

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Benefit Funding Systems LLC, et al.,

Plaintiffs,

v.

Advance America,
Cash Advance Centers, Inc.

Defendant.

Civil Action No. 12-cv-801-LPS

Jury Demanded

Benefit Funding Systems LLC, et al.,

Plaintiffs,

v.

Regions Financial Corporation

Defendant.

Civil Action No. 12-cv-802-LPS

Jury Demanded

Benefit Funding Systems LLC, et al.,

Plaintiffs,

v.

U.S. Bancorp,

Defendant.

Civil Action No. 12-cv-803-LPS

Jury Demanded

STIPULATED PROTECTIVE ORDER

The parties to this Stipulated Protective Order have agreed to the terms of this Order; accordingly, it is ORDERED:

1. **Scope.** Public records and documents that are publicly available may not be designated for protection under this Order. All disclosures, affidavits and declarations and exhibits thereto, deposition testimony and exhibits, discovery responses, documents,

electronically stored information, tangible objects, information, and other things produced, provided, or disclosed in the course of this action which may be subject to restrictions on disclosure under this Order, and information derived directly therefrom (hereinafter referred to collectively as “**documents**”), shall be subject to this Order as set forth below. Unless otherwise specified herein, this Order is subject to the Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and calculation of time periods.

2. **Privilege Log Limitation.** Attorney-client privileged communications between a party and any counsel for that party (including any employee or agent of such counsel) regarding this case, and attorney work-product protected information/material created for this case by or for any party’s counsel (including any employee or agent of such counsel), may be omitted from the privilege logs when such attorney-client privileged communications occurred after June 22, 2012 or such work-product protected information/material was created after June 22, 2012.

3. **Dispute Resolution.** Should counsel find they are unable to resolve a discovery matter or a dispute relating to this Order, the parties involved in the discovery matter or dispute relating to this Order may contact chambers at (302) 573-4571 to schedule a telephone conference.

4. **Form and Timing of Designation.** A party or non-party may designate documents as confidential and restricted in disclosure under this Order by placing or affixing the words “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” (hereinafter referred to as “**CONFIDENTIAL**”), “ATTORNEYS EYES ONLY - SUBJECT TO PROTECTIVE ORDER” (hereinafter referred to as “**ATTORNEYS EYES ONLY**”), or HIGHLY CONFIDENTIAL – SOURCE CODE (“**SOURCE CODE**”) on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the designation.

Documents shall be designated prior to or at the time of the production or disclosure of the documents. When a tangible object is produced for inspection subject to protection under this Order, a photograph thereof shall be produced at the time of inspection labeled with the designation CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE. Information learned or obtained about the tangible object during the inspection shall be subject to protection under this Order in accordance with the applicable designation. When electronically stored information is produced which cannot itself be marked with the designation CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE, the physical media on which such electronically stored information is produced shall be marked with the applicable designation. The party receiving such electronically stored information shall then be responsible for labeling any copies that it creates thereof, whether electronic or paper, with the applicable designation. By written stipulation the parties or non-parties may agree temporarily to designate original documents that are produced for inspection CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE even though the original documents being produced have not themselves been so labeled. Information learned about the original documents during the course of such an inspection shall be protected in accordance with the stipulated designation. The copies of documents that are selected for copying during such an inspection shall be marked CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE as required under this Order and thereafter the copies shall be subject to protection under this Order in accordance with their designation. The designation of documents for protection under this Order does not mean that the document has any status or protection by statute or otherwise except to the extent and for the purposes of this Order.

5. **Failure to Designate as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE.** If a party or non-party produces or discloses a document, tangible item, electronically stored information, or other information that qualifies for CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE protection under this Order, but fails to designate the document, tangible item, electronically stored information, or other information as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE, the production or disclosure shall not constitute or be deemed a waiver. If and when a party or non-party discovers that it has produced or disclosed information that qualifies for CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE protection under this order without designating the document, tangible item, electronically stored information, or other information as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE, the party or non-party shall notify all receiving parties of the production or disclosure within a reasonable period of time. The party or non-party making the production or disclosure shall then supply a new copy of the document, tangible item, electronically stored information, or other information appropriately marked as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE within a reasonable time, and the receiving parties shall promptly return the originally produced or disclosed copy, including copies as defined in Section 9(f), to the producing party or shall promptly destroy it/them. Any party that elects to destroy documents in lieu of returning them shall promptly certify in writing to the producing party that it has done so. It shall not be deemed a violation of this Order to have disclosed information not designated as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE that is subsequently so designated if disclosure was made prior to such designation.

6. **Documents Which May be Designated CONFIDENTIAL.** Any party or non-party may designate documents as CONFIDENTIAL upon making a good faith determination that the documents contain information protected from disclosure by statute or that should be protected from disclosure as confidential business or personal information, medical or psychiatric information, trade secrets, personnel records, or such other sensitive commercial information that is not publicly available.

7. **Documents Which May be Designated ATTORNEYS EYES ONLY.** Any party or non-party may designate documents as ATTORNEYS EYES ONLY upon making a good faith determination that the documents contain information protected from disclosure by statute or that should be protected from disclosure as trade secrets or other highly sensitive business, personal or financial information, the disclosure of which is likely to cause significant harm to an individual or to the business or competitive position of the designating party.

8. **Documents Which May be Designated HIGHLY CONFIDENTIAL – SOURCE CODE.** Any party or non-party may designated documents or other media as HIGHLY CONFIDENTIAL – SOURCE CODE upon making a good faith determination that the documents or media contain human-readable programming language text that defines software, firmware, or electronic hardware descriptions (hereinafter referred to as “source code”). Text files containing source code shall hereinafter be referred to as “source code files.” Source code files include, but are not limited to files containing source code written in C, C++, Java, assembler, VHDL, Verilog, SQL, and similar programming languages. Source code further includes “make” files, “include” files, script files, assembly files, source code listings and descriptions of source code, “link” files, Hardware Description Language (HDL) or Register Transfer Level (RTL) files that describe the hardware design of any ASIC or other chip, and any

human-readable text files used in the generation and/or building of software directly executed on a microprocessor, microcontroller, or digital signal processor (DSP).

9. **Depositions.** Deposition testimony and exhibits shall be deemed CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE only if designated as such. Such designation shall be specific as to the portions of the transcript or any exhibit designated for protection under this Order. Thereafter, the deposition testimony and exhibits so designated shall be protected, pending objection, under the terms of this Order. On the record during any deposition or in a writing to all parties prior to the deposition or within two (2) business days thereafter, any party or non-party attending the deposition or having a right to attend may temporarily designate an entire deposition and the exhibits used therein for protection under this Order pending receipt and review of the transcript. In such a circumstance, that party or non-party shall review the transcript within thirty (30) days of the receipt thereof and specifically designate the testimony and exhibits that will be protected under this Order. Thereafter only the specifically designated testimony and exhibits shall be protected under the terms of this Order, except that the parties do not need to specifically designate exhibits that were previously designated as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE.

10. **Protection of Confidential Material.**

(a) **Protection of Documents Designated CONFIDENTIAL.** Documents designated CONFIDENTIAL under this Order shall not be used for any purpose whatsoever other than the prosecution or defense of this action, and of any appeal thereof. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL to any third person or entity except as set forth in Subparagraphs (1)-(8).

Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated CONFIDENTIAL.

- (1) **Outside Counsel of Record.** Outside counsel of record for the parties and employees and agents of such counsel who have responsibility for the preparation and trial of the action.
- (2) **Parties.** Parties and employees of a party to this Order.
- (3) **The Court.** The Court and its personnel, including but not limited to Court reporters and recorders engaged by the Court for depositions, hearings, or trial.
- (4) **Court Reporters and Recorders.** Court reporters and recorders engaged by any party or non-party or any party's or non-party's counsel for depositions, hearings, or trial, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.
- (5) **Persons Creating or Receiving Documents.** Any person who (i) authored or recorded the designated document, (ii) has previously seen or was aware of the designated document, or (iii) is a Rule 30(b)(6) designee of the designating party.
- (6) **Consultants, Investigators, and Experts.** Consultants, investigators, or experts employed by the parties or counsel of record for the parties to assist in the preparation and trial of this action or proceeding, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.
- (7) **Outside Vendors.** Outside vendors, including outside trial graphics vendors, outside document processing or outside document review vendors employed by the parties or counsel for the parties to assist in the discovery, preparation, or trial

of this action or proceeding. All such vendors shall execute one copy of the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

- (8) **Others by Consent.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(b) **Protection of Documents Designated ATTORNEYS EYES ONLY.**

Documents designated ATTORNEYS EYES ONLY under this Order shall not be used for any purpose whatsoever other than the prosecution or defense of this action, and of any appeal thereof. If ATTORNEYS EYES ONLY documents contain nonpublic personal or financial information (including but not limited to name, address, birth date, or account number(s)), the nonpublic personal financial information may be viewed by the persons identified below, but may not be used for any purpose, including in connection with this litigation. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated ATTORNEYS EYES ONLY to any third person or entity except as set forth in Subparagraphs (1)-(7). Subject to these requirements, the following categories of persons may be allowed to review documents that have been designated ATTORNEYS EYES ONLY.

- (1) **Outside Counsel of Record.** Outside counsel of record for the parties and employees and agents of such counsel who have responsibility for the preparation and trial of the action.
- (2) **The Court.** The Court and its personnel, including but not limited to Court reporters and recorders engaged by the Court for depositions, hearings, or trial.

- (3) **Court Reporters and Recorders.** Court reporters and recorders engaged by any party or non-party or any party's or non-party's counsel for depositions, hearings, or trial, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.
- (4) **Persons Creating or Receiving Documents.** Any person who (i) authored or recorded the designated document, (ii) has previously seen or was previously aware of the designated document, (iii) is a present director, officer, employee or contractor of the designating party, and (iv) is a Rule 30(b)(6) designee of the designating party.
- (5) **Consultants, Investigators, and Experts.** Consultants, investigators, or experts employed by the parties or counsel of record for the parties to assist in the preparation and trial of this action or proceeding, but only after such persons have completed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.
- (6) **Outside Vendors.** Outside vendors, including outside trial graphics vendors, outside document processing or outside document review vendors employed by the parties or counsel for the parties to assist in the discovery, preparation, or trial of this action or proceeding. All such vendors shall execute one copy of the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.
- (7) **Others by Consent.** Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or

ordered. All such persons shall execute the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound.

(c) **Protection of Documents Designated HIGHLY CONFIDENTIAL – SOURCE CODE.** Access to confidential information designated as HIGHLY CONFIDENTIAL – SOURCE CODE shall be subject to the following procedures:

(1) **Manner of Production.**

- (i) Each producing party shall make available properly discoverable source code materials in its possession, custody, or control at a Delaware office of outside counsel for the producing party, if the producing party is a named party to this litigation, or at a location to be determined by the producing party if the producing party is a non-party to this litigation. The producing party shall allow inspection of the source code materials within (20) calendar days of receiving the initial written request for inspection from the receiving party.
- (ii) The source code materials shall be produced in a computer searchable format on one stand alone computer (that is, the computer may not be linked to any network, including a local area network (“LAN”), an intranet or the Internet), with all ports disabled except for a printer port used to connect the computer to a stand-alone, non-networked printer, unless the producing party and the receiving party agree to an alternate method of production. The receiving party’s outside counsel and its experts with prior consent from the producing party shall be entitled to use properly licensed software tools stored on read-only media

(“Inspection Materials”) for viewing, searching, and analyzing Source Code Materials.

- (iii) To the extent that the receiving party desires to have any Inspection Materials uploaded on the stand-alone computers prior to the receiving party’s inspection of the source code materials, the receiving party shall provide a copy of the Inspection Materials to the producing party with the receiving party’s written request for inspection. The producing party shall either object to the Inspection Materials within ten (10) calendar days of receiving such Inspection Materials or shall upload copies of the Inspection Materials onto the stand-alone computers that contain the producing party’s source code materials.
- (iv) The parties agree to cooperate in good faith such that maintaining the producing party’s source code materials at the offices of its outside counsel shall not unreasonably hinder the receiving party’s ability to efficiently and effectively conduct the prosecution or defense of this action. The producing party shall provide the receiving party with information explaining how to start, log on to, and operate the stand alone computers in order to access the produced source code materials on the stand alone computers.
- (v) As an alternative, any producing party may opt to produce its source code materials on CD, DVD or other storage media as HIGHLY CONFIDENTIAL - SOURCE CODE. The receiving party may copy such produced source code from the storage medium to two, non-

networked, stand-alone computers which must be kept in a secure location at the offices of the receiving party's outside counsel of record or at the offices of an expert approved under this protective order. Such source code materials must not be copied or transmitted, in whole or in part, to any computer or location other than the two authorized stand-alone computers. Whatever restrictions are imposed on the number of pages printed from electronic source code that is inspected at the producing party's outside counsel of record's offices shall also apply to produced source code materials. If the producing party produces source code materials on CD, DVD, or other storage media, outside counsel for the receiving party shall maintain a Source Code access log identifying, for each and every time any Source Code is viewed, accessed, or analyzed: (1) the name of each person who accessed the Source Code; (2) the date and time of access; and (3) the length of time of access. The Source Code access log shall be provided within 24 hours of a written request for the list.

- (2) **Disclosure of Source Code Materials.** Unless otherwise ordered by the Court or permitted in writing by the producing party, a receiving party may disclose any information designated as HIGHLY CONFIDENTIAL – SOURCE CODE only to those categories of individuals listed in Paragraphs 10(b)(1)-(3) and (5)-(7) subject to the restrictions herein, except that the receiving party shall not disclose any information designated as HIGHLY CONFIDENTIAL– SOURCE CODE to

outside counsel involved in competitive decision making on behalf of a party or a competitor of a party.

- (3) **No Electronic Copies.** A receiving party shall not make any electronic copies of source code materials, in whole or in part. This section does not preclude the creation of temporary copies that are made in the normal operation of the computer on which the source code materials reside or the creation of temporary output files created on the computer on which the source code materials reside through the use of software tools used to view, search, or analyze source code materials.
- (4) **Limitation on Print-Outs.** The producing party will allow printing of paper copies of code at the time of inspection by the receiving party, provided such printed paper copies are limited only to those portions of the source code materials for which a printed copy is reasonable needed. After printing any source code materials, the receiving party shall have give all such print-outs (the "Printed Source Code Materials") to the producing party. The producing party shall put production numbers and the designation HIGHLY CONFIDENTIAL – SOURCE CODE on the Printed Source Code Materials and provide a copy of the Printed Source Code Materials to the receiving party within two (2) business days of receipt from the receiving party. In order to protect the receiving party's work product, which is not waived by these procedures, the producing party shall not substantively review the pages of code that have been printed and shall not undertake any effort to track or otherwise determine which pages of code have been printed. The producing party may maintain the original set of Printed

Source Code Materials. The receiving party shall print only a reasonable number of pages of code, and the producing party may seek to modify the protective order to terminate or limit the right to print if the receiving party attempts to print more than is reasonable. Printed Source Code Materials must be kept under lock and key or secured otherwise by a person who has entered an appearance as outside counsel or been cleared as an expert. Printed Source Code Materials may not be converted into electronic format (including for emailing) EXCEPT as needed for filing and service of papers, motions, and pleadings as required by the Court, made under seal. Printed Source Code Materials may not be removed from a secured container at the office of a person who has entered an appearance as outside counsel or been cleared as an expert unless such removal occurs in a secured, private area. Printed Source Code Materials may not be copied, except that Printed Source Code Materials may be copied and used as exhibits for a deposition, expert report, motion, or trial, provided that such copies are kept within a secure container during transport to and from deposition, trial, or service, and are otherwise kept in a secure container at the offices of outside counsel of record or at the office of an expert approved under this protective order. Any Printed Source Code Materials filed with the Court shall be filed under seal as provided in this Protective Order. Only those individuals authorized to view HIGHLY CONFIDENTIAL – SOURCE CODE may view the Printed Source Code Materials. At the time of its first expert reports, the receiving party shall provide to the producing party a copy of Printed Source Code Materials received under this provision, regardless of any other restrictions on expert discovery.

- (5) **Additional Restrictions.** The producing party shall not videotape the review of source code materials by the requesting party. However, the producing party shall be permitted to have a paralegal or other person in the room where the stand-alone computers are located while the inspection of source code materials by the requesting party takes place. Persons inspecting source code materials may use any search features that are part of the Inspection Materials provided by the receiving party pursuant to Paragraph 10(c)(1)(iii). Such persons may not use the video recording or photography functions of any electronic device, such as telephones, cell phones, iPods, iPhones, or video cameras.
- (6) **Use of Source Code Materials.** To the extent portions of the source code materials are quoted in a document, either (1) the document will be stamped and treated as HIGHLY CONFIDENTIAL – SOURCE CODE or (2) those pages containing quoted source code materials will be separately stamped and treated as HIGHLY CONFIDENTIAL – SOURCE CODE.
- (7) **Final Disposition of Source Code Materials.** At the conclusion of this action (including any appeals) and unless the Court otherwise orders, Printed Source Code Materials shall be returned to the Producing Party or, at its choosing, the receiving party shall certify that all Printed Source Code Materials have been destroyed. The receiving party shall certify that all PDF copies of Source Code Materials have been permanently deleted, with the exception of copies in PDF used in Court filings and proceedings, expert reports, and depositions of persons or entities permitted to access HIGHLY CONFIDENTIAL – SOURCE CODE information if necessary.

(d) **Prosecution Bar.** Notwithstanding any other provision of this Protective Order, no ATTORNEYS EYES ONLY or SOURCE CODE information shall be disclosed under this Order to any individual involved in the preparation or prosecution of patent applications in the field of financial services by which capital is provided to a beneficiary based on the present value of the beneficiary's future income. However, individuals to whom ATTORNEYS EYES ONLY or SOURCE CODE information has been disclosed under this Order may provide copies of material prior art or other non-confidential information to counsel involved in prosecution to be provided to the U.S. Patent Office. No individual to whom ATTORNEYS EYES ONLY or SOURCE CODE information has been disclosed under this Order shall be involved in the preparation or prosecution of patent applications in the field of financial services providing capital based on the present value of future income until one (1) year after the final disposition of this matter unless otherwise agreed upon by the parties. The parties expressly agree that the Prosecution Bar set forth herein shall be personal to any attorney who reviews designated ATTORNEYS EYES ONLY or SOURCE CODE information and shall not be imputed to any other persons or attorneys at the attorney's law firm or company unless information concerning that designated information was communicated to an individual by one who reviewed such designated information. Notwithstanding anything to the contrary in this Prosecution Bar, if a reexamination or other administrative review at the U.S. Patent Office is instituted by any entity other than Plaintiff regarding any of the patents-in-suit, Outside Counsel of Record for the parties, may participate in the reexamination proceedings, despite the fact that Outside Counsel of Record has received ATTORNEYS EYES ONLY or SOURCE CODE information.

(e) **Special Rule for Disclosure to Experts.** The parties agree to identify testifying and non-testifying experts ten (10) business days prior to any disclosure to the expert of the

opposing side's CONFIDENTIAL information (including any ATTORNEYS EYES ONLY or SOURCE CODE information). For purposes of this rule, identifying such persons requires written notice that includes: (i) the name of the person; (ii) the present employer and title of the person; (iii) an up-to-date curriculum vitae of the person; (iv) a listing of any consulting projects undertaken by the person within the last four (4) years; and (v) an executed copy of the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. During this time period and prior to any disclosure, the opposing side shall have an opportunity to object to disclosure of CONFIDENTIAL information to the identified expert. If the other side objects during this time period, no CONFIDENTIAL information shall be disclosed to the expert until the objection is resolved.

(f) **Control of Documents.** Counsel for the parties shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated for protection under this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of one (1) year after dismissal of the action, the entry of final judgment, and/or the conclusion of any appeals arising therefrom.

(g) **Copies.** If the words CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE appear on a document produced to the receiving party, the receiving party shall not remove those words from any copies permitted to be made of said document. All such copies shall be entitled to the protection of this Order. The term "copies" shall not include indices, electronic databases, or lists of documents provided these indices, electronic databases, or lists do not contain substantial portions or images of the text of designated documents or otherwise disclose the substance of the designated documents.

(h) **No Waiver and Clawback.**

If, in connection with the pending litigation, a party (the “**Disclosing Party**”) produces or discloses a document, tangible item, electronically stored information, or other information subject to a claim of attorney-client privilege, work product protection, or some other immunity from disclosure (“**Disclosed Protected Information**”), the production or disclosure shall not constitute or be deemed a waiver or forfeiture of any applicable privileges, work product protection, or immunity from disclosure that the Disclosing Party would otherwise be entitled to assert with respect to the Disclosed Protected Information and its subject matter.

If and when a Disclosing Party discovers that it has produced or disclosed Disclosed Protected Information, the Disclosing Party shall notify the receiving party of the production or disclosure within a reasonable period of time, and request, in writing, either the return of or confirmation of destruction of the Disclosed Protected Information and provide a privilege log identifying the information. Within five (5) business days of receiving such notification, the receiving party shall return or confirm destruction of all such materials. Such return or confirmation of destruction shall not preclude the receiving party from seeking to compel production of the materials on the grounds that they are not privileged, subject to work product protection, or immune from disclosure and shall not constitute an admission by the receiving party that the materials were, in fact, privileged or otherwise protected in any way. The Disclosing Party shall retain the Disclosed Protected Information for submission to the Court in the event the receiving party moves to compel. Summaries of Disclosed Protected Information shall be destroyed by the receiving party if a motion to compel is not brought or is denied.

If, at trial, at a hearing, at a deposition, or on a motion, a Disclosing Party marks for identification or offers into evidence its Disclosed Protected Information—or proffers or elicits testimonial or other evidence that incorporates or relies on Disclosed Protected Information,

including evidence within Federal Rule of Evidence 703—that act shall be deemed to effect a waiver and forfeiture by the Disclosing Party of attorney-client privilege, work product protection, or other immunity from disclosure that would otherwise apply to undisclosed information concerning the same subject matter, within Federal Rule of Evidence 502(a). The preceding sentence shall not apply to (i) proceedings to determine whether the Disclosed Protected Information is privileged or protected or subject to discovery or disclosure, or (ii) Disclosed Protected Information that is marked for identification, offered into evidence, or incorporated in evidence proffered or elicited by an adverse party, or relied on by a witness proffered by an adverse party.

(i) **Legal Advice Based on Protected Material.** Nothing in this Order shall prevent or otherwise restrict any counsel allowed to review CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE information under this Order from rendering advice to their clients and, in the course thereof, relying generally on examination of the CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE information; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific nor substantive disclosure of any item so designated except as provided in this Order.

(j) **Limitations.** Nothing in this Order shall restrict a producing party's use or disclosure of its own protected material, nor the use or disclosure of information by a receiving party: (a) that is or has become publicly known through no fault of the receiving party; (b) that is lawfully acquired by or known to the receiving party independent of the producing party; (c) with the consent of the producing party; or (d) pursuant to an order of the Court. If confidential information of a party is obtained from a third party, including through a subpoena,

that party shall have the opportunity to designate the information as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE pursuant to the terms of this Order.

11. Filing of CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE Documents Under Seal.

(a) An exhibit designated for protection under this Order shall be filed electronically under seal in accordance with the electronic case filing procedures of this Court.

(b) Where filing electronically under seal is not possible or adequate, before an exhibit designated for protection under this Order is filed with the Clerk, it shall be placed in a sealed envelope marked CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE, which envelope shall also display the case name, docket number, a designation of what the exhibit is, the name of the party in whose behalf it is submitted, and the name of the attorney who has filed the exhibit on the front of the envelope. A copy of any exhibit filed under seal shall also be delivered to the judicial officer's chambers.

(c) To the extent that it is necessary for a party to discuss the contents of any document designated for protection under this Order in a pleading or other paper filed with this Court, then such portion of the pleading or other paper shall be filed under seal. In such circumstances, counsel shall prepare two versions of the pleading or other paper, a public and a sealed version. The public version shall contain a redaction of references to CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE documents. The sealed version shall be a full and complete version of the pleading or other paper and shall be filed with the Clerk under seal as above. A copy of the unredacted pleading or other paper also shall be delivered to the judicial officer's chambers.

12. **Challenges by a Party to a Designation for Protection Under this Order.** Any CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE designation is subject to challenge by any party or non-party with standing to object (hereafter “**party**”). Before moving the Court for relief in connection with such a challenge, the challenging party shall have an obligation to meet and confer by phone in a good faith effort to resolve the objection by agreement. If agreement is reached confirming or waiving the CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE designation as to any documents subject to the objection, the designating party shall serve on all parties a notice specifying the documents and the nature of the agreement. If the objection is not resolved by agreement, the challenging party may move the Court to resolve whether a designation is proper. The burden of showing that a designation is proper is at all times on the party making the designation.

13. **Action by the Court.** Applications to the Court for an order relating to any documents designated for protection under this Order shall be by motion and any other procedures set forth in the presiding judge’s standing orders or other relevant orders. Nothing in this Order or any action or agreement of a party under this Order limits the Court’s power to make any orders that may be appropriate with respect to the use and disclosure of any documents produced or used in discovery or at trial.

14. **Use of Confidential Documents or Information at Trial.** Absent order of the Court, all trials are open to the public and there will be no restrictions on the use at trial of any document designated for protection under this Order.

Nothing in this Order precludes the parties from requesting that the Court protect the disclosure of CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE information at trial, and it is anticipated that the parties may do so.

Nothing in this Order shall restrict a producing party's use or disclosure of its own protected material, nor the use or disclosure of information by a receiving party: (a) that is or has become publicly known through no fault of the receiving party; (b) that is lawfully acquired by or known to the receiving party independent of the producing party; (c) with the consent of the producing party; or (d) pursuant to an order of the Court. If confidential information of a party is obtained from a third party, including through a subpoena, that party shall have the opportunity to designate the information as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE pursuant to the terms of this Order.

15. **Other Proceedings.** By entering this Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this Order who becomes subject to a motion to disclose another party's information designated as CONFIDENTIAL, ATTORNEYS EYES ONLY, or SOURCE CODE pursuant to this Order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

16. **Obligations on Conclusion of Litigation.**

(a) **Order Remains in Effect.** Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) **Return of Documents Designated for Protection Under this Order.** Within thirty (30) days after dismissal or entry of final judgment not subject to further appeal, all documents designated for protection under this Order, including copies as defined in Section 10(g), shall be returned to the producing party or destroyed, unless the document has been offered into evidence or filed without restriction as to disclosure. Any party that elects to destroy

documents in lieu of returning them shall promptly certify in writing to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain copies of all pleadings, motions, orders, written discovery, and other papers filed with the Court or exchanged by the parties even though they may contain documents designated for protection under this Order. Counsel may also retain attorney work product, including an index which refers or relates to documents designated for protection under this Order, so long as that work product does not duplicate verbatim substantial portions of the text or images of documents designated for protection under this Order. This work product shall continue to be subject to the protections of this Order in accordance with the applicable designation. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use documents designated for protection under this Order.

(c) **Return of Documents Filed under Seal.** After dismissal or entry of final judgment not subject to further appeal, the Clerk may elect to return to counsel for the parties or, after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.

17. **Order Subject to Modification.** This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing concerning the subject matter. Motions to modify this Order shall be served and filed under and the presiding judge's standing orders or other relevant orders.

18. **No Prior Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents designated for protection under this Order are entitled to protection under Rule 26(c) of the

Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

19. **Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

So Ordered.

Dated: _____

The Hon. Leonard P. Stark
UNITED STATES DISTRICT
JUDGE

ATTACHMENT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Benefit Funding Systems LLC, et al.,

Plaintiffs,

v.

Advance America,
Cash Advance Centers, Inc.

Defendant.

Civil Action No. 12-cv-801-LPS

Jury Demanded

Benefit Funding Systems LLC, et al.,

Plaintiffs,

v.

Regions Financial Corporation

Defendant.

Civil Action No. 12-cv-802-LPS

Jury Demanded

Benefit Funding Systems LLC, et al.,

Plaintiffs,

v.

U.S. Bancorp,

Defendant.

Civil Action No. 12-cv-803-LPS

Jury Demanded

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Protective Order entered in the above-captioned action and attached hereto, understands the terms thereof, and agrees to

be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Delaware in matters relating to the Protective Order and understands that the terms of the Protective Order obligate him/her to use documents designated

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER or ATTORNEYS EYES ONLY –
SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm, or concern.

The undersigned acknowledges that violation of the Protective Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature: _____