

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ALBERT VIESSE, on behalf of himself
10 and others similarly situated,

11 Plaintiff,

12 v.

13 TACOMA SCREW PRODUCTS,
14 INC., *et al.*,

15 Defendants.

CASE NO. C16-1026-JCC

STIPULATION AND ORDER

16 This matter comes before the Court on the parties' stipulation to seal exhibits 4 and 5
17 (Dkt. No. 25).

18 **STIPULATION**

19 Plaintiff Albert Viesse, individually and on behalf of all others similarly situated, and
20 Defendant Tacoma Screw Products, Inc., by and through their respective counsel, agree to this
21 stipulated motion and respectfully request that the Court seal Exhibits 4 and 5 filed under seal
22 concurrently with this Motion.

23 This Motion is based upon the following:

24 **The Court's Protective Order**

25 On March 30, 2017, this Court approved of and entered a Stipulated Protective Order.
26 (Dkt. No. 24.) The Stipulated Protective Order provided, among other things, that

1 “‘Confidential’ material shall include ... documents containing sensitive, financial or
2 confidential information about third parties or parties” and that “Tacoma Screw Products
3 proprietary and confidential business information that is ‘Confidential’, includes, but is not
4 limited to ... Sales information; and Similar proprietary or confidential business data.” (Dkt. No.
5 24 at p. 2:1-13.)

6 **Documents Produced Subject To Protective Order And Marked Confidential**

7 As part of the discovery process in this case Defendant produced documents Bates
8 numbered TSP000812-TSP001551 that were marked by Defendant as “CONFIDENTIAL
9 SUBJECT TO PROTECTIVE ORDER.” These documents consist entirely of merchant
10 statements provided to Defendant from Defendant’s payment card processor (Element Payment
11 Services which later became Vantiv) that contain information about Defendant’s monthly credit
12 and debit card sales and transactions.

13 Defendant believes that these documents are “CONFIDENTIAL SUBJECT TO
14 PROTECTIVE ORDER” and marked them as such primarily because they contain various dollar
15 (\$) denominated sales and other dollar (\$) denominated figures throughout the documents.

16 **Use Of The Documents For Class Certification Purposes**

17 Plaintiff’s motion for class certification is due for filing by May 30, 2017. (Dkt. No. 21.)
18 Concurrently with this Motion, Plaintiff is filing under seal Exhibit 4 (Bates numbered
19 TSP001179-TSP001222) which consists of merchant statements for Defendant’s Kirkland store
20 location.

21 Also concurrently with this Motion, Plaintiff is filing under seal Exhibit 5 (Bates
22 numbered TSP000812-TSP001178 and TSP001223-TSP001551) which consists of merchant
23 statements for Defendant’s other store locations.

24 Plaintiff intends to rely on the documents Bates numbered TSP000812-TSP001551 in
25 support of his motion for class certification. Plaintiff will also file an expert declaration in
26 support of his motion for class certification that references and opines on certain information

1 contained in the documents. For example, but without limitation, Plaintiff intends to use the
2 documents to show things such as samples of the number of consumer credit and/or debit cards
3 used during the class period to support issues such as the numerosity factor of FRCP Rule 23.
4 For example, but without limitation, there will be statements in the brief and/or expert
5 declaration that for the merchant statement dated 05/31/2015, there were 125 transactions using
6 Visa Type 1Y51 at the Kirkland store. Defendant is not concerned about such types of
7 references. Nor is Defendant concerned about references to “Charge Type” ranges such as
8 “1100-1199,” “1200-1299,” “1300-1399,” “1500-1599,” “1800-1899,” “1Dxx,” “1Exx,” “1Txx,”
9 “1Yxx,” as codes/categories and ranges for credit or debit cards. Instead, Defendant is
10 concerned about the various dollar (\$) denominated sales and other dollar (\$) denominated
11 figures that appear throughout the documents. However, Plaintiff does not currently intend to
12 make reference to dollar (\$) denominated sales and other dollar (\$) denominated figures in either
13 Plaintiff’s opening brief in support of his motion for class certification or in the initial expert
14 declaration to be filed concurrently with his opening brief.

15 **Certification: The Parties Have Conferred About The Issues Resulting In This**
16 **Stipulated Motion**

17 Counsel for the parties certify that during May 15 and 16, 2017, counsel for the parties
18 exchanged emails concerning the issues addressed by this Motion and thereafter, on May 17,
19 2017 the following counsel conferred telephonically to further address the issues, attempt to
20 reach agreement on the need to file the documents under seal, to minimize the amount of
21 material filed under seal, and to explore redaction and other alternatives to filing under seal:
22 James A. Sturdevant and Chant Yedalian on behalf of Plaintiff, and Bradley B. Jones and
23 Stephanie Bloomfield on behalf of Defendant.

24 As discussed above, Plaintiff does not currently intend to make reference to dollar (\$)
25 denominated sales and other dollar (\$) denominated figures in either Plaintiff’s opening brief in
26 support of his motion for class certification or in the initial expert declaration to be filed

1 concurrently with his opening brief. Thus, for purposes of at least the opening brief and initial
2 expert declaration in support of the motion for class certification in this case, dollar (\$)
3 denominated sales and other dollar (\$) denominated figures will not be referenced and thus the
4 public does not have a legitimate private interest to the disclosure to such information. In
5 contrast, and as previously reflected in the Stipulated Protective Order, Defendant believes that it
6 has a private interest to maintain dollar (\$) denominated sales and other dollar (\$) denominated
7 figures confidential, at least in an instance such as this where Plaintiff will not use such
8 information in either Plaintiff's opening brief in support of his motion for class certification or in
9 the initial expert declaration to be filed concurrently with his opening brief.

10 Further, Defendant believes that its private interests to maintain dollar (\$) denominated
11 sales and other dollar (\$) denominated figures confidential will be compromised if the
12 documents are not sealed.

13 The parties have conferred regarding potentially less restrictive alternatives but believe
14 that in light of the number of pages involved and the fact that the various dollar (\$) denominated
15 sales and other dollar (\$) denominated figures sought to be kept under seal appear throughout the
16 documents, alternatives such as redaction would not be reasonably practicable.

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18 Dated this 19th day of May, 2017.

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20 Respectfully submitted,

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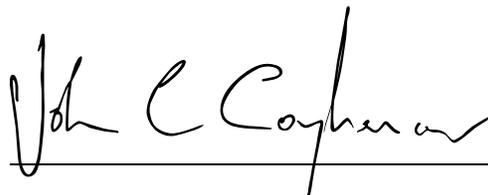
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19 Counsel for Defendant

20 **ORDER**

21 For the foregoing reasons, the parties' stipulated motion to seal exhibits 4 and 5 (Dkt. No.
22 25) is GRANTED. Exhibits 4 and 5, filed under seal as Docket Numbers 26 and 27, shall
23 REMAIN UNDER SEAL.

24 DATED this 23rd day of May, 2017.

25 

26 John C. Coughenour
UNITED STATES DISTRICT JUDGE