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Defendants JPMorgan Chase Bank, N.A., individually and as successor by merger to Chase Home Finance LLC, and JPMorgan Chase & Co. (collectively, “Defendants” or “Chase”), move pursuant to Federal Rule of Civil Procedure 26(c) for a protective order governing the disclosure and use of confidential information and documents produced in this action. Chase’s proposed protective order is attached hereto as Exhibit 1.

INTRODUCTION

Chase moves for entry of a routine protective order in this matter. In virtually every other case in which the undersigned counsel for Chase has been involved in the last twenty-plus years, the parties have been able to negotiate a mutually agreeable protective order that protects confidential business information from public disclosure. Regrettably, here, that has not been possible because Plaintiffs’ counsel have taken the highly unusual position that Chase has no interest in the confidentiality of documents that it may produce in this matter. Chase therefore files this motion for entry of a narrowly tailored protective order that will permit the parties to move forward with discovery.

BACKGROUND

In 2009, Plaintiff Mortgage Resolution Servicing, LLC purchased a pool of distressed mortgage loans from Chase pursuant to a Mortgage Loan Purchase Agreement (“MLPA”).¹ Plaintiffs’ Complaint alleges that Chase breached the terms of the MLPA by delivering loans that did not conform to Chase’s alleged representations regarding their nature and quality. Compl. ¶¶ 46-79. The Complaint also alleges that Chase erroneously purported to release liens and forgave debts relating to loans sold to Plaintiffs, in breach of the MLPA and

¹ Third Amended Complaint (ECF Doc. No. 67) (“Compl.”), ¶ 38. The Third Amended Complaint is attached as Exhibit A to the Declaration of Christian J. Pistilli, submitted herewith.

certain other debt sale agreements. *Id.* ¶¶ 103-145. Finally, the Complaint includes additional allegations that Chase has engaged in a nefarious criminal RICO conspiracy, intended to evade its obligations under a pair of settlements with the federal government – the National Mortgage Settlement (“NMS”) and the residential mortgage-backed securities settlement (“RMBS”). *Id.* ¶¶ 201-220.

Plaintiffs have requested voluminous discovery from Chase relating to these far-flung allegations.² Their document requests seek, among other things, information related to Chase’s interactions with government regulators, personal and financial information related to borrowers on the loans at issue in the litigation, and other confidential Chase business information. Pistilli Decl. Exh. B.

On May 2, 2016, Chase was contacted by a *Wall Street Journal* reporter who inquired regarding specific, confidential details the reporter had apparently obtained from two documents Chase filed under seal in the related *qui tam* action that Plaintiffs’ principal, Laurence Schneider, filed against Chase in the U.S. District Court for the District of Columbia. *See United States et al. ex rel. Schneider v. J.P. Morgan Chase Bank, N.A., et al.*, No. 114-CV-01047-RMC. Apart from Schneider and his counsel, the only parties who received these sealed filings were counsel from the Department of Justice and certain state attorneys general, and Judge Collyer herself. Plaintiffs’ counsel, moreover, have been conspicuously silent as to how the *Wall Street Journal* obtained a copy of these sealed filings.³

² A true and correct copy of Plaintiffs’ First Request for the Production of Documents is attached as Exhibit B to the Declaration of Christian J. Pistilli, submitted herewith.

³ Chase noted the same facts as to the disclosure of the sealed filings from the *qui tam* action in its memorandum in opposition to Plaintiffs’ motion to compel and in support of its cross-motion for a protective order (at 8). A true and correct copy of this memorandum is attached as Exhibit C to the Declaration of Christian J. Pistilli, submitted herewith. In their reply (continued...)

On May 9, 2016, in response to this unauthorized disclosure and in anticipation of producing confidential materials responsive to Plaintiffs' document requests, Chase sent Plaintiffs a draft protective order, and sought their consent.⁴ The proposed protective order was designed to permit a producing party to designate as "Confidential Information," not to be used outside this litigation, discovery material containing:

- (a) financial information not previously disclosed to the public . . . ;
- (b) material not previously disclosed to the public relating to ownership or control of any non-public company;
- (c) confidential or proprietary business information or communications, or other confidential research, development, or commercial information or communications;
- (d) any information of a personal or intimate nature regarding any individual;
- (e) communications to or from any regulators made with a written request for confidential treatment or with an understanding that the communication would be treated confidentially;
- (f) information for which applicable law requires confidential treatment; or
- (g) any other category of information hereinafter given confidential status by the Court.

Pistilli Decl. Exh. E, at 2. By telephone on May 12, 2016, and in writing on May 13, 2016, Chase informed Plaintiffs that it was "prepared to produce substantially all of the documents it has committed to producing within one week of the entry of an appropriate protective order."⁵

On May 20, 2016, Plaintiffs responded that they would not agree to Chase's proposed protective order.⁶ After the parties exchanged redline drafts of the protective order, on

memorandum, Plaintiffs did not deny that Mr. Schneider or his counsel were responsible for the disclosure. A true and correct copy of the reply memorandum is attached as Exhibit D to the Declaration of Christian J. Pistilli, submitted herewith.

⁴ A true and correct copy of the draft protective order sent to Plaintiffs on May 9, 2016 is attached as Exhibit E to the Declaration of Christian J. Pistilli, submitted herewith.

⁵ A true and correct copy of the referenced May 13, 2016 email is attached as Exhibit F to the Declaration of Christian J. Pistilli, submitted herewith.

⁶ A true and correct copy of the referenced May 20, 2016 email is attached as Exhibit G to the Declaration of Christian J. Pistilli, submitted herewith.

June 9, 2016, Plaintiffs ultimately agreed only “that a protective order is appropriate to cover the parties’ legal obligations regarding personal information such as social security numbers.”⁷

Plaintiffs declined to agree to a protective order covering other confidential or proprietary information, and stated that they did not believe the parties could “resolve these issues by exchanging [additional] drafts.” Pistilli Decl. Exh. H.⁸

On June 14, 2016, Chase offered to send Plaintiffs a draft protective order “including terms that [the parties] can agree on, while reserving rights on the outstanding areas of disagreement.”⁹ Chase explained that “[t]his would allow Chase to begin producing certain materials to plaintiffs in advance of a ruling on the broader confidentiality issues.” *Id.* As of today, Plaintiffs have not responded to Chase’s offer.

To date, Chase has produced over 5000 pages of documents to Plaintiffs. Chase is also prepared to produce approximately 4500 additional documents to Plaintiffs promptly upon entry of an appropriate protective order. Of those documents, a large majority have been withheld on the basis of personally identifying customer information in the document or an attachment, and only 35 have been held back on the grounds that they contain confidential Chase business information.¹⁰

⁷ A true and correct copy of the referenced June 9, 2016 email is attached as Exhibit H to the Declaration of Christian J. Pistilli, submitted herewith.

⁸ During the course of the meet-and-confer process, Chase agreed that any confidential documents produced in this action could be used in the *qui tam* litigation filed by Plaintiffs’ principal, Mr. Schneider.

⁹ A true and correct copy of the referenced June 14, 2016 email is attached as Exhibit I to the Declaration of Christian J. Pistilli, submitted herewith.

¹⁰ On July 14, 2016, the Court ordered Chase to produce a few, narrow categories of additional documents. A true and correct copy of the referenced order is attached as Exhibit J to the Declaration of Christian J. Pistilli, submitted herewith. Chase is in the process of collecting and reviewing documents that fall within the scope of the Court’s order. While Chase expects (continued...)

LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 26(c), a party “may move for a protective order in the court where the action is pending.” “The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including an order “requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.” *Id.* This rule “specifically recognize[s] the need to protect . . . proprietary information, given the possibility that disclosure can result in unnecessary financial detriment to the parties.” *Gill v. Arab Bank, PLC*, No. CV-12-3706 JBW VVP, 2012 WL 8169888, at *1 (E.D.N.Y. Aug. 23, 2012). The rule also serves more broadly “to protect parties’ privacy interests.” *Duling v. Gristede’s Operating Corp.*, 266 F.R.D. 66, 71 (S.D.N.Y. 2010); *see also Garnett-Bishop v. New York Cmty. Bancorp, Inc.*, No. CV 12-2285 ADS ARL, 2013 WL 101590, at *1 (E.D.N.Y. Jan. 8, 2013) (privacy interests “should weigh heavily in a court’s decision of whether to hold information confidential” (citing *United States v. Amodeo*, 71 F.3d 1044, 1050-51 (2d Cir. 1995))).

ARGUMENT

The entry of a protective order shielding confidential discovery materials from pre-trial public disclosure is a commonplace feature of civil litigation. In light of the unauthorized disclosure of materials filed under seal in the *qui tam* case, the need for a protective order in this case is especially acute. Plaintiffs, however, have refused to agree to the ordinary and customary protective order terms proposed by Chase. Accordingly, Chase hereby requests

that certain of those documents will also contain confidential Chase business information, those documents are not included in the totals set forth above.

that the Court enter a protective order prohibiting Plaintiffs from publicly disclosing three, narrow categories of confidential Chase business and customer information.

First, Chase seeks the right to designate as confidential previously undisclosed financial information or other confidential or proprietary research, development, or commercial information. Exh. 1, ¶ 3(a)-(c). This information falls within the plain language of Rule 26(c)'s protection, and courts in this Circuit regularly approve protective orders encompassing similar information. *See, e.g., Garnett-Bishop*, 2013 WL 101590, at *3 (approving protective order covering “internal financial analyses, business plans and other sensitive company information”); *Gill*, 2012 WL 8169888, at *1 (same for “proprietary commercial or financial information”); *Brookdale Univ. Hosp. & Med. Ctr., Inc. v. Health Ins. Plan of Greater New York*, No. 07-CV-1471(RRM)(LB), 2008 WL 4541014, at *1 (E.D.N.Y. Oct. 7, 2008) (same for “proprietary or sensitive . . . information concerning the businesses of Defendants or Plaintiff[], financial data, . . . strategic or long-range plans, internal cost data, performance data, customer or vendor data,” etc.). As one court has explained, “in an action where the plaintiffs’ allegations necessarily involve an in-depth investigation of the defendants’ business . . . operations and policies, as is the case here, good cause clearly exists during the discovery stage to protect such business information if the public dissemination of such information would prove harmful to defendants’ business.” *Brookdale*, 2008 WL 4541014, at *2.

Second, Chase seeks the ability to protect communications to or from bank regulators, made with a written request for confidential treatment or with an understanding that the communication would be treated confidentially. Exh. 1, ¶ 3(e). Disclosure of such non-public bank supervisory information may be prohibited by law. *See, e.g.,* 12 C.F.R. §§ 4.36(d), 261.20(g), 309.6(a). And, as courts in this circuit and elsewhere have recognized, confidential

treatment of such documents permits “1) the promotion of stability of financial institutions, 2) the maintenance of cooperative relationships between banks and their supervising agencies, and 3) the protection of confidential information relating to bank customers.” *In re Verrazzano Towers, Inc.*, 7 B.R. 648, 652 (Bankr. E.D.N.Y. 1980). Given the “pronounced interest in protecting bank regulatory agency records from unchecked disclosure,” “[i]t is perfectly evident that . . . potentially sensitive information” of this type should be “subject to a protective order in order to maintain strict confidentiality except as necessitated in the proceeding before this court.” *Id.* at 653; *see also In re Subpoena Served Upon Comptroller of Currency, & Sec’y of Bd. of Governors of Fed. Reserve Sys.*, 967 F.2d 630, 633-634 (D.C. Cir. 1992) (protective order for supervisory communications appropriate to safeguard “iterative process of comment by the regulators and response by the bank”).

Finally, Chase seeks the right to protect information of a personal or intimate nature regarding non-party individuals, like the borrowers whose loans are at issue in the litigation. Exh. 1, ¶ 3(d). Plaintiffs have stated that they consent to this request. Pistilli Decl. Exh. G, at 2. Moreover, the request is fully consistent with case law in this Circuit. *See, e.g., Gill*, 2012 WL 8169888, at *1 (records relating to personal information, including “financial, medical, employment, educational information,” particularly “of persons who are not parties to this litigation . . . are worthy of protection because their disclosure could well expose persons, including nonparties who have no stake whatsoever in the various cases,” to detrimental consequences). Indeed, federal law requires that Chase safeguard this information from public disclosure. *See* Gramm-Leach-Bliley Act §§ 501-502, 15 U.S.C. §§ 6801-6802.

Plaintiffs have objected to Chase’s proposed order in part because it would require the party opposing a confidentiality designation to challenge the designation with the

Court prior to disclosing the document. Pistilli Exh. G, at 2. However, this commonplace feature of the proposed order is amply supported in the case law. By contrast, Plaintiff's proposal—which would effectively require “the court to conduct a document-by-document review” before a disputed document could be designated as confidential—“would defeat the purpose of Federal Rule of Civil Procedure 26(c) . . . ‘to secure the just, speedy, and inexpensive determination of civil disputes.’” *Brookdale*, 2008 WL 4541014, at *2 n.5 (quoting *Martindell v. Int'l Tel. & Tel. Corp.*, 594 F.2d 291, 295 (2d Cir. 1979)). Such a procedure is “improviden[t]” not only because it demands that the Court “‘review each and every document in an *ex parte* session,’” but also because it is “‘the producing party,’” not the Court, that “‘is in the best position to determine the sensitivity of the material produced.’” *Id.* (quoting *Kamyr AB v. Kamyr, Inc.*, No. 91-CV-0453, 1992 WL 317529, at *5 (N.D.N.Y. Oct. 30, 1992)). There is no reason to countenance this wasteful procedure, particularly given that Chase's proposed order is already narrowly tailored to encompass only a small number of confidential documents.

Plaintiffs also objected that the proposed protective order would preclude them from using confidential documents in connection with other, unspecified litigation. Pistilli Decl. Exh. G, at 2. Notably, however, Chase's proposed order expressly contemplates that the confidential materials produced in this litigation may be used in connection with the *qui tam* litigation filed by Plaintiffs' principal, Laurence Schneider. Exh. 1, ¶ 2. Nor is there anything improper about a restriction on the use of confidential documents in other litigation matters. *Wolters Kluwer Fin. Servs. Inc. v. Scivantage*, No. 07 CV 2352 (HB), 2007 WL 1498114, at *7 (S.D.N.Y. May 23, 2007) (holding that protective orders prohibiting use of confidential materials “in any other litigation proceeding” are “valid and enforceable”); *see also On Command Video Corp. v. LodgeNet Entm't Corp.*, 976 F. Supp. 917, 922 (N.D. Cal. 1997) (“Plaintiff's use of

protected information [in] a *separate* . . . lawsuit—as opposed to *this* litigation—is tantamount to no compliance at all.” (emphasis adjusted)); *Bonin v. World Umpires Ass’n*, 204 F.R.D. 67, 70 (E.D. Pa. 2001) (“[P]laintiffs should not be allowed carte blanche to utilize the information legitimately disclosed in discovery to work mischief on other fronts.”). Accordingly, the Court should enter Chase’s proposed protective order.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter the Protective Order attached hereto as Exhibit 1.

Dated: July 25, 2016

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH CONFERRAL

Pursuant to Federal Rule of Civil Procedure 26(c)(1), counsel for Defendants certify that they have conferred in good faith with counsel for Plaintiffs to resolve by agreement the issues raised in this motion, but were unsuccessful in doing so.

s/ Robert D. Wick
Robert D. Wick

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
S&A CAPITAL PARTNERS, INC., :
MORTGAGE RESOLUTION SERVICING, :
LLC, and 1ST FIDELITY LOAN :
SERVICING, LLC, :
:

Plaintiffs, :

- v. - :

JPMORGAN CHASE BANK, N.A., CHASE :
HOME FINANCE, LLC, and JPMORGAN :
CHASE & CO., :

Defendants. :

----- X

No. 15-cv-00293-LTS-JCF

[PROPOSED] PROTECTIVE ORDER

JAMES C. FRANCIS IV, United States Magistrate Judge:

The Court having found that good cause exists for issuance of an appropriately tailored confidentiality order, it is hereby ORDERED that any person subject to this Order—including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order—shall adhere to the following terms:

1. Any person subject to this Order who receives from any other person any “Discovery Material” (*i.e.*, information of any kind provided in the course of discovery in this action, including but not limited to documents and deposition transcripts) which the producing party claims contains “Confidential Information” pursuant to the terms of this Order shall not disclose such Confidential Information to anyone else except as expressly permitted hereunder.

2. Confidential Information produced or disclosed in connection with this action shall be used solely for the prosecution or the defense of either (a) this action (including any appeal therefrom), or (b) the matter now pending in the District of Columbia, captioned *United States of*

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America et al ex rel. Lawrence Schneider v. J.P. Morgan Chase Bank, National Association, et al., 114-CV-01047-RMC (the “*qui tam* Case”) (including any appeal therefrom), and for no other purpose.

3. A person producing Discovery Material may designate as “Confidential Information” Discovery Material that consists of or contains:

- (a) financial information not previously disclosed to the public;
- (b) material not previously disclosed to the public relating to ownership or control of any non-public company;
- (c) confidential or proprietary business information or communications, or other confidential research, development, or commercial information or communications;
- (d) any information of a personal or intimate nature regarding any individual (which shall include only personal or intimate information; not any actions taken by any individual in the course of conducting business);
- (e) communications to or from any regulators made with a written request for confidential treatment or with an understanding that the communication would be treated confidentially;
- (f) information for which applicable law requires confidential treatment; or
- (g) any other category of information hereinafter given confidential status by the Court.

4. Whether or not expressly so designated, “Confidential Information” shall include, but not be limited to, “Personal Identifying Information,” which for purposes of this Order shall mean any information that constitutes “nonpublic personal information” within the meaning of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6802 *et seq.* and its implementing regulations, including, but

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not limited to, any portion of a mortgage loan file or other document which includes financial or credit information for any person (including any credit history, report or score obtained on any such person to determine the individual's eligibility for credit), together with personally identifiable information with respect to such person, including, but not limited to, name, address, Social Security number, loan number, telephone number, or place or position of work. As set forth in paragraph 5 below, this Order authorizes the disclosure of such Personal Identifying Information in this action.

5. To the extent any federal or state law or other legal authority governing the disclosure or use of Personal Identifying Information (hereinafter, "Personal Identifying Information Law") permits disclosure of such information pursuant to an order of a court, this Order shall constitute compliance with such requirement. To the extent any Personal Identifying Information Law requires a Party to obtain a court-ordered subpoena or give notice to or obtain consent, in any form or manner, from any person or entity before disclosure of any Personal Identifying Information, the Court finds that, in view of the protections provided for the information disclosed in this Order, the volume of documents to be produced and the ongoing oversight of the Court, there is good cause to excuse such requirement, and this Order shall constitute an express direction that the Party is exempted from obtaining a court-ordered subpoena or having to notify and/or obtain consent from any person or entity prior to the disclosure of Personal Identifying Information. To the extent that any Personal Identifying Information Law requires that any person or entity be notified prior to disclosure of Personal Identifying Information except where such notice is prohibited by court order, the Court directs that, in view of the protections provided for the information disclosed in this Order, the volume of documents to be produced and the ongoing oversight of the Court, the parties are explicitly prohibited from providing such notice; provided, however, that this Order shall not prohibit either Party from contacting any person or entity for any other purpose. Any Producing

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Party may seek additional orders from this Court that such party believes may be necessary to comply with any Personal Identifying Information Law.

6. Regardless of whether a document or other material is designated Confidential, and in addition to the restrictions on use of Confidential Information contained in this Order, all parties shall comply with all applicable laws and regulations related to the protection of Social Security numbers, financial institution account numbers and records, and any other Personal Identifying Information, as defined by applicable laws or regulations.

7. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the producing person or that person's counsel may designate such portion as "Confidential" by stamping or otherwise clearly marking as "Confidential" the document or protected portion in a manner that will not interfere with legibility or audibility.

8. Portions of deposition testimony may be designated as Confidential either on the record during the deposition or within thirty (30) days of receipt of the transcript only to the extent that such testimony qualifies as Confidential under paragraph 3 above. Until such time period expires without designation having been made, the entire deposition transcript shall be treated as Confidential unless otherwise specified in writing or on the record of the deposition by the disclosing person. If the disclosing person designates any portion of deposition testimony as Confidential, that portion of the deposition testimony contained in the final transcript shall be bound in a separate volume and marked "Confidential Information Governed by Protective Order" by the reporter.

9. If at any time prior to the trial of this action, a party believes that some portion(s) of Discovery Material that any person previously produced without limitation should be designated as Confidential, it may so designate by notifying all parties in writing, and such designated portion(s) of the Discovery Material will thereafter be treated as Confidential under the terms of this Order. In

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addition, the party shall provide each other party and the producing person with replacement versions of such Discovery Material that bears the “Confidential” designation within two (2) business days of providing such notice.

10. To the extent that any party to this action wishes to challenge the designation of any Discovery Material as Confidential, that party shall so advise the producing party in writing. If the producing party does not agree to withdraw the Confidential designation, the challenging party may challenge the designation by seeking Court intervention. For the avoidance of doubt, this paragraph is subject to the requirements of Local Rule 37.3, which requires parties to attempt to confer in good faith in an effort to resolve disputes prior to seeking judicial resolution of a discovery dispute.

11. No person subject to this Order other than the producing person shall disclose any Confidential Information to any other person whomsoever, except to individuals described in the below subparagraphs.:

- (a) the parties to this action;
- (b) the in-house and outside counsel participating in the prosecution and defense of this matter, including any paralegal, clerical or other assistant employed by such counsel and involved in these matters;
- (c) the parties to the *qui tam* Case;
- (d) the outside counsel participating in the *qui tam* Case, including any paralegal, clerical or other assistant employed by such counsel and involved in these matters;
- (e) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action or the *qui tam* Case;
- (f) with respect to Confidential Information that was produced by a non-party, also to such non-party;

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(g) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;

(h) any witness who counsel for a party in good faith believes may be called to testify at trial or deposition;

(i) stenographers engaged to transcribe depositions;

(j) independent photocopying, graphic production services, or litigation support services employed by the parties or their counsel to assist in this action and computer service personnel performing duties in relation to a computerized litigation system;

(k) Court and support personnel; and

(l) any other person whom the producing person, or other person designating the Discovery Material Confidential, agrees in writing may have access to such Discovery Material.

12. Prior to any disclosure of Confidential Information to any person referred to in subparagraphs 11(c) and 11(e) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. Said counsel shall retain each signed Non-Disclosure Agreement and produce it to opposing counsel prior to such person being permitted to testify (at deposition or trial).

13. Prior to disclosure of any Confidential Information to any outside counsel referred to in subparagraph 11(d) above, an authorized representative of each law firm representing Relator in the *qui tam* Case shall be provided by Plaintiffs' counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that the person has read this Order and agrees on behalf of the person's firm to be bound by its terms. Counsel for Plaintiffs shall retain each signed Non-Disclosure Agreement until the conclusion of this

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litigation and the *qui tam* Case. For the avoidance of doubt, no counsel of record for a party in this action need sign such a Non-Disclosure Agreement, even if counsel also represents a party to the *qui tam* Case.

14. All Confidential Information filed with the Court, and all portions of or exhibits to pleadings, motions or other papers filed with the Court that disclose such Confidential Information, shall be filed under seal with the Clerk of the Court and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing.

15. If, in connection with this litigation, a producing person claims that it has inadvertently produced Discovery Material that is subject to a claim of attorney-client privilege or attorney work product protection (“Inadvertently Disclosed Information”), such disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with respect to the Inadvertently Disclosed Information and its subject matter.

16. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five (5) business days of the claim, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed.

17. The receiving party may move the Court for an Order compelling production of the Inadvertently Disclosed Information. The motion shall be filed under seal, and shall not assert as a ground for entering such an Order the fact of the inadvertent production.

18. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this Order shall limit the right of any party to request an in camera review of the Inadvertently Disclosed Information.

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19. In the event a non-party produces information in response to a subpoena or request from a party, the party receiving such information from the non-party shall ensure that all other parties receive copies of the non-party's production within five (5) business days of the receiving party's receipt of such production.

20. A non-party from whom the parties seek discovery may designate Discovery Material as "Confidential" consistent with the terms of this Order. In such circumstances, Discovery Material designated Confidential by a non-party shall be assigned the same protection as Discovery Material so designated by a party, and all duties applicable to a party under this Order shall apply to a non-party designating Discovery Material as Confidential. All obligations applicable under this Order to parties receiving Discovery Material shall apply to any party receiving Discovery Material from such non-party. Any party who serves a subpoena on a non-party shall provide such non-party with a copy of this Order.

21. If, at any time, any Confidential Information governed by this Order is subpoenaed or requested by any court, administrative or legislative body, or by any other person or entity purporting to have authority to require the production thereof, the person to whom the subpoena or request is directed, to the extent permitted by law, shall promptly give written notice to the producing person and include with such notice a copy of the subpoena or request. The person to whom the subpoena or request is directed also shall make all reasonable good faith efforts to provide to the producing person, a reasonable period of time in which to seek to quash, limit or object to the subpoena or request, or to move for any protection for the Confidential Information, before the person to whom the subpoena or request is directed takes any action to comply with the subpoena or request. In no event shall such Confidential Information subject to this Order be produced by a

EXHIBIT 1

person receiving a subpoena or request without providing the producing person an opportunity to quash, limit or object, absent a Court order to do so or as otherwise required by law.

22. This Protective Order shall survive the termination of the litigation. Within sixty (60) calendar days after the final conclusion of all aspects of this action and the *qui tam* Case, by judgment not subject to further appeal or by settlement, the parties shall ensure that all Confidential Information and all copies thereof, shall be returned or destroyed, and the disclosing party, upon request, shall be provided with a certification stating that the disclosing party's Confidential Information has been destroyed. As to those materials containing Confidential Information that constitute counsel's work product, or that were served in this action, filed with the Court and/or marked as trial exhibits, counsel may retain such documents if such counsel otherwise comply with this Order with respect to such retained material.

23. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 1

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential. I agree that I will not disclose Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: _____

[NAME]