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9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF WASHINGTON

11 GREG S. GOLDFOGEL,

12 Plaintiff,

13 vs.

14 NUMERICA CREDIT UNION, a  
 15 Washington Corporation,

16 Defendant.

Case No.: 2:15-cv-00234-TOR

**STIPULATED PROTECTIVE  
 ORDER**

17 The parties to this action, Defendant Numerica Credit Union and  
 18 Plaintiff Greg S. Goldfogel, by and through their respective counsel,  
 19 hereby stipulate to entry of this mutual protective order regarding the  
 20 use and confidentiality of documents, testimony, information and other  
 21 material produced in this litigation.  
 22

23 To expedite the flow of discovery, facilitate the prompt resolution  
 24 of disputes over confidentiality, to adequately protect material entitled  
 25

1 to be kept confidential, and pursuant to the Court's authority under  
2 Fed. R. Civ. P. 26(c), the parties stipulate to comply with the following  
3 provisions:  
4

### 5 **1. PURPOSES AND LIMITATIONS**

6 Discovery in this action is likely to involve production of  
7 confidential, proprietary, or private information for which special  
8 protection may be warranted. The parties acknowledge that this  
9 agreement is consistent with LCR 26(c). It does not confer blanket  
10 protection on all disclosures or responses to discovery; the protection  
11 it affords from public disclosure and use extends only to the limited  
12 information or items that are entitled to confidential treatment under  
13 the applicable legal principles, and it does not presumptively entitle  
14 parties to file confidential information under seal.  
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### 17 **2. "CONFIDENTIAL" MATERIAL**

18 "Confidential" material shall include the following documents and  
19 tangible things produced or otherwise exchanged:  
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21 a. Personnel records pertaining to any current or former  
22 employee of any Defendant that contain personal, payroll, medical or  
23 financial information. Good cause exists to protect the privacy rights of  
24 Defendant's current and former employees (if any) who are not Parties  
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1 to this litigation. These files include these individuals' personal  
2 identifying information and financial account information. No public  
3 interest is served by requiring public disclosure of an individual's  
4 private and personal information in a matter in which he or she is not a  
5 Party.  
6

7           **b.**     Good cause exists to protect Defendant's confidential  
8 and proprietary business information, which provides it with a business  
9 advantage over its competitors. To the extent that documents relate to  
10 matters that Defendant takes significant steps to protect in its daily  
11 operations, including through the use of non-disclosure and  
12 confidentiality agreements with its employees (if any), such information  
13 can be designated as confidential. No public interest is served by  
14 requiring Defendant to disclose information it strives to maintain as  
15 confidential and proprietary in its business operations and which would  
16 harm its business operations if disclosed.  
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19           **c.**     Medical records and healthcare information  
20 pertaining to Plaintiff, or any non-party, to the extent the information is  
21 discoverable. Good cause exists to protect the highly sensitive and  
22 private nature of all medical records from non-Party access. No public  
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1 interest is served by making any medical records of Plaintiff or any  
2 non-Party publicly available.

3           **d.**     Financial records of the Parties, including payroll  
4 records and other records reflecting wealth or earnings. Good cause  
5 exists to protect private financial records from non-Party access. No  
6 public interest is served by these records being publicly available.  
7

### 8           **3. SCOPE**

9           The protections conferred by this agreement cover not only  
10 confidential material (as defined above), but also (1) any information  
11 copied or extracted from confidential material; (2) all copies, excerpts,  
12 summaries, or compilations of confidential material; and (3) any  
13 testimony, conversations, or presentations by parties or their counsel  
14 that might reveal confidential material. However, the protections  
15 conferred by this agreement do not cover information that is in the  
16 public domain or becomes part of the public domain through trial or  
17 otherwise.  
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### 21           **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

22           **4.1 Basic Principles.** A receiving party may use confidential  
23 material that is disclosed or produced by another party or by a non-  
24 party in connection with this case only for prosecuting, defending, or  
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1 attempting to settle this litigation. Confidential material may be  
2 disclosed only to the categories of persons and under the conditions  
3 described in this agreement. Confidential material must be stored and  
4 maintained by a receiving party at a location and in a secure manner  
5 that ensures that access is limited to the persons authorized under this  
6 agreement.  
7

8 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.**  
9

10 Unless otherwise ordered by the court or permitted in writing by  
11 the designating party, a receiving party may disclose confidential  
12 material only to:  
13

14 (a) the receiving party’s counsel of record in this action, as  
15 well as employees of counsel to whom it is reasonably  
16 necessary to disclose the information for this litigation;  
17

18 (b) the officers, directors, and employees (including in  
19 house counsel) of the receiving party to whom disclosure is  
20 reasonably necessary for this litigation, unless the parties  
21 agree (or the court orders) that a particular document or material  
22 produced is for Attorney’s Eyes Only and is so designated;  
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1 (c) experts and consultants to whom disclosure is  
2 reasonably necessary for this litigation and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
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5 (d) the court, court personnel, and court reporters and their  
6 staff;

7 (e) copy or imaging services retained by counsel to assist  
8 in the duplication of confidential material, provided that counsel  
9 for the party retaining the copy or imaging service instructs the  
10 service not to disclose any confidential material to third parties  
11 and to immediately return all originals and copies of any  
12 confidential material;  
13

14 (f) during their depositions, witnesses in the action to  
15 whom disclosure is reasonably necessary and who have signed  
16 the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
17 unless otherwise agreed by the designating party or ordered by  
18 the court. Pages of transcribed deposition testimony or exhibits  
19 to depositions that reveal confidential material must be  
20 separately bound by the court reporter and may not be disclosed  
21 to anyone except as permitted under this agreement;  
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1 (g) the author or recipient of a document containing the  
2 information or a custodian or other person who otherwise  
3 possessed or knew the information.  
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5 **4.3 Filing Confidential Material.** Before filing confidential  
6 material or discussing or referencing such material in court filings, the  
7 filing party shall confer with the designating party to determine whether  
8 the designating party will remove the confidential designation, whether  
9 the document can be redacted, or whether a motion to seal or  
10 stipulation and proposed order is warranted. A Party that files  
11 confidential material files with the court shall submit to the court a  
12 motion to seal, pursuant to Local Civil Rule 5(g).  
13  
14

## 15 **5. DESIGNATING PROTECTED MATERIAL**

### 16 **5.1 Exercise of Restraint and Care in Designating Material** 17 **for Protection.**

18 Each party or non-party that designates information or items for  
19 protection under this agreement must take care to limit any such  
20 designation to specific material that qualifies under the appropriate  
21 standards. The designating party must designate for protection only  
22 those parts of material, documents, items, or oral or written  
23 communications that qualify as confidential, so that other portions of  
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1 the material, documents, items, or communications for which  
2 protection is not warranted are not swept unjustifiably within the ambit  
3 of this agreement.  
4

5 Mass, indiscriminate, or routinized designations are prohibited.  
6 Designations that are shown to be clearly unjustified or that have been  
7 made for an improper purpose (e.g., to unnecessarily encumber or  
8 delay the case development process or to impose unnecessary  
9 expenses and burdens on other parties) expose the designating party  
10 to sanctions.  
11

12 If it comes to a designating party's attention that information or  
13 items that it designated for protection do not qualify for protection, the  
14 designating party must promptly notify all other parties that it is  
15 withdrawing the mistaken designation.  
16

17 **5.2 Manner and Timing of Designations.** Except as otherwise  
18 provided in this agreement (see, e.g., sections 5.2(a) and 5.3 below),  
19 or as otherwise stipulated or ordered, disclosure or discovery material  
20 that qualifies for protection under this agreement must be clearly so  
21 designated before or when the material is disclosed or produced.  
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1 (a) Information in documentary form: (e.g., paper or  
2 electronic documents and deposition exhibits, but excluding  
3 transcripts of depositions or other pretrial or trial proceedings),  
4 the designating party must affix the word "CONFIDENTIAL" to  
5 each page that contains confidential material. Alternatively, a  
6 party may designate any document or group of documents as  
7 "CONFIDENTIAL" by identifying such document(s) in a cover  
8 page or in a letter addressed to the opposing party's counsel and  
9 accompanying the production of such document(s). If only a  
10 portion or portions of the material on a page qualifies for  
11 protection, the producing party also must clearly identify the  
12 protected portion(s) (e.g., by making appropriate markings in the  
13 margins).

14 (b) Testimony given in deposition or in other pretrial or trial  
15 proceedings: the parties must identify on the record, during the  
16 deposition, hearing, or other proceeding, all protected testimony,  
17 without prejudice to their right to so designate other testimony  
18 after reviewing the transcript. Any party or non-party may, within  
19 fifteen days after receiving a deposition transcript, designate  
20 portions of the transcript, or exhibits thereto, as confidential.  
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1 (c) Other tangible items: the producing party must affix in a  
2 prominent place on the exterior of the container or containers in  
3 which the information or item is stored the word be clearly so  
4 designated before or when the material is disclosed or produced.  
5

### 6 **5.3 Inadvertent Failures to Designate.**

7 If timely corrected, an inadvertent failure to designate qualified  
8 information or items does not, standing alone, waive the designating  
9 party's right to secure protection under this agreement for such  
10 material. Upon timely correction of a designation, the receiving party  
11 must make reasonable efforts to ensure that the material is treated in  
12 accordance with the provisions of this agreement.  
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## 15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

### 16 **6.1 Timing of Challenges.**

17 Any party or non-party may challenge a designation of  
18 confidentiality at any time. Unless a prompt challenge to a designating  
19 party's confidentiality designation is necessary to avoid foreseeable,  
20 substantial unfairness, unnecessary economic burdens, or a significant  
21 disruption or delay of the litigation, a party does not waive its right to  
22 challenge a confidentiality designation by electing not to mount a  
23 challenge promptly after the original designation is disclosed.  
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**6.2 Meet and Confer.**

The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

**6.3 Judicial Intervention.**

If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the

1 material in question as confidential until the court rules on the  
2 challenge.

### 3 **7. RIGHTS OF PARTIES**

4 This Protective Order is without prejudice to the right of any  
5 Party to apply to the court for any further protective order relating to  
6 any confidential information or for an order permitting disclosure of any  
7 confidential information beyond the terms of this Protective Order.  
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### 10 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED 11 PRODUCED IN OTHER LITIGATION**

12 If a party is served with a subpoena or a court order issued in  
13 other litigation that compels disclosure of any information or items  
14 designated in this action as "CONFIDENTIAL," that party must:

15 (a) promptly notify the designating party in writing and include a  
16 copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena  
18 or order to issue in the other litigation that some or all of the material  
19 covered by the subpoena or order is subject to this agreement. Such  
20 notification shall include a copy of this agreement; and  
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1 (c) cooperate with respect to all reasonable procedures sought to  
2 be pursued by the designating party whose confidential material may  
3 be affected.  
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5 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED**  
6 **MATERIAL**

7 If a receiving party learns that, by inadvertence or otherwise, it  
8 has disclosed confidential material to any person or in any  
9 circumstance not authorized under this agreement, the receiving party  
10 must immediately:  
11

12 (a) notify in writing the designating party of the unauthorized  
13 disclosures,

14 (b) use its best efforts to retrieve all unauthorized copies of the  
15 protected material,  
16

17 (c) inform the person or persons to whom unauthorized  
18 disclosures were made of all the terms of this agreement, and  
19

20 (d) request that such person or persons execute the  
21 "Acknowledgment and Agreement to Be Bound" that is attached hereto  
22 as Exhibit A.  
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1                   **10. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
2                   **OTHERWISE PROTECTED MATERIAL**

3                   When a producing party gives notice to receiving parties that  
4                   certain inadvertently produced material is subject to a claim of privilege  
5                   or other protection, the obligations of the receiving parties are those  
6                   set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
7                   is not intended to modify whatever procedure may be established in an  
8                   e-discovery order or agreement that provides for production without  
9                   prior privilege review. Parties shall confer on an appropriate non-  
10                  waiver order under Fed. R. Evid. 502.  
11

12                   **11. NON TERMINATION AND RETURN OF DOCUMENTS**

13                  Within 60 days after the termination of this action, including all  
14                  appeals, each receiving party must return all confidential material to  
15                  the producing party, including all copies, extracts and summaries  
16                  thereof. Alternatively, the parties may agree upon appropriate methods  
17                  of destruction. Notwithstanding this provision, counsel are entitled to  
18                  retain one archival copy of all documents filed with the court, trial,  
19                  deposition, and hearing transcripts, correspondence, deposition and  
20                  trial exhibits, expert reports, attorney work product, and consultant and  
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1 expert work product, even if such materials contain confidential  
2 material.

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4 The confidentiality obligations imposed by this agreement shall  
5 remain in effect until a designating party agrees otherwise in writing or  
6 a court orders otherwise.

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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9 DATED: April 7, 2016

  
\_\_\_\_\_  
Thomas O. Rice  
Chief United States District Judge

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name],  
of \_\_\_\_\_ [print or type full address],  
declare under penalty of perjury that I have read in its entirety and  
understand the Stipulated Protective Order that was issued by the  
United States District Court for the Eastern District of Washington on  
\_\_\_\_\_ [date] in the case of *Goldfogel v. Numerica Credit Union*,  
Case No.: 2:15-cv-00234-TOR. I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose  
me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item  
that is subject to this Stipulated Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_