry of this Order, neither party concedes to the confidentiality of any
6 documents so designated by the Producing Party;

7 NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

8 1. DEFINITIONS As used in this Protective Order:

9 a. The term “Action” means the case entitled *Jacqueline Anderson v. Charles*
10 *Schwab & Co., Inc.*, Northern District of California Case No. 3:12-cv-01682-MMC.

11 b. The term “Challenging Party” means a Party or Non-Party that challenges the
12 designation of information or items designated as “Confidential.”

13 c. The term “Confidential” means any information, whether documentary or
14 oral, so designated by any Producing Person or Party which it reasonably, under standards developed
15 under California statutory and common law, believes is of the type entitled to protection by law,
16 subject to any party’s right to challenge such designation through court intervention, as specified
17 herein.

18 d. The term “Current Employee” means any Person who is currently employed
19 by any Party or Producing Person.

20 e. The term “Defendant” means Defendant Charles Schwab & Co., Inc.
21 (“Charles Schwab”) and Defendant’s current employees, agents, managers, officers, directors,
22 subsidiaries, parent companies, and divisions, and any person or entity purporting to act on their
23 behalf.

24 f. The term “Designating Party” means a Party or Non-Party that designates
25 information or items that it produces in responses to discovery as “Confidential.”

26 g. The term “Former Employee” means any Person who was formerly employed
27 by any Party or Producing Person.

28 h. The term “In-house Counsel” means internal corporate counsel employed or

1 assigned by any party engaged in the prosecution or defense of this Action including the paralegals,
2 legal assistants, stenographic, or clerical employees and vendors who assist such counsel;

3 i. The term “Material” means the original and any copy (regardless of origin or
4 location) of any written, reported, recorded or graphic matter, however stored, produced or
5 reproduced, including, but not limited to, computer-stored and computer retrievable information;
6 testimony at depositions upon oral examinations or upon written questions; answers to
7 interrogatories; information obtained from the inspection of premises; tangible objects or documents;
8 answers to requests for admission; and anything that is a “writing” under the California Evidence
9 Code.

10 j. The term “Outside Counsel” means counsel of record retained by a Party for
11 representation in the prosecution or defense of this Action for the parties, including firm associates,
12 of counsel attorneys, paralegals, legal assistants, stenographic, or clerical employees who assist such
13 counsel;

14 k. The term “Outside Experts, Consultants, or Investigators” means those
15 Persons consulted or retained by the parties or their counsel of record in connection with this Action.

16 l. The term “Party” means any of the parties in this action including its officers,
17 directors, and agents (but not Counsel).

18 m. The term “Person” or “Non-Party” includes a natural person, association,
19 organization, partnership, limited liability company, business, trust, corporation, or public entity and
20 any agent of the foregoing not named as a Party in this Action.

21 n. The term “Plaintiff” means Plaintiff Jacqueline Anderson, and any Person or
22 entity purporting to act on her behalf.

23 o. The term “Producing Party” or “Producing Person” means a Party to the
24 action or any third party, and all of its directors, employees, and agents (including Counsel), who
25 produce or otherwise make available discovery Material to a Receiving Party.

26 p. The term “Professional Vendors” means persons or entities that provide
27 litigation support services (e.g., court reporting, photocopying, videotaping, translating, preparing
28 exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and

1 their employees and subcontractors.

2 q. The term “Protected Material” means any Material that is designated as
3 “Confidential.”

4 r. The term “Provide” means the production, delivery, or transfer of any
5 Material directly to the Receiving Party, voluntarily or involuntarily, regardless of whether it is
6 performed pursuant to a request or subpoena.

7 s. The term “Receiving Party” means a Party to the action, and all of its
8 directors, employees, and agents (including Counsel), who receive discovery Material from a
9 Producing Party or Producing Person.

10 2. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected Material (as
12 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
13 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
14 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
15 However, the protections conferred by this Stipulation and Order do not cover the following
16 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
17 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
18 publication not involving a violation of this Order; and (b) any information known to the Receiving
19 Party that was obtained by the Receiving Party before the disclosure from a Producing Person who
20 obtained the information lawfully and under no obligation of confidentiality to the Designating
21 Party. Nothing in this Protective Order, however, shall negate any duties or obligations regarding
22 confidential or proprietary information to which Plaintiff is subject by virtue of her former
23 employment with Defendant. Any use of Protected Material at trial shall be governed by a separate
24 agreement or order to be worked out with the Court.

25 3. DESIGNATION/DISCLOSURE OF CONFIDENTIAL MATERIAL

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

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

8 a. Manner and Timing of Designation. The Parties may designate as
9 confidential at the time of production any Materials or information that contains Confidential
10 Information by placing or affixing on each page of such Material the legend “Confidential.” If only
11 a portion or portions of the material on a page qualifies for protection, the Producing Party also must
12 clearly identify the protected portion(s). Portions of deposition testimony and transcripts may be
13 designated “Confidential” pursuant to the provisions of Paragraph 5, below.

14 b. Permitted Disclosures. Protected Material shall not be used for any purpose
15 other than the prosecution or defense of the Action by the Party or parties receiving such Protected
16 Material in discovery.

17 i) Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated
19 “Confidential” only to:

- 20 (1) Parties to the Action;
- 21 (2) Outside counsel
- 22 (3) In-house counsel;
- 23 (4) Outside Experts, Consultants, or Investigators under the
24 conditions described in Paragraph 8 below;
- 25 (5) Current Employees. A Current Employee of a Producing
26 Person or Party may be examined, may be shown, and may testify concerning any Protected Material
27 of that Producing Person or Party;
- 28 (6) Former Employees (to the extent consistent with the California

1 Rules of Professional Conduct and applicable case law). A Former Employee of a Producing Person
2 or Party may be examined, may be shown, may be interviewed, and may testify concerning any
3 Protected Material of a Producing Person or Producing Party that pertains in any way to him/her, the
4 subject matter of his/her employment or consultation or to the subject matter of his/her

5 (7) communications with the Producing Person or Party.

6 (8) A Non-Party who has had any contact or relationship with a
7 Party may be examined, may be shown, may be interviewed, and may testify:

8 (a) Concerning any Protected Material that appears on its
9 face to have been communicated between the Non-Party and any Party; and

10 (b) Concerning any Protected Material of a Party that
11 documentary or testimonial evidence indicates was communicated between the Non-Party
12 and the Party

13 (9) Professional Vendors engaged for this Action, and their staff;

14 (10) The California Superior Court, Appellate Court and Supreme
15 Court, and their personnel, or other persons acting on its behalf, including without limitation
16 members of any jury that may serve in proceedings in the Action.

17 c. Restrictions on Use. Persons to whom Protected Material are to be provided,
18 exhibited, or disclosed pursuant to this Paragraph 3(b)(i) must have: (1) read this order, (2) agreed to
19 be bound by the terms thereof, (3) agreed to maintain said information in confidence, (4) agreed not
20 to disclose the same except as permitted by this Paragraph 3, and (5) agreed to use said information
21 solely for purposes of the prosecution and defense of this Action and not for any business,
22 competitive or other purposes whatsoever. Notwithstanding the foregoing, the California Superior
23 Court, Appellate Court and Supreme Court, and its personnel, or other persons acting on its behalf,
24 Court Reporters who provide services during depositions, are not subject to the provisions in this
25 Paragraph.

26 4. Use Of Party's Own Confidential Information: Notwithstanding any other provision
27 of this Protective Order to the contrary, this Protective Order has no effect upon, and shall not apply
28 to, a Party's use or disclosure for any purpose of its own confidential information, including but not

1 limited to Protected Material in this Action. By way of illustration only, nothing herein shall require
2 a Party (Party A) to inform another Party (Party B) that the Party (Party A) intends to disclose its
3 own confidential information to Persons identified in Paragraph 3(b)((i). Nothing herein shall
4 prohibit a Producing Party, or its Counsel, from disclosing Protected Material to the Person the
5 document identifies as the author or addressee of such material.

6 5. DEPOSITIONS

7 a. The parties may designate any information disclosed during depositions as
8 “Confidential” either on the record at the deposition or within 15 calendar days after the date of the
9 deposition.

10 b. Designation of the portion of the transcript (including exhibits) as
11 “Confidential” shall be made as follows: Upon review of the transcript by counsel for the party to
12 whose information the contents of the deposition relate, that counsel shall designate within 15
13 calendar days after counsel’s receipt of the transcript, by written communication to the other Parties,
14 the specific pages and lines to be designated as “Confidential.” If no designation is made within 15
15 calendar days after receipt of the transcript, the transcript shall be considered not to contain any
16 confidential material.

17 c. The Parties also agree that to the extent depositions were completed prior to
18 the execution of this stipulated protective order, the Parties have 15 calendar days after the Court’s
19 execution of this order to designate portions of the existing deposition transcripts or exhibits as
20 “Confidential.”

21 d. A Person not otherwise authorized to be shown Protected Material under
22 Paragraph 3 of this Order may be examined as a witness at deposition and may be shown and may
23 testify concerning any such information or documents as follows:

24 i) A Current Employee of a Producing Person or Party may be examined,
25 may be shown, and may testify concerning any Protected Material of that Producing Person or Party.

26 ii) A Former Employee of a Producing Person or Party may be examined,
27 may be shown, may be interviewed, and may testify concerning any Protected Material of a
28 Producing Person or Producing Party that pertains in any way to him/her, the subject matter of

1 his/her employment or consultation or to the subject matter of his/her communications with the
2 Producing Person or Party.

3 iii) A Non-Party who has had any contact or relationship with a Party may
4 be examined, may be shown, may be interviewed, and may testify:

5 (1) Concerning any Protected Material that appears on its face to
6 have been communicated between the Non-Party and any Party; and

7 (2) Concerning any Protected Material of a Party that documentary
8 or testimonial evidence indicates was communicated between the Non-Party and the Party;

9 (3) Concerning any Protected Material to which the Non-Party is
10 the subject.

11 6. CHALLENGING DESIGNATION OF PROTECTED MATERIAL

12 Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a
13 prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid
14 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
15 delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by
16 electing not to mount a challenge promptly after the original designation is disclosed.

17 In the event that counsel for any Party at any time believes Protected Material should not be
18 so designated, such counsel shall so notify the Designating Party in writing, counsel for the
19 Challenging and Designating Parties then shall meet and confer in good faith concerning such
20 disputed Protected Material within ten (10) business days of receipt of the notice. If agreement is
21 not reached, the Challenging Party may file a motion requesting that the Court order the removal of
22 the Designating Party’s designation. In such a proceeding, the Designating Party bears the burden of
23 showing good cause with respect to any challenged designation. The Protected Material at issue
24 shall be subject to and protected by this Stipulation and Order under the designation assigned by the
25 Designating Party, until the Court has ruled on any such application. The Court may impose a
26 monetary sanction under California Code of Civil Procedure § 2023.010, *et seq.*, against any Party,
27 Person, or attorney who unsuccessfully makes or opposes such a motion, unless it finds that the one
28 subject to the sanction acted with substantial justification or that other circumstances make the

1 imposition of the sanction unjust. Designations that are shown to have been made for an improper
2 purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to impose
3 unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.
4 No Party shall be obliged to challenge the propriety of a Confidential Information designation, and a
5 failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

6 7. INADVERTENT DISCLOSURE

7 a. If a Producing Person or Party inadvertently fails to stamp or otherwise
8 appropriately designate and/or label certain Protected Material as “Confidential” upon production or
9 disclosure, the Producing Person or any other Party may thereafter designate by promptly giving
10 written notice to all Parties that the Material is to be so designated. All parties shall then stamp or
11 otherwise mark the designated Material with a “Confidential” or a similar legend.

12 b. To the extent provided by law, the inadvertent production of Material that is
13 privileged or otherwise protected from disclosure independently of this Order shall not be deemed a
14 waiver or impairment of any claim of privilege or protection, including but not limited to, the
15 attorney-client privilege and the protection afforded to work-product Materials, or the subject matter
16 thereof. Upon receiving notice from a Producing Person or Party that Materials have been
17 inadvertently produced, all such Materials (including all copies) shall be returned to the Producing
18 Person or party within five (5) business days of receipt of that notice, unless timely application is
19 made to the Court within that period to challenge the claim of privilege.

20 8. DISCLOSURE OF PROTECTED MATERIAL TO EXPERTS, CONSULTANTS, FORMER
21 EMPLOYEES, INVESTIGATORS, AND NON-PARTIES

22 a. Before a Party discloses Protected Material to any Outside Expert, Consultant,
23 Investigator, Former Employee, or Non-Party, he or she must certify that he or she has read this
24 Protective Order and must sign a copy of the “Agreement to be Bound by Protective Order,”
25 attached hereto as Exhibit A. Once the Outside Expert, Consultant, Investigator, Former Employee,
26 or Non-Party has executed the “Agreement to be Bound by Protective Order,” it shall not be
27 necessary for that Person to sign a separate statement each time he or she is subsequently given
28 access to Protected Material. An Outside Expert, Consultant, or Investigator that is shown Protected

1 Material may retain copies of that Material or information subject to the provisions of Paragraph 9
2 below.

3 b. The original, executed “Agreement to be Bound by Protective Order” signed
4 by Persons receiving Protected Material pursuant to this Paragraph 8 shall be maintained by the
5 Outside Counsel who obtained the Agreement.

6 9. COMPLETION OF LITIGATION

7 Upon completion of all proceedings in this Action, including the expiration of all rights to judicial
8 review, all Protected Material shall be returned to the Producing Party or destroyed. If the Receiving
9 Party elects to destroy instead of returning such Protected Material, the Receiving Party shall
10 confirm in writing to the Producing Party within sixty (60) days after final termination of the Action
11 that the Protected Material has been destroyed. Each Party shall also ensure that all Outside Experts,
12 Consultants and Investigators to whom Protected Materials designated were disclosed shall return all
13 such Protected Materials to the Party consulting with or retaining such Persons or, alternatively, shall
14 confirm in writing that all such Protected Material has been destroyed. Provided there is no
15 Protected Material contained therein, Receiving Parties are not required to return or destroy any
16 pleadings, discovery requests, documents filed with the Court, trial, deposition, or hearing
17 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
18 consultant and expert work product, or attorney work-product. If Protected Material is contained
19 therein, these documents must be either returned or destroyed. The provisions of this Protective
20 Order restricting the dissemination, exhibition or other use of Protected Material shall continue to be
21 binding on any Person subject to the terms of the Protective Order even after conclusion of this
22 Action, unless a Designating Party agrees otherwise in writing or a court order otherwise directs.

23 10. RIGHT TO SEEK RELIEF FROM THE COURT

24 Nothing in this Protective Order shall be deemed to limit, prejudice or waive any rights of any Party
25 or Person: (a) to resist or compel discovery with respect to, or to seek additional or different
26 protection for, Material claimed to be protected by attorney work-product or other applicable
27 privilege, Material as to which the Party or Person claims a legal obligation not to disclose, or
28 Material not required to be produced pursuant to governing laws and rules; (b) to seek to modify or

1 obtain relief from any aspect of this Protective Order; (c) to object to the use, relevance or
2 admissibility at trial of any evidence, whether or not comprised of Confidential Information
3 governed by this Protective Order; (d) otherwise to require that discovery be conducted according to
4 governing laws and rules; or (e) to oppose production of any information on any ground allowed
5 under the California Code of Civil Procedure, or any other state or federal law, rule or regulation.
6 By signing this Protective Order, a Producing Party is not deemed to waive any objection to the
7 production of any document. In addition, the election by any Party to disclose any portion of its
8 “Confidential” information to others shall not be deemed a waiver of any of the rights established by
9 this Protective Order. The placing of any “Confidential” designation or a production identification
10 number on the face of a document produced shall have no effect on the authenticity or admissibility
11 of that document at trial.

12 11. FILING CONFIDENTIAL INFORMATION WITH THE COURT

13 Without written permission from the Designating Party or a court order secured after appropriate
14 notice to all interested persons, a Party may not file in the public record in this action any Protected
15 Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local
16 Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the
17 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order
18 will issue only upon a request establishing that the Protected Material at issue is privileged,
19 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's
20 request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the
21 court, then the Receiving Party may file the information in the public record pursuant to Civil Local
22 Rule 79- 5(e) unless otherwise instructed by the court.

23 12. USE OF PROTECTED MATERIAL IN COURT

24 Should counsel for any Party desire to use Protected Material, or any portion or summary thereof,
25 during any proceedings held in open court, he or she shall, prior to such use and upon conferring
26 with opposing counsel, make a request to the Court that the Protected Material be filed under seal
27 with this Court. Outside Counsel shall exercise due care not to disclose Protected Material
28 needlessly in the public record of any proceedings. As to use of the Protected Material at trial, the

1 Parties shall work out with the trial court at the Final Status Conference or other hearing to establish
2 a procedure for using Confidential Information at trial. The court will have discretion to decide how
3 the Confidential Information can be used at trial.

4 13. MAINTENANCE OF PROTECTED MATERIAL

5 Persons described in paragraph 3(b)(i) with custody of Protected Material shall maintain them in a
6 manner that ensures that access to it is strictly limited to Persons entitled to receive Protected
7 Material in accordance with this Protective Order.

8 14. SUBPOENAS

9 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
10 compel disclosure of Protected Material, the Receiving Party must promptly notify the Designating
11 Party in writing and in no event more than five court days after receiving the subpoena or order.
12 Such notification must include a copy of the subpoena or court order. The Receiving Party also must
13 promptly inform in writing the litigant who caused the subpoena or order to issue in the other
14 litigation that some or all of the Protected Material covered by the subpoena or order are the subject
15 of a Protective Order. In addition, the Receiving Party must deliver a copy of this Protective Order
16 promptly to the litigant in the other action that caused the subpoena or order to issue. The purpose of
17 imposing these duties is to alert the interested parties to the existence of this Protective Order and to
18 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in
19 the court from which the subpoena or order issued. The Designating Party shall bear the burdens
20 and the expenses of seeking protection in that court of its Protected Material – and nothing in these
21 provisions should be construed as authorizing or encouraging a Receiving Party in this Action to
22 disobey a lawful directive from another court.

23 15. JURISDICTION

24 Upon conclusion of this Action, this Court shall retain such jurisdiction with respect to this
25 Protective Order for purposes of enforcing its terms and conditions and to enable any Party herein
26 affected to apply for such other and further orders concerning the subject of this Protective Order as
27 may be necessary or appropriate. Counsel for the Designating Party shall have the opportunity to
28 oppose any request for public inspection of Protected Material.

1 Based on the parties' stipulation, and good cause appearing, **IT IS SO ORDERED.**

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4 DATED: March 13, 2013.


Hon. Maxine M. Chesney
Senior United States District Judge

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10 REED SMITH LLP
A limited liability partnership formed in the State of Delaware

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EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I hereby acknowledge that I am about to receive Confidential Information provided in connection with the litigation entitled *JACQUELINE ANDERSON v. CHARLES SCHWAB & CO., INC.*, Northern District of California Case No. 3:12-cv-01682-MMC. I certify my understanding that such Confidential Information is to be provided to me pursuant to the terms and restrictions of the Protective Order in the action and that I have been given a copy of and have read said Protective Order and agree to be bound by the terms thereof. I understand that such Confidential Information and any copies I make of any Material containing Confidential Information or any notes or other records that may be made regarding any such Confidential Information shall not be disclosed to any persons other than those persons to whom such information may be disclosed pursuant to this Protective Order.

Dated: _____

Signature

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

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