

United States District Court
Northern District of California

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FIRST DATABANK, INC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EXELTIS USA, INC., a New Jersey Corporation,

Plaintiff,

vs.

FIRST DATABANK, INC., a Missouri
Corporation,

Defendant.

Case No. 4:17-cv-04810-HSG

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords from public disclosure and use extends
8 only to the limited information or items that are entitled to confidential treatment under the
9 applicable legal principles. The parties further acknowledge, as set forth in paragraph 12.3, below,
10 that this Stipulated Protective Order does not entitle them to file confidential information under seal;
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
12 applied when a party seeks permission from the Court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
20 as their support staff).

21 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

23 2.5 Designating Party: a Party or Non-Party that designates information or items that it
24 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
27 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
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1 transcripts, and tangible things), that are produced or generated in disclosures or responses to
2 discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action.

6 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
7 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
8 Non-Party would create a substantial risk of serious harm that could not be avoided by less
9 restrictive means.

10 2.9 House Counsel: attorneys who are employees of a party to this action. House
11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
13 entity not named as a Party to this action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action
15 but are retained to represent or advise a party to this action and have appeared in this action on
16 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party. It is
17 understood and agreed that counsel at The Hearst Corporation Office of General Counsel who have
18 made an appearance in this action are Outside Counsel of Record for purposes of this Order.

19 2.12 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this action.

23 2.14 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
25 storing, or retrieving data in any form or medium) and their employees and subcontractors.

26 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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1 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected Material (as
5 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
6 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Stipulation and Order do not cover the following
9 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
10 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
11 publication not involving a violation of this Order, including becoming part of the public record
12 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
14 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
15 Protected Material at trial shall be governed by a separate agreement or order.

16 4. DURATION

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

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
27 Non-Party that designates information or items for protection under this Order must take care to

1 limit any such designation to specific material that qualifies under the appropriate standards. The
2 Designating Party must designate for protection only those parts of material, documents, items, or
3 oral or written communications that qualify – so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept unjustifiably within
5 the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
7 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
8 encumber or delay the case development process or to impose unnecessary expenses and burdens on
9 other parties) expose the Designating Party to sanctions.

10 If it comes to a Designating Party’s attention that information or items that it designated for
11 protection do not qualify for protection at all or do not qualify for the level of protection initially
12 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
13 mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order or
15 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
16 under this Order must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but
19 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
20 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” to each page that contains protected material. If only a portion or portions of the material on
22 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
23 (e.g., by making appropriate markings in the margins), and must specify, for each portion, the level
24 of protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for inspection
26 need not designate them for protection until after the inspecting Party has indicated which material it
27 would like copied and produced. During the inspection and before the designation, all of the material

1 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY.” After the inspecting Party has identified the documents it wants copied and
3 produced, the Producing Party must determine which documents, or portions thereof, qualify for
4 protection under this Order. Then, before producing the specified documents, the Producing Party
5 must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a portion or
7 portions of the material on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the margins), and must
9 specify, for each portion, the level of protection being asserted.

10 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
11 Designating Party identify on the record, before the close of the deposition, hearing, or other
12 proceeding, all protected testimony and specify the level of protection being asserted. When it is
13 impractical to identify separately each portion of testimony that is entitled to protection and it
14 appears that substantial portions of the testimony may qualify for protection, the Designating Party
15 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
16 to have up to 21 days to identify the specific portions of the testimony as to which protection is
17 sought and to specify the level of protection being asserted. Only those portions of the testimony
18 that are appropriately designated for protection within the 21 days shall be covered by the
19 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
20 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
21 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY.” Parties shall give the other parties notice if they reasonably expect
23 a deposition, hearing or other proceeding to include Protected Material so that the other parties can
24 ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to
25 Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
26 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 Transcripts containing Protected Material shall have an obvious legend on the title page
2 that the transcript contains Protected Material, and the title page shall be followed by a list of all
3 pages (including line numbers as appropriate) that have been designated as Protected Material and
4 the level of protection being asserted by the Designating Party. The Designating Party shall inform
5 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
6 21-day period for designation shall be treated during that period as if it had been designated
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
8 agreed. After the expiration of that period, the transcript shall be treated only as actually
9 designated.

10 (c) for information produced in some form other than documentary and for any other
11 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
12 containers in which the information or item is stored the legend “CONFIDENTIAL” and/or
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
14 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
15 the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the Designating Party’s
18 right to secure protection under this Order for such material. Upon timely correction of a
19 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
20 accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
23 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
25 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
26 confidentiality designation by electing not to mount a challenge promptly after the original
27 designation is disclosed.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
2 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
4 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
5 retain confidentiality as described above, all parties shall continue to afford the material in question
6 the level of protection to which it is entitled under the Producing Party’s designation until the Court
7 rules on the challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
12 the categories of persons and under the conditions described in this Order. When the litigation has
13 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
14 DISPOSITION).

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

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
18 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
19 information or item designated “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
21 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
22 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
23 attached hereto as Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of the Receiving
25 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
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1 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
2 to Be Bound” (Exhibit A);

3 (d) the Court and its personnel;

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

7 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
8 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
9 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed
10 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
11 bound by the court reporter and may not be disclosed to anyone except as permitted under this
12 Stipulated Protective Order; and

13 (g) the author or recipient of a document containing the information or a custodian or
14 other person who otherwise possessed or knew the information.

15 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
17 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

19 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
21 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
22 Bound” that is attached hereto as Exhibit A;

23 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
24 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
25 (Exhibit A), and (3) are not a current officer, director, or employee of a competitor of a Party or
26 anticipated to become one;

27 (c) the Court and its personnel;

1 (d) court reporters and their staff, professional jury or trial consultants, mock jurors,
2 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

4 (e) the author or recipient of a document containing the information or a custodian
5 or other person who otherwise possessed or knew the information.

6 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House
8 Counsel.

9 (a) Unless otherwise ordered by the Court or agreed to in writing by the
10 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
11 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
13 sets forth the full name of the Designated House Counsel and the city and state of his or her
14 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable
15 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
16 involved, or may become involved, in any competitive decision-making.

17 (b) A Party that makes a request and provides the information specified in the
18 preceding respective paragraphs may disclose the subject Protected Material to the identified
19 Designated House Counsel unless, within 14 days of delivering the request, the Party receives a
20 written objection from the Designating Party. Any such objection must set forth in detail the
21 grounds on which it is based.

22 (c) A Party that receives a timely written objection must meet and confer with the
23 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
24 agreement within seven days of the written objection. If no agreement is reached, the Party
25 seeking to make the disclosure to Designated House Counsel may file a motion as provided in
26 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking
27 permission from the Court to do so. Any such motion must describe the circumstances with

1 specificity, set forth in detail the reasons why the disclosure to Designated House Counsel is
2 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any
3 additional means that could be used to reduce that risk. In addition, any such motion must be
4 accompanied by a competent declaration describing the parties' efforts to resolve the matter by
5 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the
6 reasons advanced by the Designating Party for its refusal to approve the disclosure.

7 In any such proceeding, the Party opposing disclosure to Designated House Counsel shall
8 bear the burden of proving that the risk of harm that the disclosure would entail (under the
9 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
10 its Designated House Counsel.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
12 LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that compels
14 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
15 CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

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

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

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
22 Designating Party whose Protected Material may be affected.

23 If the Designating Party timely seeks a protective order, the Party served with the subpoena
24 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the Court
26 from which the subpoena or order issued, unless the Party has obtained the Designating Party's
27 permission. The Designating Party shall bear the burden and expense of seeking protection in that

1 court of its confidential material – and nothing in these provisions should be construed as
2 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
3 another court.

4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
5 LITIGATION

6 (a) The terms of this Order are applicable to information produced by a Non-Party in this
7 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is
9 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
10 construed as prohibiting a Non-Party from seeking additional protections.

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

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

16 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
17 this litigation, the relevant discovery request(s), and a reasonably specific description of the
18 information requested; and

19 (3) make the information requested available for inspection by the Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may produce the
22 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
23 seeks a protective order, the Receiving Party shall not produce any information in its possession or
24 control that is subject to the confidentiality agreement with the Non-Party before a determination by
25 the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
26 seeking protection in this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
4 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
7 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
8 Be Bound” that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
13 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
14 modify whatever procedure may be established in an e-discovery order that provides for production
15 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
16 parties reach an agreement on the effect of disclosure of a communication or information covered by
17 the attorney-client privilege or work product protection, the parties may incorporate their agreement
18 in the stipulated protective order submitted to the Court.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
21 its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
23 no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
25 Party waives any right to object on any ground to use in evidence of any of the material covered by
26 this Protective Order.

27 12.3 Filing Protected Material. Without written permission from the Designating Party or a
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1 court order secured after appropriate notice to all interested persons, a Party may not file in the
2 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
3 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
4 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
5 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
6 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
7 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
8 to Civil Local Rule 79-5(d) is denied by the Court, then the Receiving Party may file the information
9 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

10 13. FINAL DISPOSITION

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 10, 2018

Respectfully submitted,

By: /s/ Benjamin M. Mundel
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Attorney for First Databank, Inc.

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SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing Stipulated Protective Order. In compliance with Local Rule 5-1(i)(3), I hereby attest that the other signatories have concurred in this filing.

DATED: October 10, 2018

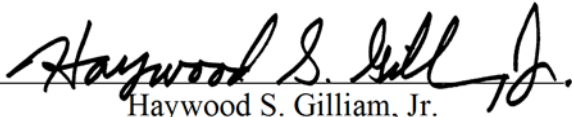
THE HEARST CORPORATION

By: /s/ Ravi V. Sitwala
Ravi V. Sitwala (*pro hac vice*)
Attorney for First Databank, Inc.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: October 11, 2018


Haywood S. Gilliam, Jr.
U.S. District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *Exeltis USA, Inc. v. First Databank, Inc.*, No. 4:17-CV-
7 04810-HSG. I agree to comply with and to be bound by all the terms of this Stipulated Protective
8 Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
10 information or item that is subject to this Stipulated Protective Order to any person or entity except
11 in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related
18 to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____