

The Honorable Paul A. Engelmayer
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

May 26, 2026

Re: *United States v. The New York and Presbyterian Hospital*, No. 26 Civ. 02480 (S.D.N.Y.)

Dear Judge Engelmayer:

Plaintiff United States of America respectfully moves for entry of the attached proposed protective order (“PPO”) (Exhibit A). There is good cause for the PPO’s entry. Discovery in this antitrust action will include a large volume of confidential business and personal information, the disclosure of which without protection would be harmful to parties and non-parties. The PPO limits use of such information and limits disclosure to outside counsel only, preventing Defendant’s employees from accessing sensitive information, including from non-parties with which Defendant transacts.

The parties agree on many terms, but after telephonic and written meet-and-confers,¹ the parties have reached impasse on five items, which are discussed below. Except where Plaintiff has incorporated or adapted Defendant’s proposed language to address Defendant’s concerns,² Plaintiffs’ proposed PPO is consistent with the protective orders entered in this District in antitrust matters filed by the United States, *United States of America, et al. v. Live Nation Entertainment, Inc. and Ticketmaster L.L.C.*, (ECF No. 213) (Exhibit B) and *United States of America v. Visa Inc.*, No. 24 Civ. 07214, (ECF No. 42) (Exhibit C).

1. Third-Party Notice. Because Plaintiff must produce to Defendant third-party discovery collected during the Plaintiff’s pre-complaint investigation, Plaintiff stands in the shoes of third parties. Plaintiff has informed third parties that their materials will likely be produced in discovery after the entry of a protective order. PPO Paragraph 24 requires Plaintiff to provide notice of the protective order to third parties that produced materials during the investigation so that they have an opportunity to seek additional protection *before* Plaintiff produces their confidential information to Defendant. To not unduly delay production of investigative materials to Defendant, a third party seeking greater protection than the terms of the entered protective order must file a motion within 10 business days of being provided the order. Similar notice requirements to third parties are found in the *Live Nation* (§ 21.c) and *Visa* (§ 21) protective orders, as well as in nearly all Antitrust Division litigations with pre-complaint discovery. This commonly used provision creates an orderly mechanism to enable third parties a limited period to seek additional protection from the Court while ensuring that Plaintiff can promptly produce pre-complaint third-party discovery to Defendant.

¹ On April 7, May 4, and May 21, 2026, parties met and conferred via video conference. Parties exchanged draft orders and emailed regarding the proposed language on April 10, April 24, May 13, May 14, May 15, and May 22, 2026.

² See, e.g., §§ 40, 42 (permitting use and production of protected materials in related actions at the request of Defendant); § 47 (parties’ agreed upon language addressing Defendant’s desire to use generative AI); § 52 (adapting Defendant’s proposed language regarding public proceedings); and § 62 (parties’ agreed upon language addressing Defendant’s concerns regarding use of technology-assisted review in identifying privileged materials).

The Honorable Paul A. Engelmayer
Page 2

Defendant objects to this commonly used provision. Defendant has asserted that the provision creates different standards for third parties and parties. It does not. Paragraph 24 affords third parties an opportunity to be heard by the Court before they suffer prejudice from inadequate protections, that is, before their documents are produced. Parties *already* have this pre-production opportunity to secure adequate protection through this motion practice. Paragraph 25 makes clear that there are no separate standards. Any person may seek additional protection or modification of the order via motion.

2. United States's Disclosure and Use of Confidential Information. The Department of Justice is tasked with enforcing federal law and investigating potentially unlawful conduct. Protective orders sought by the Division or other Department of Justice components routinely include a provision making clear that nothing in the order prevents the United States from using or disclosing information subject to the order (i) to the extent permitted or required by law, court order, or regulation, (ii) for law-enforcement purposes, or (iii) to secure compliance with a final judgment in this action. Such a provision is found in both *Visa* (§ 37) and *Live Nation* (§ 18). At the meet-and-confer, counsel for Defendant objected to this provision in PPO Paragraph 45.c. on the grounds that Defendant is not permitted similar disclosure rights. But unlike Defendant, Plaintiff has a duty to enforce the law. And Congress has provided the Department with authority to obtain documents and information in civil antitrust investigations, specifically allowing the Department to keep copies of documents that were obtained. 15 U.S.C. § 1313(e).

3. Disclosure in Public Proceedings.³ Plaintiff has incorporated Paragraph 52 at the request of Defendant, even though Plaintiff does not normally stipulate to such a provision and such language is not found in the *Visa* and *Live Nation* protective orders. Paragraph 52 requires five business days' notice to a protected person if a party reasonably expects to disclose that protected person's confidential information at a public proceeding before the Court. Plaintiff takes the position that such notice requirement should only apply to the confidential information of a *non-party* protected person. This is because a non-party may not be present at such a proceeding. The advance notice enables the non-party to seek protection from public disclosure by filing a motion ahead of the proceeding. The PPO therefore limits the notice requirement in Paragraph 52 to non-parties only. This advanced notice requirement is unnecessary for parties. Plaintiff and Defendant will both be present at any proceeding before the Court and able to address confidentiality issues in real time with your Honor or Magistrate Judge Wang. Further, applying the notice requirement to party confidential information prejudices Plaintiff as relevant confidential information is likely to come from Defendant and Defendant may waive its own confidentiality designation at any time to disclose confidential information to its own advantage. Plaintiff may then be unable to respond to the Court with relevant information if it has not provided sufficient notice to Defendant or is at least disadvantaged by Defendant's formulation. To resolve Defendant's stated concern that it will be required to address confidentiality issues at the hearing, Plaintiff has added a provision requiring a party using another party's confidential information to ask the Court to receive the information under seal or similarly protected form.

4. Persons Bound by Order. Plaintiff respectfully submits that this order should broadly bind the parties and their affiliated representatives and agents to properly protect confidential information.

³ Paragraph 53 of the PPO expressly provides that use of Confidential Information in trial and post-trial proceedings and filings will be governed by a later order.

The Honorable Paul A. Engelmayer
Page 3

PPO Paragraph 21 makes clear the scope of persons and entities that the Order binds. This provision is nearly identical to *Visa* ¶ 18 and *Live Nation* at page 1, and has been included in other recent protective orders in this District, see *ESPN Enterprises, Inc. v. DISH Network L.L.C.*, No. 1:25-CV-07169 (AS), 2025 WL 2602160, at *1 (S.D.N.Y. Sept. 9, 2025).⁴ Defendant objects in part to the language. Defendant wants to limit the interested persons bound by the Order to anyone that both receives confidential information and receives actual notice of the Order. These are needless limits on the scope of persons bound by the Order. Defendant’s formulation excludes both any person that receives constructive notice of the order and anyone who does not receive confidential information. Receipt of confidential information is an unwarranted limitation on the person that ought to be bound by the order because it excludes persons that have access to confidential information, such as legal IT personnel, persons that are in a position to disclose confidential information in ways that violate the order, even though such persons do not necessarily receive confidential information. Plaintiff has added language to Paragraph 21 expressly binding any person with access to confidential information.

A person that receives constructive notice of the order should be bound. Extending the order’s obligations to persons with constructive notice is routine practice in this District. Extending the order’s prohibitions to any person with constructive notice provides additional protection against inappropriate use and disclosure of confidential information. Defendant has identified no prejudice from binding persons with constructive notice.

5. Non-designation. PPO Paragraph 28 requires the designating party to have a good-faith belief that material is confidential when designating it as such.⁵ PPO Paragraph 28 makes clear that any information not designated as Confidential Information will not be treated as Confidential Information. Defendant objects to the inclusion of this sentence. To attempt to address Defendant’s concern, Plaintiff added a sentence to Paragraph 28 expressly indicating that any Person may address the lack of a designation by using the procedure set forth in Paragraph 36, which governs inadvertent designation failures.

We thank the Court for its consideration of this submission.

Respectfully submitted,
By: s/ Paul Torzilli
PAUL J. TORZILLI (202) 476-0547
JESSICA HOLLIS (202) 307-1347
Trial Attorneys
Counsel for Plaintiff United States

cc: All counsel of record (via ECF)

⁴ “[A]ny person subject to this Order—including without limitation the parties to this action, their representatives, agents, experts, 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, upon pain of contempt.”

⁵ The good-faith standard is common for this District’s “blanket” protective orders, and this Court has routinely entered blanket protective orders expressly requiring designations be made in good faith. See, e.g., *Visa* (¶ 25). As Magistrate Judge Peck explained: “a ‘blanket’ protective order [] permits the parties to protect documents that they *in good faith believe* contain trade secrets or other confidential commercial information.” *Bayer AG and Miles, Inc. v. Barr Laboratories, Inc.*, 162 F.R.D. 456, 465 (S.D.N.Y. 1995) (emphasis added).

Exhibit A

Proposed Protective Order

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE NEW YORK AND
PRESBYTERIAN HOSPITAL,

Defendant.

Case No. 26-cv-02480-PAE-OTW

District Judge Paul A. Engelmayer

Magistrate Judge Ona T. Wang

PROTECTIVE ORDER

Discovery in the above-captioned action is likely to involve production of confidential, proprietary, trade secret, or private information for which special protection may be warranted. To ensure the efficient and prompt resolution of this Action, facilitate discovery by the Parties litigating this Action, and protect Confidential Information from improper disclosure or use, pursuant to Fed. R. Civ. P. 26(c)(1), the Court finds good cause for entry of this Protective Order governing information produced in discovery and ORDERS as follows:

I. GENERAL PROVISIONS

A. Definitions

For the purposes of this Order, the following definitions will apply:

1. “Action” means *United States of America v. The New York and Presbyterian Hospital*, 26-cv-02480 (S.D.N.Y.), including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

2. “Confidential Information” means the portion of any Investigation Materials and Discovery Materials that contains (a) Personally Identifiable Information (PII), (b) Sensitive Health Information (SHI), or (c) trade secrets or other confidential research, development, or commercial information as such terms are used in Fed. R. Civ. P. 26(c)(1)(G). Provided, however, that any portion of any Investigation Materials or Discovery Materials, except for PII or SHI, that has been published or otherwise made publicly available is not Confidential Information.

3. “Defendant” means The New York And Presbyterian Hospital, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its and their directors, officers, managers, agents, and employees.

4. “Disclosed” means shown, divulged, revealed, produced, described, transmitted, or otherwise communicated, in whole or in part.

5. “Discovery Materials” means any information, documents, data, communications, transcripts of testimony, or other materials relating to this Action that (a) any Non-Party provides to any Party; (b) any Party provides to any Non-Party; (c) any Party provides to any opposing Party, including in response to any discovery request or obligation pursuant to Court Order or Federal Rules of Civil Procedure 26–37, or 45. Discovery Materials do not include information that is or becomes publicly available or known to a Person through other sources, other than through a violation of this Order. Provided, however, that written comments relating to a proposed consent judgment in this Action that is submitted pursuant to the Antitrust Procedures and Penalties Act (Tunney Act), 15 U.S.C. § 16(b)–(h), are not Discovery Materials.

6. “Document” means any document, data, or electronically stored information as such term is used in Federal Rule of Civil Procedure 34(a).

7. “Expert” means a Person who possesses specialized knowledge that a Party has retained to provide opinions or analysis pursuant to Federal Rule of Civil Procedure 26(b)(4), including persons who may testify pursuant to Federal Rules of Evidence 701–702, and non-testifying trial preparation consulting experts. Absent agreement of the Parties or Court Order, the term Expert excludes any past, present, or anticipated future employee of the Party retaining the expert.

8. “Investigation” means any pre-Complaint review, assessment, or investigation by any Party of the Defendant’s conduct alleged in the Complaint.

9. “Investigation Materials” means documents, data, communications, transcripts of testimony, or other materials relating to the Investigation, including but not limited to those provided pursuant to the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-1314, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, that (a) any Non-Party provided to any Party; (b) any Party provided to any Non-Party; or (c) any Party provided to any opposing Party.

10. “Non-Party” means any Person that is not a Party to this Action.

11. “Outside Counsel of Record” means the law firm(s) representing Defendant(s) in this Action, including any attorneys, paralegals, and other professional personnel (including IT professionals and support staff) employed by such law firm(s) and assigned to this Action.

12. “Party” means the United States, or the Defendant in this Action. “Parties” means collectively the United States, and the Defendant in this Action.

13. “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

14. “Personally Identifiable Information” or “PII” means a natural person’s (a) Social Security number; (b) driver’s license number, state or federal government identification number,

or foreign country equivalent identification number; (c) passport number; (d) financial account number; (e) credit or debit card number; (f) name, address, or phone number in combination with their date of birth; or (e) SHI.

15. “Plaintiff” means the United States and its employees, agents, and representatives.

16. “Pretrial Period” means the time between the filing of this Action and the first day of any trial of this Action.

17. “Protected Person” means any Person, including any Party or Non-Party, that provided Investigation Materials or provides Discovery Materials.

18. “Related Action” means *UFCW Local 1500 Welfare Fund v. The New York and Presbyterian Hospital*, 25-cv-05023 (E.D.N.Y.); *Cement and Concrete Workers DC Benefit Fund v. The New York and Presbyterian Hospital*, 25-cv-05571 (E.D.N.Y.); and any other action that is consolidated with those actions.

19. “Sensitive Health Information” or “SHI” means information or data about an individual’s health, including medical records and other individually identifiable health information, whether on paper, in electronic form, or communicated orally. SHI relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

B. Computing Time

20. Unless otherwise specified, time will be computed according to Federal Rule of Civil Procedure 6(a).

C. Person Bound by This Order

21. This Order is binding on the Parties, including without limitation their representatives, agents, experts, and consultants, all non-Parties providing Investigation Materials or Discovery Materials in this Action, and all other interested Persons who receive or have access to Confidential Information with actual or constructive notice of this Order, upon pain of contempt.

D. Notice of This Order to Non-Party Protected Persons

22. Within two (2) business days of the Court's entry of this Order, each Party must send by email, overnight mail, or hand delivery a copy of this Order to each Non-Party Protected Person (or, if represented by counsel, the Non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

23. Any Party that seeks discovery related to this Action from any Non-Party must include a copy of this Order when serving a discovery request or subpoena on the Non-Party. If any Party sent a discovery request or subpoena to any Non-Party prior to entry of this Order, that Party must send a copy of this Order to the Non-Party within two (2) business days of entry of this Order.

E. Modifications of This Order

24. If a Non-Party Protected Person determines that this Order does not adequately protect its Confidential Information within its Investigation Materials, it may, within ten (10) business days after receiving notice of this Order, file a motion seeking additional protection from the Court for such Confidential Information. A Party may not disclose a non-Party Protected Person's Investigation Materials until the ten (10) business day period concludes, unless such Non-Party Protected Person consents to earlier disclosure. If a Non-Party Protected Person timely files such a motion, the information for which additional protection has been

sought may not be disclosed until the Court has rendered a decision on the motion, unless the movant and the Parties reach an agreement that permits disclosure of Confidential Information while the motion is pending.

25. Nothing in this Order limits any Person, including members of the public, a Party, or an interested Non-Party, from seeking additional protection or modification of this Order upon a motion duly made according to the Local Rules of this Court or an order that certain information need not be produced at all or is not admissible evidence in this Action or any other proceeding.

F. Privacy Act

26. This Order, and any subsequent order of this Court governing the United States' production of any documents, data, communications, transcripts of testimony, or other materials in this Action, constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a (b)(12).

II. PROCEDURES FOR DESIGNATING CONFIDENTIAL

A. Investigatory Materials Designated Confidential Information

27. All Investigatory Materials produced by any Party or Non-Party Protected Persons to any other Party will automatically be designated "Confidential." Any Person not entitled to receive Confidential Information under this Order is excluded from attendance at any deposition for which the Person would otherwise receive Confidential Information under this Order. Any Party may challenge Investigation Materials designations pursuant to Section II.E.

B. Designating Discovery Materials

28. The following procedures govern the process for Protected Persons (including Parties) to designate Confidential Information contained in any Discovery Materials. By so designating, the Protected Person (and counsel, if any) represents to the Court that it in good

faith believes that the information constitutes Confidential Information as defined by this Order. Notwithstanding the foregoing, the designation of a non-public company document identified as responsive to discovery requests through the use of technology-assisted review or search terms that the Protected Person (and counsel, if any) believes in good faith likely contains Confidential Information constitutes a good faith designation of the document as Confidential Information. Any Discovery Materials not designated in the manner required by this Order will not be treated as Confidential Information, even if such information was subject to a prior designation of confidentiality. A Person may address the lack of a confidentiality designation in accordance with Paragraph 36.

29. Production of Electronic Documents and Information. Where a Protected Person produces in this Action documents or information in electronic format, Confidential Information contained in those electronic documents or information must be designated by the Protected Person for protection under this Order by marking each page with a “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” header or footer.

30. Documents Produced in Native Format. When a Protected Person produces electronically stored documents in native file format, the Protected Person must designate any Confidential Information by (a) appending the suffix “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” to the file name or document production number, or (b) including the confidentiality designation in reasonably accessible metadata associated with the file. When documents that were produced in native file format are printed for use during a deposition, for a court proceeding, or for disclosure to any Person covered by Paragraph 43, the Party printing the file must affix to the printed version a label containing the production number and the confidentiality designation associated with the document.

31. Documents and Data Produced in Hard Copy or Non-Native Format. When a Protected Person produces documents in hard copy, image files, or other non-native file formats, the Protected Person must designate Confidential Information by stamping or otherwise marking each page or image that contains Confidential Information with the designation “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” in a manner that will not interfere with legibility.

32. PII. Any PII produced to any Party, whether during the Investigation or this Action, is considered Confidential Information under this Order without the need for any Protected Person or Party to designate it as such.

33. SHI. The Parties and Protected Persons desire to ensure the privacy of patient records and other information that the Parties have determined might contain SHI. Any SHI produced to any Party, whether during the Investigation or this Action, is considered Confidential Information under this Order without the need for any Protected Person or Party to designate it as such. Any Person who receives and stores SHI, whether during the course of the Investigation or this Action, will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the privacy, integrity, and confidentiality of any SHI and to prevent unpermitted use or disclosure of any SHI they may receive from any Person in connection with this proceeding. The Parties will securely return or destroy SHI in accordance with and to the extent required by the Health Insurance Portability and Accountability Act (“HIPAA”).

34. Testimony. All transcripts of depositions taken in this Action will be treated as Confidential Information in their entirety for twenty-one (21) days after the date when a complete and final copy of the transcript has been made available to the deponent (or the

deponent's counsel). Within twenty-one (21) days of receiving a final transcript, a Protected Person may designate any portion of a deposition transcript or any portion of a deposition exhibit as containing Confidential Information by highlighting, stamping, or otherwise clearly marking the information as Confidential Information and by providing a copy of the deposition transcript and exhibits with the Confidential Information redacted. Any portion of a transcript or portion of a deposition exhibit not designated in the manner required by this Paragraph will not be treated as Confidential Information, even if the document(s) that became the deposition exhibit(s) or information that is the subject of the deposition testimony was subject to a prior designation of confidentiality. For avoidance of doubt, a blanket designation that an entire deposition transcript or all exhibits from a deposition are Confidential Information does not comply with the requirements of this Order.

C. Notice of Confidentiality Designations to the Parties

35. Any designation of Confidential Information or other written notice to the Parties required by this Order must be provided by email, overnight mail, or hand delivery to the following counsel for the Parties:

For Plaintiff:

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D. Inadvertent Failure to Designate Confidential Information

36. If at any time prior to the trial of this Action a Protected Person realizes that it inadvertently failed to designate any Discovery Materials as Confidential Information, such failure will not constitute a waiver of the right to designate any of such Discovery Materials as Confidential Information. The Protected Person may so designate such information by following the procedures of this Order. If so designated, the Parties must thereafter treat the information according to the Protected Person's new designation; provided, however, that no prior disclosure of newly designated Confidential Information violates this Order. The disclosure of any information for which disclosure was proper when made will not be deemed improper regardless of any subsequent confidentiality designation.

E. Challenging Designations during the Pretrial Period

37. This Order does not preclude or prejudice a Protected Person or Party from arguing for or against any confidentiality designation, establish any presumption that a particular

confidentiality designation is valid, or alter the burden of persuasion that would otherwise apply in a dispute over whether something constitutes Confidential Information.

38. During the Pretrial Period, any Party may object to a designation of Investigation Materials or Discovery Materials as Confidential Information, including a confidentiality designation made pursuant to Paragraph 36. In the case of such an objection, the Party seeking to challenge the designation may provide written notice to the Protected Person who made the designation and to all Parties identifying the challenged designation and stating with particularity the grounds for its objection. All materials objected to must continue to be treated as Confidential Information pending resolution of the dispute by the Court or pursuant to an agreement between the objecting Party and the Protected Person.

39. If the objecting Party and the Protected Person cannot reach agreement within fourteen (14) days of the Party's written notice, the Protected Person may file a motion for a protective order with the Court to maintain the confidentiality of the challenged material. The Protected Person bears the burden of persuading the Court that the material is Confidential Information as defined by this Order. If the Protected Person fails to timely file a motion for a protective order with the Court in accordance with this Paragraph, or if the Court finds the designation improper, the information will no longer be treated as Confidential Information in this Action.

III. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

A. Restriction on Use and Disclosure of Confidential Information

40. Except as provided by Paragraph 45 of this Order, all Confidential Information produced by a Party or a Non-Party Protected Person as part of this Action will be used solely for the purpose of prosecuting or defending the Action or any Related Action—provided the

procedures specified in this Order are complied with prior to its use in any Related Action—and must not be used for any business, commercial, competitive, personal, or other purpose.

41. Any Person that becomes subject to a motion to disclose Confidential Information protected by this Order in another case must promptly notify the Party or Non-Party Protected Person that designated the Confidential Information of the motion so the Protected Person has an opportunity to appear in the other case and be heard on whether that information should be disclosed.

42. Notwithstanding anything to the contrary in this Order, unless otherwise ordered by a court of competent jurisdiction, any Protected Person's Confidential Information in any Investigation Materials or Discovery Materials produced in this Action may be re-produced or made available to the parties in a Related Action upon 30 days' notice to the Protected Person. The use of Confidential Information in any Related Action, and any restrictions relating to the disclosure of such information, will be governed by the Protective Order in the Related Action.

43. Except as provided by Paragraph 45 or pursuant to a court order, Confidential Information may be disclosed only to the following individuals:

- a. Outside Counsel of Record in the Action, including any attorneys, paralegals, and other professional personnel employed by such counsel (including support and IT staff), and any agents or independent contractors retained by such counsel, whose functions require access to the information;
- b. the Court and all individuals assisting the Court in this Action, including Magistrate Judges, law clerks, court reporters, and stenographic or clerical personnel;

- c. any special master, mediator, arbitrator, trustee, or monitor that the Parties engage in this Action or that this Court appoints;
- d. counsel for Plaintiff, including any attorneys, paralegals, and other professional personnel employed by Plaintiff (including support and IT staff), and any agents or independent contractors retained by Plaintiff whose functions require access to the information;
- e. Court reporters and videographers;
- f. litigation support vendors or trial consultants retained by a Party to assist that Party in this Action, including without limitation e-discovery vendors, jury consultants, and trial graphics or trial presentation firms, provided they first executed an Agreement Concerning Confidentiality in the form attached as Exhibit A;
- g. any individual retained by a Party to serve as a testifying or consulting Expert in this Action, including employees of the firm with which the expert or consultant is associated who assist the expert's work in this Action, provided they first execute an Agreement Concerning Confidentiality in the form attached as Exhibit A;
- h. any individual who is an author, addressee recipient, custodian of the information, identified as a participant in any meeting memorialized by the document, and individuals who received or have had access to the information as well as any counsel representing such individuals;
- i. a testifying witness may be shown a Document, provided that (i) counsel responsible for the disclosure has a good faith belief that the witness has

knowledge of the Document; (ii) prior to any disclosure the witness has executed an Agreement Concerning Confidentiality in the form attached as Exhibit A; (iii) such witness is only shown the Document during the course of providing or preparing for such testimony; and (iv) such witness does not retain a copy of the Document.

44. Each Person identified in Paragraph 43 of this Order to whom Confidential Information is disclosed may not disclose that information to any other Person, except as otherwise provided by this Order.

45. Nothing in this Order:

- a. limits a Protected Person's use or disclosure of its own Confidential Information;
- b. prevents disclosure of Confidential Information with the consent of the Protected Person that designated the information;
prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) that was lawfully acquired by that Party independent of receipt during the Investigation or this Action; (iii) that was previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to a court order; or
- c. prevents the United States' retention, use, or disclosure of Confidential Information outside the context of this Action (i) to the extent permitted or required by law, court order, or regulation; (ii) for law enforcement purposes; or (iii) for the purpose of securing compliance with a Final Judgment in this Action.

46. The provision of legal advice to a Party based on counsel's evaluation of Confidential Information will not constitute an impermissible use or disclosure of such information, provided that such advice and opinions do not reveal the specific contents of the information.

47. *Use of Large Language Model or Generative AI.* A Party must not load, upload, input, import, submit, or otherwise transfer Confidential Information to a publicly accessible Large Language Model ("LLM") or generative artificial intelligence ("GenAI") platform. Before using Confidential Information in any non-publicly accessible LLM or GenAI platform, a Party must ensure that the LLM or GenAI platform can not and will not utilize Confidential Information to train public models or otherwise disclose Confidential Information to other users of the LLM or GenAI platform not authorized to receive such materials.

B. Inadvertent Disclosure of Confidential Information

48. If a Party learns that, by inadvertence or otherwise, it has disclosed Confidential Information to a Person not authorized to receive it under this Order, the Party must promptly (a) notify the Protected Person whose information has been disclosed and provide all known relevant information concerning the nature and circumstances of the disclosure, (b) use its best efforts to retrieve all unauthorized copies of the information and ensure there is no additional unauthorized disclosure or use of the information, and (c) provide a copy of this Order to any Person to whom unauthorized disclosures were disclosed and request that such person execute Exhibit A.

49. Unauthorized or inadvertent disclosure of Confidential Information does not change the confidential status of any disclosed material or waive the Protected Person's right to maintain the disclosed material as Confidential Information.

C. Filing Pretrial Court Filings Under Seal

50. Nothing in this Order will modify the standards for maintaining judicial records under seal. A Party that files Confidential Information with the Court must file the information under seal. The Party must follow the Court's procedures with respect to filings under seal.

51. Filing another Person's Confidential Information under seal does not constitute agreement by the filing Party that the information is properly designated, and nothing in this Order should be construed to prevent a Party from later challenging the confidentiality designation of information that was previously filed under seal.

52. ***Disclosure in Public Proceedings.*** Absent good cause or further Order of the Court, (i) a Party will give a Non-Party Protected Person five (5) business days' notice if the Party reasonably expects to disclose the Non-Party Protected Person's Confidential Information at a public hearing or other public proceeding before the Court; and (ii) a Non-Party Protected Person seeking to seal or restrict access to such information must file a motion seeking such relief in advance of the proceeding. In the absence of a subsequent Court Order, Confidential Information may be used at such hearing or proceeding and may be disclosed on the public record. To the extent a Party seeks to use another Party's Confidential Information in such proceeding, the Party intending to use the Confidential Information must ask the Court to receive the Confidential Information under seal or in another form that avoids public disclosure.

D. Use of Confidential Information at Trial and in Post-Trial Filings

53. Use of Confidential Information at trial and in post-trial filings will be governed by a later order. The Parties must meet and confer and submit a recommended order outlining those procedures.

IV. PROCEDURES UPON TERMINATION OF THE ACTION

54. A Party will provide a Protected Person notice within seven (7) days after receipt of a subpoena or other process compelling production of Investigation Materials or Discovery Materials that contain Confidential Information. Absent agreement of the Protected Person or an order of this Court or other court of competent jurisdiction, the Party will not otherwise disclose such Investigation Materials or Discovery Materials for at least twenty-one (21) days after such notice has been provided. If the Protected Person objects to the production of such information within such twenty-one (21)-day period, the Party will not disclose such information absent an order from this Court or other court of competent jurisdiction.

55. Within ninety (90) days following the expiration of the time for appeal of a judgment, or decree terminating this Action, all Persons must make a good faith effort to will return or destroy all Confidential Information it has received, including all copies, that has not otherwise been made public during this Action unless the Confidential Information may be retained pursuant to Paragraph 45, Paragraph 57, or Paragraph 58. The restrictions set forth in this Order will continue to govern any use or disclosure of such archival copies.

56. Within ninety (90) days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons that received Confidential Information must certify compliance with Paragraph 55 of this Order in writing to the Party or Protected Person that produced the Confidential Information.

57. Counsel for the Parties will be entitled to retain court papers, deposition, hearing and trial transcripts, exhibits, and work product. Provided, however, that the Parties and their counsel may not disclose the portions of those materials containing Confidential Information

except pursuant to a court order, with the consent of the Protected Person that produced the Confidential Information, or as otherwise permitted by this Order.

58. Expert witnesses for the Parties will be entitled to retain their own expert reports, their own deposition and trial transcripts and exhibits, and their own work product. Provided, however, that they may not disclose the portions of those materials containing Confidential Information except pursuant to a court order, with the consent of the Protected Person that produced the Confidential Information, or as otherwise permitted by this Order, and except for SHI which must be returned or destroyed.

59. Counsel for a Party that disclosed Confidential Information to a Person identified in Paragraph 43 subparagraphs (f), (g), or (i) of this Order must obtain and retain the signed version of the Agreement Concerning Confidentiality in the form attached as Exhibit A for a period of at least one year following the termination of this Action.

60. This Order will survive the termination of this Action and will remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

61. This Court retains jurisdiction to resolve any disputes arising out of this Order after termination of this Action.

V. INADVERTENT PRODUCTION OF PRIVILEGED INFORMATION

62. The disclosure of any Investigation Materials or Discovery Materials subject to attorney-client privilege, deliberative-process privilege, law-enforcement privilege, work-product protection, or other applicable legal or evidentiary privilege (“Privileged Material”) is not a waiver in this Action or in any other federal or state proceeding, provided that (a) the disclosure was inadvertent; (b) the Person that disclosed the Privileged Material used reasonable

efforts to prevent such disclosure; and (c) the Person that disclosed the Privileged Material promptly took reasonable steps to rectify the error, including by following Federal Rule of Civil Procedure 26(b)(5)(B). Notwithstanding the foregoing, use of technology-assisted review, including artificial intelligence, to make initial privilege determinations does not on its own operate as a waiver of privilege absent a specific intent to waive privileged and so long as the holder of the privilege promptly took reasonable steps to rectify the error upon learning of it.

63. The Person asserting the privilege bears the burden of proof with respect to a claim or assertion of privilege. A Person claiming inadvertent production of Privileged Material must first make a good-faith determination that such materials are privileged or otherwise protected from disclosure under applicable law and rules. The Person must then promptly notify all Parties that received the Privileged Material and provide sufficient information for such Parties to assess the claim of privilege in the form of a privilege log as outlined in Federal Rule of Civil Procedure 26(b)(5). If a receiving Person discovers a document that it believes to be Privileged Material, the receiving Person must promptly notify the Person that produced it. Provided, however, that no Person will be found to have violated this Order for failing to recognize inadvertently produced Privileged Material.

64. After discovering or being notified of a claim of inadvertent production of Privileged Material, a receiving Person (a) may not use or disclose the Privileged Material until the claim is resolved, except as permitted by Federal Rule of Civil Procedure 26(b)(5), (b) must return, sequester, or destroy all copies of the Privileged Material in its possession, and (c) must take reasonable steps to retrieve the Privileged Material from any Person(s) to whom the receiving Person disclosed it before being notified of or discovering the inadvertent production.

The designating Person must retain a copy of the Privileged Material until the resolution or termination of this Action.

SO ORDERED.

Dated: May __, 2026

Paul A. Engelmayer
United States District Judge
New York, New York

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE NEW YORK AND
PRESBYTERIAN HOSPITAL,

Defendant.

Case No. 26-cv-02480-PAE-OTW

Agreement Concerning Confidentiality

I, _____, the undersigned person, state as follows:

1. I have received and read the Protective Order entered in this Action.
2. I have been informed that certain information to be disclosed to me or my firm in connection with the Action has been designated as Confidential Information.
3. I agree that I will (i) be bound by the terms of the Protective Order, (ii) comply with the Protective Order; (ii) not disclose any Confidential Information to any Person not entitled to receive such information under the terms of the Protective Order; and (iii) not to use any Confidential Information for any purpose other than this litigation or as expressly permitted by the Protective Order.
4. I understand that my failure to abide by the terms of the Protective Order will subject me, without limitation, to civil and criminal penalties for contempt of Court.

5. I submit to the jurisdiction of this Court solely for the purpose of enforcing the terms of the Protective Order and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of this Court.

6. To the extent that disclosure pursuant to Paragraphs 8(e), 8(f), or 9 of the Protective Order is to be made to a litigation support vendor or expert firm with which I am affiliated, I represent and warrant I have authority to agree on behalf of such vendor or firm that the vendor or firm, and its employees, will (i) comply with the Protective Order; (ii) not disclose any Confidential Information to any other person not entitled to receive such information under the terms of the Protective Order; and (iii) not to use any Confidential Information for any purpose other than this litigation. I agree that I am personally responsible for their conduct with respect to compliance with this Protective Order and agree to be held in contempt for any of their failure to comply with the terms of this Order.

Dated: _____

By: _____

Exhibit B

*United States of America, et al. v. Live Nation
Entertainment, Inc. and Ticketmaster L.L.C.,*

(ECF No. 213)

Protective Order

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

LIVE NATION ENTERTAINMENT, INC.
and TICKETMASTER L.L.C.,

Defendants.

Case No. 1:24-cv-03973 (AS)(SLC)

PROTECTIVE ORDER

The parties having agreed to the following terms of confidentiality, and the Court having found that good cause exists for issuance of an appropriately tailored confidentiality order governing the pre-trial phase of this action, it is therefore hereby:

ORDERED that any person subject to this Order—including without limitation the parties to this action, their representatives, agents, experts, consultants, all non-parties providing investigation or discovery materials in this action, and all other interested persons with actual or constructive notice of this Order—shall adhere to the following terms, upon pain of contempt:

1. Any person subject to this Order who receives from any other person any “Discovery Material” (i.e., information of any kind provided in discovery in this action) or who previously received from any other person any “Investigation Material” (i.e., information provided to any party related to the Plaintiffs’ pre-Complaint investigation of the Defendants’ alleged conduct) that is designated as “Highly Confidential” or “Confidential” pursuant to the terms of this Order shall not disclose such Highly Confidential or Confidential Discovery Material or Investigation Material to anyone else except as expressly permitted hereunder and shall not use such Highly Confidential or Confidential Discovery Material or Investigation Material for any purpose other than in connection with this action, except, for Plaintiffs, as provided in Paragraph 18 of this Protective Order.

2. The person producing any given Discovery Material or Investigation Material may designate as Highly Confidential only such portion of such material that if disclosed, is likely to cause material and significant competitive or commercial harm. Highly Confidential is defined as:

- a. trade secrets, including non-public, commercially sensitive customer lists;
- b. current or future non-public financial, marketing, or strategic business planning information;
- c. current or future non-public information regarding prices, costs, or margins;
- d. information relating to research, development, or plans for existing or proposed future acquisitions or expansions;
- e. evaluation of the strengths and vulnerabilities of product or service offerings, including non-public pricing and cost information;
- f. confidential contractual terms, proposed contractual terms, or negotiating positions (including internal deliberations about negotiating positions) taken with respect to Defendants or competitors or customers of Defendants;
- g. personnel files;
- h. sensitive personally identifiable information;
- i. communications that disclose any Highly Confidential Information; or
- j. any other category of information hereinafter given Highly Confidential status by the Court.

Material that is more than three (3) years old at the time of production is presumptively not entitled to protection as Highly Confidential Information but can be Confidential Information if non-public; provided, that such material may be considered Highly Confidential Information if it discloses current or future business practices or competitive strategies. All protections under this Order to Confidential Information apply as well to Highly Confidential Information.

3. The person producing any given Discovery Material or Investigation Material may designate as Confidential only such portion of the following material, not otherwise designated as Highly Confidential:

- a. previously non-publicly disclosed financial information;

- b. previously non-publicly disclosed material relating to ownership or control of any non-public company;
 - c. previously non-publicly disclosed business plans, product development information, or marketing plans;
 - d. any information of a personal or intimate nature regarding any individual; or
 - e. any other category of information hereinafter given Confidential status by the Court.
4. With respect to the Highly Confidential or Confidential portion of any Discovery Material or Investigation Material other than deposition transcripts (e.g., documents (including deposition exhibits) and data), the producing person or that person's counsel may designate such portion as "Highly Confidential" or "Confidential" by stamping or otherwise clearly marking as "Highly Confidential" or "Confidential" the protected portion in a manner that will not interfere with legibility or audibility, and by also producing within seven (7) days of the deposition for all deposition exhibits or within three (3) business days of a receiving person's request (which shall be limited to those documents it intends in good faith to use in any motion, hearing or trial) for any other Discovery Material or Investigation Material, another copy of said deposition exhibit or other Discovery Material or Investigation Material with the Highly Confidential or Confidential information redacted.
5. With respect to deposition transcripts, a producing person or that person's counsel may indicate on the record that the deposition included testimony on Highly Confidential or Confidential information, in which case the transcript of the deposition will be designated as Highly Confidential or Confidential for a period of thirty (30) days following the release of the official transcript. The producing person or that person's counsel will, within thirty (30) days of the release of the official transcript (unless otherwise agreed to by the Parties), provide the receiving person a copy of such transcript with the specific testimony containing Highly Confidential or Confidential information, highlighted, stamped, or otherwise clearly marked as "Highly Confidential" or "Confidential" on a line-by-line basis, in a manner that does not interfere with legibility or audibility.
6. If at any time prior to the trial of this action, a producing person realizes that some portion(s) of Discovery Material or Investigation Material that that person previously

produced without limitation should be designated as Highly Confidential or Confidential, he or she may so designate by so apprising all parties in writing, and such designated portion(s) of the Discovery Material or Investigation Material will thereafter be treated as Highly Confidential or Confidential under the terms of this Order.

7. No person subject to this Order other than the producing person shall disclose any of the Discovery Material or Investigation Material designated by the producing person as Highly Confidential to any other person whomsoever, except to:
 - a. counsel for Plaintiffs, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by Plaintiffs to assist in this action whose functions require access to the information;
 - b. outside counsel for Defendants retained specifically for this action, including any attorneys, paralegals, clerical and other assistants employed by such counsel and assigned to this matter;
 - c. outside vendors or service providers (such as copy-service providers, and document-management consultants) retained by a party to assist that party in this action, provided that they shall first execute the Non-Disclosure Agreement in the form annexed as an Exhibit hereto as Appendix A;
 - d. as to any document, its author, its custodian, its addressee and any other person indicated on the face of the document as having received a copy, or any other individual from the producing person who the receiving party has a good-faith basis to believe, was the author, addressee, recipient, custodian, or source of the information;
 - 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, including employees of the firm with which the expert or person is associated or independent contractors who assist the person's work in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto as Appendix A;
 - f. any outside trial consultant (including, but not limited to, graphics consultants) or mock juror provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto as Appendix A;
 - g. stenographers engaged to transcribe, and videographers engaged to

- record, depositions conducted in this action;
- h. any special master, mediator, arbitrator, trustee, or monitor that the parties engage in this action or that the Court appoints; and
 - i. the Court and its support personnel.
8. No person subject to this Order other than the producing person shall disclose any of the Discovery Material or Investigation Material designated by the producing person as Confidential to any other person whomsoever, except to:
- a. counsel for Plaintiffs, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by Plaintiffs to assist in this action whose functions require access to the information;
 - b. outside counsel for Defendants retained specifically for this action, including any attorneys, paralegals, clerical and other assistants employed by such counsel and assigned to this matter;
 - c. No more than two Designated In-House Counsel of Defendants with responsibilities for the litigation of this Action. Designated In-House Counsel shall not (currently or for a period of two years following the last occasion on which Confidential Information is disclosed to such Designated In-House Counsel):
 - (i) participate in or advise on Competitive Decision-Making (e.g., decision-making relating to a competitor, potential competitor, customer, or distribution partner including decisions regarding contracts, marketing, pricing, product or service development or design, product or service offerings, research and development, mergers and acquisitions, or licensing, acquisition, or enforcement of intellectual property rights) at the Defendants,
 - (ii) participate in or advise on Competitive Decision-Making involving a non-party whose Confidential information they accessed during the course of this Action at any employer, or
 - (iii) participate in or advise on litigation or other legal actions on behalf of Defendants or any other employer where a non-party is a party and whose Confidential information Designated In-House Counsel accessed in the course of this Action for two years following the last occasion on which Confidential Information is disclosed to such Designated In-House Counsel (aside from litigation arising from or related to the allegations in the Complaint in this action).

Before qualifying for access under this subpart, Designated In-House Counsel must be publicly designated through a letter filed on ECF and must execute a

Designated In-House Counsel Agreement Concerning Confidentiality in the form of Appendix B attached hereto (executed versions of which shall be maintained by Outside Counsel for Defendants and available for inspection upon the request of the Court, any Party, or any non-party). Designated In-House Counsel shall only access Confidential information in person at the offices of Defendants' Outside Counsel of Record, or using a secure electronic data room or document review platform using an individual login identification and password. Defendants shall promptly report any confirmed or suspected unauthorized use or disclosure of Confidential information to the Court and Plaintiffs. Any counsel subject to this subsection who leaves the employment of Defendants to work in an industry unrelated to the decisions associated with Competitive Decision-Making shall be presumed to be exempt from the post-employment limits of this provision absent a showing by Plaintiffs or any interested non-party that such a person engaged in Competitive Decision-Making.

- d. outside vendors or service providers (such as copy-service providers, and document-management consultants) retained by a party to assist that party in this action, provided that they shall first execute the Non-Disclosure Agreement in the form annexed as an Exhibit hereto as Appendix A;
- e. as to any document, its author, its custodian, its addressee and any other person indicated on the face of the document as having received a copy, or any other individual from the producing person who the receiving party has a good-faith basis to believe, was the author, addressee, recipient, custodian, or source of the information;
- f. any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, including employees of the firm with which the expert or person is associated or independent contractors who assist the person's work in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto as Appendix A;
- g. any outside trial consultant (including, but not limited to, graphics consultants) or mock juror provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto as Appendix A;
- h. stenographers engaged to transcribe, and videographers engaged to record, depositions conducted in this action;
- i. any special master, mediator, arbitrator, trustee, or monitor that the parties engage in this action or that the Court appoints; and

- j. the Court and its support personnel.
9. All Highly Confidential or Confidential Discovery Material or Investigation Material filed with the Court, and all portions of pleadings, motions, or other papers filed with the Court that disclose such Highly Confidential or Confidential Discovery Material or Investigation Material, shall be filed under seal and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing. In any event, any party filing a motion or any other papers with the Court under seal shall also within seven (7) days publicly file a redacted copy of the same, via the Court's Electronic Case Filing system, that redacts only the Highly Confidential or Confidential Discovery Material or Investigation Material itself, and not text that in no material way reveals the Highly Confidential or Confidential Discovery Material or Investigation Material.
10. Any party who either objects to any designation of confidentiality, or who, by contrast, requests still further limits on disclosure (such as "attorneys' eyes only" in extraordinary circumstances), may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will address their dispute to this Court in accordance with Paragraph 5 of this Court's Individual Practices in Civil Cases.
11. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material or Investigation Material introduced in evidence at trial, even if such material has previously been sealed or designated as Highly Confidential or Confidential. The Court also retains unfettered discretion whether to afford confidential treatment to any Highly Confidential or Confidential Document or information contained in any Highly Confidential or Confidential Document submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court. Each person who has access to Discovery Material or Investigation Material that has been designated as Highly Confidential or Confidential shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.
12. If, in connection with this litigation, a party inadvertently discloses information

subject to a claim of attorney-client privilege, deliberative process privilege, attorney- work-product protection, or other applicable legal or evidentiary privilege (“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.

13. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall not thereafter review the Inadvertently Disclosed Information for any purpose, except by order of the Court. The receiving party shall, within five (5) business days, 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.
14. Within five (5) business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information, and a redacted version of the Inadvertently Disclosed Information.
15. As with any information redacted or withheld, the receiving party may seek an order from the Court compelling production of the Inadvertently Disclosed Information. The receiving party should follow the procedures in Paragraph 5 of the Court’s Individual Practices in Civil Cases and shall not assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.
16. 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.
17. This Order, and any subsequent order of this Court governing the Plaintiffs’ production of any documents, data, communications, transcripts of testimony, or other materials in this action, constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a(b)(11) and analogous state laws.
18. Nothing in this Order prevents any Plaintiff’s retention, use, or disclosure of Highly Confidential or Confidential information outside the context of this action (i) to the extent permitted or required by law, court order, or regulation; (ii) for law enforcement purposes; or (iii) for the purpose of securing compliance with a Final

Judgment in this action. Outside counsel for the parties will be entitled to retain court papers and exhibits, deposition transcripts and exhibits, hearing transcripts and exhibits, trial transcripts and exhibits, correspondence (including internal correspondence and email) and work product, provided that the parties and their counsel do not disclose the portions of these materials containing Highly Confidential or Confidential information to any person, except pursuant to court order or agreement with the person that produced the Highly Confidential or Confidential information or as otherwise permitted herein.

19. This Protective Order shall survive the termination of the litigation. Within thirty (30) days of the final disposition of this action, all Discovery Material and Investigation Material designated as “Highly Confidential” or “Confidential,” and all copies thereof, shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed, except as provided in paragraph 18.
20. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.
21. Notice of this Order will be provided to non-parties in the following manner:
 - a. Within four (4) business days of the Court’s entry of this Order, each party must send by email, overnight mail, or hand delivery a copy of this Order to each non-party (or, if represented by counsel, the non-party’s counsel) that provided Investigation Material to that party; and
 - b. Any party that seeks Discovery Material from any non-party must include a copy of this Order when serving the discovery request or subpoena on the non-party. If any party sent a discovery request or subpoena to any non-party prior to entry of this Order, that party must send a copy of this Order to the non-party within two (2) business days of entry of this Order.
 - c. If a non-party determines that this Order does not adequately protect its Investigation Material or Discovery Material, it may, within seven (7) days after receipt of a copy of this Order, seek additional protection from the Court. If a non-party timely seeks additional protection from the Court, the party’s obligation to produce that non-party’s documents containing Highly Confidential or Confidential Investigation Material or Discovery Material, that is the subject of the motion, is suspended until a decision is rendered by the Court. If the Court orders the production of the non-party’s documents, the party will have seven (7) days to make the

production unless a longer period is ordered by the Court.

22. Any other Investigation Material produced by a non-party that was not previously designated as Highly Confidential or Confidential will be treated as Highly Confidential for a period of thirty (30) days from the date of this Order. Within that time, any non-party person who produced Investigation Material to any party and did not designate those materials as Confidential or Highly Confidential may so designate any such materials as Confidential or Highly Confidential pursuant to the terms of this Order. Except as provided in paragraph 6, any non-party Investigation Material not timely designated under this paragraph will not be treated as Confidential or Highly Confidential following the expiration of the thirty (30) day period. Nothing in this Order shall be construed to prevent a party from asserting a valid privilege or protection with respect to disclosure of such Investigation Material. The following procedures govern the process for non-parties to designate Investigation Material as Confidential or Highly Confidential. Non-parties shall either (i) reproduce any document containing newly designated material as Confidential or Highly Confidential with a stamp or otherwise clearly marking as “Highly Confidential” or “Confidential” the designated portion(s) in a manner that will not interfere with legibility or audibility or (ii) notify counsel for Plaintiffs and Defendants via email of such designated portion(s). Counsel for the United States, Plaintiff States, and the Defendants to be notified of confidentiality designations are as follows:

For Plaintiff United States:

Bonny Sweeney (bonny.sweeney@usdoj.gov)
Sarah Licht (sarah.licht@usdoj.gov)
Alexis Lazda (alexis.lazda@usdoj.gov)
U.S. Department of Justice
450 Fifth Street NW, Suite 4000
Washington, DC 20530

For Plaintiff States:

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P.O. Box 20207, Nashville, Tennessee 37202

Joe Betsko (Jbetsko@attorneygeneral.gov)
Pennsylvania Office of the Attorney General
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Harrisburg, PA 17120

Sarah Mader (Sarah.mader@ohioAGO.gov)
Office of Ohio Attorney General
30 E. Broad St. 26th Floor
Columbus, OH 43215

For Defendants:

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Two Manhattan West
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New York, NY 10001

23. To the extent a producing person or non-party designates or has previously designated Investigation Material as Confidential, Highly Confidential or other equivalent designation, those materials shall be designated as Confidential or Highly Confidential under this Order, subject to any later challenge by a party. To the extent Investigation Material is reproduced in this action, it shall be treated as Confidential or Highly Confidential Discovery Material under the terms of this Order.

SO ORDERED.



ARUN SUBRAMANIAN, U.S.D.J.

Dated: July 29, 2024
New York, New York

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

LIVE NATION ENTERTAINMENT, INC.
and TICKETMASTER L.L.C.

Defendants.

Case No. 1:24-cv-03973 (AS)(SLC)

NON-DISCLOSURE AGREEMENT

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material and Investigation Material that have been designated as Highly Confidential or Confidential. I agree that I will not disclose such Highly Confidential or Confidential Discovery Material and Investigation Material to anyone other than for purposes of this litigation and that at the conclusion of this litigation I will return all such 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: _____

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

LIVE NATION ENTERTAINMENT, INC.
and TICKETMASTER L.L.C.

Defendants.

Case No. 1:24-cv-03973 (AS)(SLC)

**DESIGNATED IN-HOUSE LITIGATION COUNSEL AGREEMENT
CONCERNING CONFIDENTIAL INFORMATION**

I, _____ am employed as _____ by _____. I certify that:

1. I have read the Protective Order entered in the above-captioned action and understand its terms.

2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action, agree that in my role as in-house counsel for the above Defendant company I meet the requirements of Paragraph 7(c) of this Protective Order, and agree to use the information provided to me only as explicitly provided in this Protective Order.

3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me without limitation to civil penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the Southern District of New York solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE

Exhibit C

United States of America v. Visa Inc., No. 24
Civ. 07214, (ECF No. 42)

Protective Order

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

VISA INC.,

Defendant.

Case No. 1:24-cv-07214-JGK-SLC

STIPULATED PROTECTIVE ORDER

To ensure the efficient and prompt resolution of this Action, facilitate discovery by the Parties litigating this Action, and protect Confidential Information and Highly Confidential Information from improper disclosure or use, the Parties stipulate to the provisions set forth below. The Court, upon good cause shown and according to Federal Rule of Civil Procedure 26(c)(1) and all applicable Local Rules, ORDERS as follows:

I. GENERAL PROVISIONS

A. Definitions

1. “Action” means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

2. “Confidential Information” means the portion of any Investigation Materials or Litigation Materials that contains (a) Personally Identifiable Information (PII) or (b) trade secrets or other confidential research, development, or commercial information as such terms are used in Federal Rule of Civil Procedure 26(c)(1)(G). Provided, however, that any portion of any

Investigation Materials or Litigation Materials, except for PII, that has been published or otherwise made publicly available is not Confidential Information.

3. “Defendant” means Visa Inc., and its employees, agents, representatives, parents, subsidiaries, affiliates, successors, and assigns.

4. “Disclosed” means shown, divulged, revealed, produced, described, transmitted, or otherwise communicated, in whole or in part.

5. “Document” means any document, data, or electronically stored information as such term is used in Federal Rule of Civil Procedure 34(a).

6. “Highly Confidential Information” means any Confidential Information which the Protected Person producing it reasonably believes is likely to result in economic harm or competitive disadvantage if it is disclosed.

7. “Investigation” means any pre-complaint review, assessment, or investigation by any Party of the Defendant’s conduct alleged in the Complaint.

8. “Investigation Materials” means non-privileged documents, data, communications, transcripts of testimony, or other materials relating to the Investigation, including but not limited to those provided pursuant to the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-1314, or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, that (a) any non-Party provided to any Party; (b) any Party provided to any non-Party; or (c) any Party provided to any opposing Party.

9. “Litigation Materials” means non-privileged documents, data, communications, transcripts of testimony, or other materials relating to this Action that (a) any non-Party provides to any Party; (b) any Party provides to any non-Party; (c) any Party provides to any opposing Party. Provided, however, that any written comment relating to a proposed consent judgment in

this Action that is submitted pursuant to the Antitrust Procedures and Penalties Act (Tunney Act), 15 U.S.C. § 16(b)–(h), is not Litigation Materials.

10. “Outside Counsel of Record” means the law firm(s) representing Defendant in this Action, including any attorneys, paralegals, and other professional personnel (including IT professionals and support staff) employed by such law firm(s) and assigned to this Action.

11. “Party” means the United States, any state or commonwealth that joins this Action, or Defendant. “Parties” means collectively the United States, any state or commonwealth that joins this Action, and Defendant in this Action.

12. “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

13. “Personally Identifiable Information” or “PII” means a natural person’s (a) Social Security number; (b) driver’s license number, or state or federal government identification number, or foreign country equivalent identification number; (c) passport number; (d) financial account number; (e) credit or debit card number; (f) name, address, or phone number in combination with their date of birth; or (e) personal health information.

14. “Plaintiff” means the United States and its employees, agents, and representatives. In the event that a U.S. state or commonwealth joins this Action, the term “Plaintiff” will include the United States and all states or commonwealths that join this Action.

15. “Pretrial Period” means the time between the filing of this Action and the first day of any Trial of this Action.

16. “Protected Person” means any Person, including any Party or non-Party, that provided Investigation Materials or provides Litigation Materials.

B. Computing Time

17. Unless otherwise specified, time will be computed according to Federal Rule of Civil Procedure 6(a).

C. Persons Bound by This Order

18. This Order is binding on the Parties, their attorneys, successors, representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, contractors, experts, and consultants, all non-Parties providing discovery in this Action, and all other interested persons with actual or constructive notice of this Order, upon pain of contempt.

D. Notice of This Order to Non-Party Protected Persons

19. Within fifteen (15) business days of the Court's entry of this Order, each Party must send by email, overnight mail, or hand delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

20. Any Party that seeks discovery related to this Action from any non-Party must include a copy of this Order when serving a discovery request or subpoena on the non-Party. If any Party sent a discovery request or subpoena to any non-Party prior to entry of this Order, that Party must send a copy of this Order to the non-Party within two (2) business days of entry of this Order.

E. Modifications of This Order

21. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information or Highly Confidential Information, it may, within ten (10) business days after receiving notice of this Order pursuant to Paragraph 19 or Paragraph 20, file a motion seeking additional protection from the Court for its Confidential Information or Highly Confidential Information. If a non-Party Protected Person timely files such a motion, the

information for which additional protection has been sought may not be disclosed until the Court has rendered a decision on the motion, unless the movant and the Parties reach an agreement that permits disclosure of the Confidential Information or Highly Confidential Information while the motion is pending.

22. Nothing in this Order limits any Person, including members of the public, a Party, or an interested non-party, from seeking additional protection or modification of this Order upon a motion duly made according to the Local Rules of this Court, including, without limitation, an order that certain information need not be produced at all or is not admissible evidence in this Action or any other proceeding.

F. Privacy Act

23. This Order, and any subsequent order of this Court governing the United States' production of any documents, data, communications, transcripts of testimony, or other materials in this Action, constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a (b)(11).

II. PROCEDURES FOR DESIGNATING CONFIDENTIAL INFORMATION AND HIGHLY CONFIDENTIAL INFORMATION

A. Designating Highly Confidential Information in Investigation Materials

24. All Investigation Materials or any other materials that are entitled to confidentiality protections pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1313(c) (3), or the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a(h), must be treated as Highly Confidential Information during the Pretrial Period unless that designation is successfully challenged under the procedures set forth in Paragraphs 43-44 below.

B. Designating Confidential Information or Highly Confidential Information in Litigation Materials

25. The following procedures govern the process for Protected Persons (including Parties) to designate Confidential Information or Highly Confidential Information contained in any Litigation Materials. By so designating, the Protected Person (and counsel, if any) represents to the Court that it in good faith believes that the information constitutes Confidential Information or Highly Confidential Information as defined in Paragraphs 2 and 6 of this Order. Any Litigation Materials not designated in the manner required by this Order will not be treated as Confidential Information or Highly Confidential Information, even if such information was subject to a prior designation of confidentiality.

26. Documents Produced in Native Format. When a Protected Person produces electronically stored documents in native file format, the Protected Person must designate any Confidential Information by (a) appending the suffix “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” to the file name or document production number, or (b) including the confidentiality designation in reasonably accessible metadata associated with the file. When documents that were produced in native file format are printed for use during a deposition, for a court proceeding, or for disclosure to any Person described in Paragraphs 34 or 35, the Party printing the file must affix to the printed version a label containing the production number and the confidentiality designation associated with the document.

27. Documents and Data Produced in Hard Copy or Non-Native Format. When a Protected Person produces documents in hard copy, image files, or other non-native file formats, the Protected Person must designate Confidential Information or Highly Confidential Information by stamping or otherwise marking each page or image that contains Confidential

Information with the designation “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” in a manner that will not interfere with legibility.

28. Testimony. All transcripts of depositions taken in this Action will be treated as Highly Confidential Information in their entirety for sixty (60) days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent’s counsel). Within twenty-one (21) days of receiving a final transcript, a Protected Person may designate any portion of a deposition transcript or any portion of a deposition exhibit as containing Confidential Information or Highly Confidential Information by highlighting, stamping, or otherwise clearly marking the information as Confidential or Highly Confidential and by providing for future public use a copy of the deposition transcript and exhibits with the Confidential Information and/or Highly Confidential Information redacted. Any portion of a transcript or portion of a deposition exhibit not designated in the manner required by this Paragraph 28 will not be treated as Confidential Information or Highly Confidential Information, even if the document(s) that became the deposition exhibit(s) or information that is the subject of the deposition testimony was subject to a prior designation of confidentiality.

C. Notice of Confidentiality Designations to the Parties

29. Any designation of Confidential Information or Highly Confidential Information or other written notice to the Parties required by this Order must be provided by email, overnight mail, or hand delivery to the following counsel for the Parties:

For Plaintiff the United States:

Edward Duffy
Bennett Matelson
Michele Trichler
U.S. Department of Justice, Antitrust Division
450 Fifth Street NW, Suite 4000
Washington, DC 20530

Edward.Duffy@usdoj.gov
Bennett.Matelson@usdoj.gov
Michele.Trichler@usdoj.gov

For Defendant Visa Inc.:

Kieran Gostin
Wilkinson Stekloff LLP
2001 M Street NW, 10th Floor
Washington, D.C. 20036
kgostin@wilkinsonstekloff.com

D. Inadvertent Failure to Designate Confidential Information or Highly Confidential Information

30. A Protected Person that produced Litigation Materials prior to receiving a copy of this Order and did not designate such information as Confidential Information or Highly Confidential Information at the time it was produced may subsequently designate such materials as Confidential Information or Highly Confidential Information according to the terms of this Order following receipt of this Order.

31. If at any time prior to the trial of this Action a Protected Person realizes that it inadvertently failed to designate Confidential Information or Highly Confidential Information that it previously produced in Litigation Materials, it may so designate such information by following the procedures of this Order. The Parties must thereafter treat the information according to the Protected Person's new designation; provided, however, that no prior disclosure of newly designated Confidential Information or Highly Confidential Information violates this Order. The disclosure of any information for which disclosure was proper when made will not be deemed improper regardless of any subsequent confidentiality designation.

III. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION

A. Limited Use and Disclosure of Confidential Information and Highly Confidential Information

32. Except as provided by Paragraph 37 of this Order, all Confidential Information and Highly Confidential Information produced by a Party or a non-Party Protected Person as part of this Action may be used solely for the conduct of this Action and must not be used for any business, commercial, competitive, personal, or other purpose. Provided, however, this Order does not preclude another court from finding that Confidential Information or Highly Confidential Information produced in this Action is relevant and subject to disclosure in another case.

33. Any Person that becomes subject to a motion to disclose Confidential Information or Highly Confidential Information protected by this Order in another case must promptly notify the Party or non-Party Protected Person that designated the Confidential Information or Highly Confidential Information of the motion so the Protected Person has an opportunity to appear in the other case and be heard on whether that information should be disclosed.

34. Except as provided by Paragraph 37 or pursuant to a court order, Confidential Information may be disclosed only to the following Persons:

- (a) the Court and all Persons assisting the Court in this Action, including magistrates, law clerks, court reporters, and stenographic or clerical personnel;
- (b) any special master, mediator, arbitrator, trustee, or monitor that the Parties engage in this Action or that this Court appoints;
- (c) counsel for Plaintiff, including any attorneys, paralegals, and other professional personnel employed by Plaintiff (including support and IT staff), and any agents or independent contractors retained by Plaintiff whose functions require access to the information;

(d) Outside Counsel of Record for Defendant, including any attorneys, paralegals, and other professional personnel (including support and IT staff) that such outside counsel assigns to this Action, and agents or independent contractors retained by Defendant to assist in this Action whose functions require access to the information;

(e) persons who are the authors, addressees, recipients, or custodians of the Confidential Information and persons who counsel for a Party believes in good faith previously received or had access to the Confidential Information, unless the person indicates they did not have access to the information;

(f) any Person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated, employees of any firm retained by a Party to assist a testifying or consulting expert in this Action, and independent contractors who assist the expert's work in this Action, provided they first execute an Agreement Concerning Confidentiality in the form attached as Appendix A;

(g) outside vendors or service providers (such as e-discovery vendors, contract attorneys, and printing service providers) retained by a Party to assist that Party in this Action, provided they first execute an Agreement Concerning Confidentiality in the form attached as Appendix A;

(h) outside trial consultants (including, but not limited to, graphics consultants and jury consultants) retained by a Party to assist that Party in this Action, provided they first execute an Agreement Concerning Confidentiality in the form attached as Appendix A;

(i) stenographers engaged to transcribe, and videographers engaged to record, depositions conducted in this Action; and

(j) five in-house attorneys for Defendant, not involved in business decisions, to whom disclosure is reasonably necessary for this litigation and whose names must be disclosed to Plaintiff at least five business days before being given access to Confidential Information, provided that the in-house attorneys must first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto. For purposes of this paragraph, the phrase “involved in business decisions” does not include the rendering of legal advice solely as to litigation, compliance, regulatory, or liability issues related to business decisions. To the extent Defendant seeks to change the five in-house attorneys that may receive access to Confidential Information, Defendant must provide notice to Plaintiff at least 10 business days prior to the effective date of such change.

35. Except as provided by Paragraph 36 or pursuant to a court order, Highly Confidential Information may be disclosed only to the persons set forth in Paragraph 34(a)-(i) above and under the same requirements to execute an Agreement Concerning Confidentiality in the form attached as Appendix A.

36. Each Person identified in Paragraphs 34 and 35 of this Order to whom Confidential Information or Highly Confidential Information is disclosed may not disclose that Confidential Information or Highly Confidential Information to any other Person, except as otherwise provided by this Order.

37. Nothing in this Order:

(a) limits a Protected Person’s use or disclosure of its own Confidential Information or Highly Confidential Information;

(b) prevents disclosure of Confidential Information or Highly Confidential Information with the consent of the Protected Person that designated the material;

(c) prevents disclosure by a Party of Confidential Information or Highly Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) that was lawfully acquired by or known to that Party independent of receipt during the Investigation or this Action; (iii) that was previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to a court order;

(d) requires Plaintiff to withdraw or redact the Complaint; or

(e) prevents the United States' retention, use, or disclosure of Confidential Information or Highly Confidential Information outside the context of this Action (i) to the extent permitted or required by law, court order, or regulation; or (ii) for law enforcement purposes, including for the purpose of securing compliance with a Final Judgment in this Action and in other legal proceeding in which the United States is a party.

B. Inadvertent Disclosure of Confidential Information

38. In the event Confidential Information or Highly Confidential Information is disclosed to a Person not authorized to receive it under this Order, the Party responsible for the disclosure must promptly notify the Protected Person whose Confidential Information or Highly Confidential Information has been disclosed and provide all known relevant information concerning the nature and circumstances of the disclosure. The Party responsible for the disclosure must also promptly take all reasonable measures to retrieve the improperly disclosed material and ensure there is no additional unauthorized disclosure or use of the information.

39. Unauthorized or inadvertent disclosure of Confidential Information or Highly Confidential Information does not change the confidential status of any disclosed material or waive the Protected Person's right to maintain the disclosed material as Confidential Information or Highly Confidential Information.

C. Motions to Seal Pretrial Court Filings

40. After the entry of this Order, during the Pretrial Period if any Confidential Information or Highly Confidential Information is included in a pleading, motion, exhibit, or other paper filed with the Court, the filing Party must file such Confidential Information or Highly Confidential Information under seal. The Protected Person that designated the material as Confidential Information or Highly Confidential Information may not oppose the filing of such Confidential Information or Highly Confidential Information under seal. The Parties and any Protected Person must comply with Section VI of the Court's Individual Practices, the Court's standing order, 19-mc-00583, and ECF Rules & Instructions, section 6, with respect to seeking Court approval for sealing and/or redacting filings.

41. Filing another Person's Confidential Information or Highly Confidential Information under seal does not constitute agreement by the filing Party that the information is properly designated, and nothing in this Order should be construed to prevent a Party from later challenging the confidentiality designation of information that was previously filed under seal.

D. Challenging Confidentiality Designations During the Pretrial Period

42. This Order does not preclude or prejudice a Protected Person or Party from arguing for or against any confidentiality designation, establish any presumption that a particular confidentiality designation is valid, or alter the burden of persuasion that would otherwise apply in a dispute over whether something constitutes Confidential Information or Highly Confidential Information.

43. During the Pretrial Period, any Party that objects to the treatment or designation of Investigation Materials or Litigation Materials as Confidential Information or Highly Confidential Information—including a new confidentiality designation made pursuant to Paragraph 31—may provide written notice to the Protected Person who made the designation

and to all Parties identifying the challenged designation and stating with particularity the grounds for its objection. All materials objected to must continue to be treated as Confidential Information or Highly Confidential Information pending resolution of the dispute by agreement between the objecting Party and the Protected Person or by the Court.

44. If the objecting Party and the Protected Person cannot reach agreement within fourteen (14) days of the Party's written notice, the Protected Person may file a motion for a protective order with the Court to maintain the confidentiality of the challenged material. The Protected Person bears the burden of persuading the Court that the material is Confidential Information or Highly Confidential Information as defined in Paragraphs 2 and 6 of this Order. If the Protected Person fails to timely address the dispute to the Court in accordance with this Paragraph 44, or if the Court finds the designation inapplicable, the information will no longer be treated as Confidential Information or Highly Confidential Information in this Action.

IV. USE OF CONFIDENTIAL INFORMATION AND HIGHLY CONFIDENTIAL INFORMATION AT TRIAL AND IN POST-TRIAL FILINGS

A. Notice to Non-Party Protected Persons of Confidential Information and Highly Confidential Information to be Used at Trial

45. Within seven (7) days of the Parties' exchange of their preliminary trial exhibit lists, the Parties must notify any non-Parties (or the non-Party's counsel if represented by counsel) that produced any of the exhibits on their preliminary trial exhibit lists. The notification must identify the exhibit(s) produced by the non-Party and include a copy of this Order.

46. Within seven (7) days of the Parties' exchange of their preliminary deposition designations, the Parties must notify any non-Party deponents (or the deponent's counsel, if represented by counsel) whose testimony appears in their preliminary deposition designations. The notification must identify the designated deposition testimony and include a copy of this Order.

B. Sealing Confidential Information and Highly Confidential Information at Trial

47. The Parties must meet and confer in good faith with each other and with any affected non-Party Protected Person regarding the disclosure and use of Confidential Information or Highly Confidential at Trial before filing any motions with the Court to seal Confidential Information or Highly Confidential Information at Trial.

48. No later than twenty-one (21) days before the Final Pretrial Conference in this Action, any Party or non-Party Protected Person that seeks to prevent its Confidential Information or Highly Confidential Information contained in a trial exhibit or designated deposition testimony from being disclosed on the public record at Trial must file a motion with the Court seeking to seal such information at Trial by following the procedures set forth in the Court's Individual Practices, Section VI, Standing Order 19-mc-00583, and ECF Rules & Instructions, section 6. The movant bears the burden of persuading the Court that the material should be sealed at Trial. Any opposition to a motion to seal must be filed within fourteen (14) days after the motion is filed. Replies to a motion to seal may only be filed with leave of the Court upon a showing of good cause.

49. If the Court grants a motion to seal brought pursuant to Paragraph 48, the Confidential Information or Highly Confidential Information that is the subject of the motion must be sealed and not made available on the public record for purposes of all arguments, presentations, and witness examinations at Trial, unless the Court orders otherwise.

50. Absent a ruling by the Court granting a motion to seal brought pursuant to Paragraph 48, any information previously designated by a Protected Person as Confidential Information or Highly Confidential Information that appears on any Party's final trial exhibit list or final deposition designations, and that is admitted into evidence at trial, will no longer be

treated as Confidential Information or Highly Confidential Information under the terms of this Order, will be disclosed on the public record, and any arguments, presentations, and witness examinations about such information likewise will be disclosed on the public record.

C. Sealing Post-trial Court Filings

51. If a Party includes in any post-trial motion, brief, findings of fact, conclusions of law, or other paper filed with the Court any documents, data, testimony, or other materials or information that were sealed during Trial under the terms of this Order or any other Order of the Court, the Party must file such information under seal. The Protected Person that requested sealing of such information during Trial may not oppose the motion to file under seal and the filing Party need not meet and confer with the Protected Person before filing the Confidential Information or Highly Confidential Information under seal.

52. Any information that appears on any Party's final trial exhibit list or final deposition designations and was admitted into evidence at trial that was not sealed during Trial under the terms of this Order or any other order of the Court need not be sealed in any post-trial motion, brief, findings of fact, conclusions of law, or other paper filed with the Court and may be disclosed on the public record.

V. INADVERTENT PRODUCTION OF PRIVILEGED INFORMATION

53. The disclosure of any Investigation Materials or Litigation Materials subject to attorney-client privilege, deliberative process privilege, work-product protection, or other applicable legal or evidentiary privilege ("Privileged Material") is not a waiver in this Action or in any other federal or state proceeding, provided that (a) the disclosure was inadvertent; (b) the Person that disclosed the Privileged Material used reasonable efforts to prevent such disclosure; and (c) the Person that disclosed the Privileged Material promptly took reasonable steps to rectify the error, including following Federal Rule of Civil Procedure 26(b)(5)(B).

54. The Person asserting the privilege bears the burden of proof with respect to a claim or assertion of privilege. A Person claiming inadvertent production of Privileged Material must first make a good-faith determination that such materials are privileged or otherwise protected from disclosure under applicable law and rules. The Person must then promptly notify all Parties that received the Privileged Material and provide sufficient information for such Parties to assess the claim of privilege, in the form of a privilege log as outlined in Federal Rule of Civil Procedure 26(b)(5). If a receiving Person discovers a document that it believes to be Privileged Material, the receiving Person must promptly notify the designating Person; provided, however, that no Person will be found to have violated this Order for failing to recognize inadvertently produced Privileged Material.

55. After discovering or being notified of a claim of inadvertent production of Privileged Material, any receiving Person (a) may not use or disclose the Privileged Material until the claim is resolved, except as permitted by Federal Rule of Civil Procedure 26(b)(5), (b) must return, sequester, or destroy all copies of the Privileged Material in its possession, and (c) must take reasonable steps to retrieve the Privileged Material from any Person(s) to whom the receiving Person disclosed it before being notified of or discovering the inadvertent production. The designating Person must retain a copy of the Privileged Material until the resolution or termination of this Action.

VI. PROCEDURES UPON TERMINATION OF THIS ACTION

56. The obligations imposed by this Order survive the termination of this Action unless the Court orders otherwise.

57. Within ninety (90) days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received Confidential Information or Highly Confidential Information must make a good faith effort to return all copies

of such Confidential Information or Highly Confidential Information that has not otherwise been made public during this Action to the Protected Person that produced it (or the Protected Person's counsel, if represented by counsel), or to destroy or delete all copies of such Confidential Information or Highly Confidential Information, unless the Confidential Information or Highly Confidential Information may be retained pursuant to Paragraph 37, Paragraph 59, or Paragraph 60. All Confidential Information or Highly Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in accordance with this Order.

58. Within ninety (90) days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received Confidential Information or Highly Confidential Information must certify compliance with Paragraph 57 of this Order in writing to the Party or Protected Person that produced the Confidential Information or Highly Confidential Information.

59. Counsel for the Parties will be entitled to retain court papers, deposition, hearing, and trial transcripts and exhibits, and work product containing Confidential Information or Highly Confidential Information, provided that the Parties and their counsel do not disclose the portions of those materials containing Confidential Information or Highly Confidential Information except pursuant to a court order or with the consent of the Protected Person that produced the Confidential Information or Highly Confidential Information, or as otherwise permitted by this Order.

60. Expert witnesses for the Parties, and any firm retained by a Party to assist an expert witness in this Action will be entitled to retain their own expert reports, their own deposition and trial transcripts and exhibits, and their own work product, even if such materials

contain Confidential Information or Highly Confidential Information, provided such Persons have executed Appendix A to this Order and do not disclose the portions of those materials containing Confidential Information or Highly Confidential Information except pursuant to a court order or with the consent of the Protected Person that produced the Confidential Information or Highly Confidential Information.

61. Counsel for a Party that disclosed Confidential Information or Highly Confidential Information to a Person identified in Paragraph 34 subparagraphs (f), (g), or (h) and Paragraph 35 of this Order must obtain and retain the signed version of the Agreement Concerning Confidentiality in the form attached as Appendix A for a period of at least one year following the termination of this Action.

62. This Court retains jurisdiction to resolve any disputes arising out of this Order after termination of this Action.

63. This Order is not binding on the Court or Court personnel. The Court reserves the right to amend it at any time.

Dated: December 16, 2024

Agreed By:

<p><u>/s/ Edward Duffy</u> Edward Duffy Bennett J. Matelson Michele Trichler United States Department of Justice Antitrust Division 450 Fifth Street, N.W., Suite 4000 Telephone: (202) 812-4723 Facsimile: (202) 514-7308 Edward.duffy@usdoj.gov Bennett.Matelson@usdoj.gov Michele.Trichler@usdoj.gov</p> <p><i>Counsel for Plaintiff, the United States</i></p>	<p><u>/s/ Beth A. Wilkinson</u> Beth Wilkinson (SBN NY 2181592) Brian Stekloff (<i>admitted pro hac vice</i>) Kieran Gostin (SBN NY 4847653) Roxana Guidero (<i>admitted pro hac vice</i>) WILKINSON STEKLOFF LLP 2001 M Street NW, 10th Floor Washington, DC 20036 Telephone: (202) 847-4000 Facsimile: (202) 847-4005 bwilkinson@wilkinsonstekloff.com bstekloff@wilkinsonstekloff.com kgostin@wilkinsonstekloff.com rguidero@wilkinsonstekloff.com</p> <p>Anne P. Davis (<i>admitted pro hac vice</i>) Jonathan Ian Gleklen (<i>admitted pro hac vice</i>) ARNOLD & PORTER KAYE SCHOLER LLP 601 Massachusetts Avenue NW Washington, D.C. 20001 Telephone: (202) 942-6197 Facsimile: (202) 942-5999 anne.davis@arnoldporter.com jonathan.gleklen@arnoldporter.com</p> <p><i>Counsel for Defendant Visa Inc.</i></p>
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SO ORDERED this 17 of December, 2024



U.S. District Judge

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

Plaintiff,

v.

VISA INC.

Defendant.

Case No. 1:24-cv-07214-JGK-SLC

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____ in the position of

_____. I certify as follows.

1. I have read the Protective Order entered in the above-captioned action and understand its terms.

2. I agree to be bound by the terms of the Protective Order. I agree to use the information provided to me only as explicitly permitted by the Protective Order.

3. I understand that my failure to abide by the terms of the Protective Order will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of this Court solely for the purpose of enforcing the terms of the Protective Order and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of this Court.

Dated: _____, 20__

Signed: _____