

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Julie Golden
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1. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information produced or disclosed during this proceeding, captioned as *Consumer Data Industry Association v. State of Texas Through Ken Paxton, In His Official Capacity As Attorney General For The State of Texas*, Case No. 1:19-CV-00876-RP (the “Litigation”). This Protective Order does not govern any trial proceedings in

this Litigation but will otherwise be applicable to and govern all materials produced, adduced, or obtained in the course of discovery pursuant to the Federal Rules of Civil Procedure and this Court's Local Rules, the Joint Discovery Plan, or other legal process, including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any party to this Litigation (the "Producing Party") to any other party (the "Receiving Party").

2. This Protective Order is binding upon all the Parties to this Litigation, including their respective corporate parents, subsidiaries, and affiliates and their respective attorneys, principals, agents, experts, consultants, representatives, directors, officers, and employees, and others as set forth in this Protective Order. Third parties who so elect may avail themselves of, and agree to be bound by, the terms and conditions of this Protective Order and thereby become a Producing Party for purposes of this Protective Order.

3. This Protective Order is entered solely for the purpose of facilitating the exchange of documents and information among the Parties to this litigation without involving the Court unnecessarily in the process. The entry of this Protective Order does not preclude any Party from seeking a further order of this Court pursuant to Federal Rule of Civil Procedure 26. Nothing in this Protective Order, nor the production of any information or document under the terms of this Protective Order, nor any proceedings pursuant to this Protective Order shall be deemed a waiver of any rights or objections to challenge the authenticity or admissibility of any document, testimony or other evidence at trial. This Protective Order will not prejudice the right of any party or nonparty to oppose production of any information on the grounds of attorney-client privilege, work product doctrine, or any other privilege or protection provided under the law.

4. This Protective Order does not confer blanket protection on all disclosures or responses to discovery and the protection it affords extends only to the specific information or items that are entitled to protection under the applicable legal principles for treatment as confidential.

5. **DEFINITIONS.** In this Stipulation and Protective Order, the words set forth below shall have the following meanings:

- a. “Party” means any of the parties in this Litigation at the time this Protective Order is entered, including officials, officers, and directors of such parties. If additional parties are added other than parents, subsidiaries, or affiliates of current parties to this Litigation, then their ability to receive Confidential Information and/or Highly Confidential Information as set forth in this Protective Order will be subject to them being bound, by agreement or Court Order, to this Protective Order.
- b. “Discovery Material” means any information, document, or tangible thing, response to discovery requests, deposition testimony or transcript and any other similar materials or portions thereof, obtained produced or disclosed in discovery.
- c. “Computerized Material” means any matter stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, Internet sites, discs, networks, or tapes).
- d. “Confidential Material” or “Confidential Information” (collectively, “Confidential Materials”) means documents, records, and information that a Party believes in good faith are entitled to confidential treatment pursuant to Fed. R. Civ. P. 26(c)

and/or applicable state law. In providing or revealing information, documents or other material in this case, any party may designate as “CONFIDENTIAL” the whole or any part of such information, documents or other material which constitutes trade secrets, know-how, proprietary data, marketing information, contacts, financial information, personally identifiable information, and/or similar commercially sensitive business information or data, or otherwise non-public information, which the designating party in good faith believes in fact is confidential or that unprotected Disclosure might result in economic or competitive injury, and which is not publicly known and cannot be ascertained through an inspection of publicly available documents, materials, or devices. The Confidential designation shall be made by stamping such documents as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER”. Any copies, summaries, abstracts, or exact duplications of Confidential Information shall be marked “Confidential” and is subject to the terms and conditions of this Order. Attorney-client communications and attorney work product regarding Confidential Information shall not be subject to this Paragraph, regardless of whether they summarize, abstract, paraphrase, or otherwise reflect Confidential Information. Public records and other information or documents that are publicly available are not considered Confidential Information. A Producing Party may not designate as “Confidential” materials which it has disclosed to others without restriction or materials that are publicly available.

- e. “Producing Party” means a Party to this Litigation, and all employees, agents, and directors (other than Counsel) of the Party or any third party that produces or

otherwise makes available Discovery Material to a Receiving Party, subject to Paragraph 3.

- f. “Receiving Party” means a Party to this Litigation, and all employees, agents, and directors (other than Counsel) of the Party who receive Discovery Material from a Producing Party.
 - g. “Outside Counsel” means any law firm or attorney who represents any Party for purposes of this Litigation.
 - h. “In-House Counsel” means attorney employees of any Party.
 - i. “Counsel,” without another qualifier, means Outside Counsel and In- House Counsel.
 - j. “Independent Expert” means an expert and/or independent consultant formally retained, and/or employed to advise or to assist Counsel in the preparation and/or trial of this Litigation, and their staff who are not employed by a Party to whom it is reasonably necessary to disclose Confidential Information for the purpose of this Litigation.
6. All “Confidential Materials” produced by any party or nonparty in this Litigation shall be used by the Party receiving them only for the purposes of preparing for and conducting the Litigation.
7. The use of Confidential Materials during the pre-trial hearing shall be determined by agreement of the parties or by Order of the Court.
8. Each Party that designates information or items for protection under this Protective Order shall do so in good faith consistent with the provisions of this Protective Order

and rulings of the Court. Indiscriminate designations are prohibited. Nothing herein shall be construed to allow for global designations of all documents as “CONFIDENTIAL.”

9. DESIGNATING A DOCUMENT, COMPUTERIZED MATERIAL, OR DEPOSITION AS CONFIDENTIAL.

- a. For each document produced by the Producing Party that contains or constitutes Confidential Materials pursuant to this Protective Order, each page shall be marked “CONFIDENTIAL.” To the extent that Computerized Material is produced by any Party in such form, the Producing Party may designate such matters as confidential by a designation of “CONFIDENTIAL” on the media. Whenever any Party to whom Computerized Material designated as “CONFIDENTIAL” is produced reduces such material to hardcopy form, that Party shall mark the hardcopy form with the corresponding “CONFIDENTIAL” designation.
- b. Specific discovery responses produced by the Producing Party shall, if appropriate, be designated as Confidential Information by marking the pages of the document that contain such information with the notation “CONFIDENTIAL” or comparable notices.
- c. Confidential Material disclosed through testimony at a deposition taken in connection with this Litigation may be designated as “Confidential” by either:
 - i. Identifying on the record, before the close of the deposition, all Confidential Information Testimony, by specifying all portions of the Testimony that qualify as “Confidential”; or

- ii. Designating the entirety of the Testimony at the deposition as “Confidential” (before the deposition is concluded) with the right to identify more specific portions of the Testimony as to which protection is sought within 30 days following receipt of the deposition transcript. In circumstances where portions of the deposition Testimony are designated for protection, the transcript pages containing Confidential information may be separately bound by the court reporter, who must affix at the top of each page the legend “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER,” as instructed by the producing party.

10. **USE OF A CONFIDENTIAL DOCUMENT IN COURT.** To the extent any motion, briefs, pleadings, deposition transcripts, or other papers to be filed with the Court incorporate documents or information subject to this Order, the party filing such papers shall designate such materials, or portions thereof, as “Confidential,” and shall file them with the clerk under seal pursuant to this Court’s local rule governing the filing of sealed documents. If a Party believes that material has been designated as “CONFIDENTIAL” and cannot or should not be sealed, pursuant to this Court’s local rules, then the Party wishing to file the materials shall particularly identify the documents or information that it wishes to file to the Producing Party, in writing. The Parties will then meet and confer, in a good faith effort to resolve the dispute. Failing agreement, the Party wishing to file the materials must request a ruling from the Court on whether the Confidential Material in question must be submitted under seal. The Producing Party shall have the burden of justifying that the materials must be submitted under seal. Absent

written permission from the Producing Party or a court Order denying a motion to seal, a Receiving Party may not file in the public record any Confidential Material.

11. **SECURED STORAGE OF CONFIDENTIAL INFORMATION.** Confidential Materials must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

12. **SECURED TRANSFER/MAILING OF CONFIDENTIAL INFORMATION.** When any Receiving Party ships any Confidential Materials to others designated in this Order as authorized to receive Confidential Materials, the Receiving Party will encrypt any electronic data (if the Confidential Material is in that format) and supply the password in separate correspondence to the recipient. If the Confidential Material is in hard copy/paper form, the Receiving Party will ship the Confidential Material using secure packaging tape via Federal Express or UPS and retain a tracking number for the materials. If the Receiving party learns at any time that Confidential Material may have been retrieved or viewed by unauthorized parties during shipment, it will immediately notify the Producing Party and take all reasonable measures to retrieve the improperly disclosed Confidential Material.

13. **USE OF A PRODUCING PARTY'S OWN CONFIDENTIAL MATERIAL.** Nothing in this Order shall restrict in any way a Producing Party's use or disclosure of its own Confidential Material. Nothing in this Order shall restrict in any way the use or disclosure of Confidential Material by a Receiving Party: (i) that is or has become publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known to the Receiving Party independent of the Producing Party; (iii) that was previously produced, disclosed and/or provided by the Producing Party to the Receiving Party or a non-party without an obligation of

confidentiality and not by inadvertence or mistake; (iv) with the consent of the Producing Party; or (v) pursuant to Order of the Court.

14. **WHO MAY RECEIVE A CONFIDENTIAL DOCUMENT.** In the absence of written permission from the Producing Party or an order of the Court, any Confidential Materials produced in accordance with this Order shall be used solely for purposes of this Litigation and shall only be disclosed or made available by the counsel for the party receiving such materials to “Qualified Persons,” who are defined as:

- a. Outside Counsel and In-House Counsel, and the attorneys, paralegals, stenographic, and clerical staff employed by such counsel;
- b. The Parties themselves, corporate officers, in-house counsel, and key employees of the Parties who have responsibility for directing or assisting litigation counsel in connection with this action;
- c. The Court and its personnel, although any documents that are filed with the Court and reference or attach any information or document labeled “CONFIDENTIAL” must be filed pursuant to the sealing rules described in Paragraph 10, above;
- d. Any outside expert or consultant formally retained by the Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to perform such work; and provided that such expert or consultant has agreed to be bound by the provisions of the Protective Order by signing a copy of Exhibit A;
- e. Court reporters, stenographers and videographers retained to record testimony taken in this action;
- f. Deposition and trial witnesses, and attorneys for witnesses, in this action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that

the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any Protected Material unless they sign a copy of Exhibit A, unless otherwise agreed by the Producing Party or ordered by the court;

- g. A vendor hired by a party to collect documents, host data, maintain a database of electronic data or perform other work related to the collection, review or production of documents in the case, if the vendor's employees having access to the data or documents sign the certificate attached as Exhibit A; and
- h. Any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order.

15. A Party may not disclose to mock jurors any original, as-produced materials or information (including, for example, documents, deposition testimony, or interrogatory responses) produced by another Party designated as "CONFIDENTIAL" unless that mock juror has signed a copy of Exhibit A. Mock jurors shall not be permitted to take any Confidential Material with them at the end of the exercise and may not at any time take Confidential Materials out of the offices where the mock trial is conducted.

16. In the event of a disclosure of any Confidential Material pursuant to this Order to any person or persons not authorized to receive such disclosure under this Protective Order, the party responsible for having made such disclosure, and each party with knowledge thereof, shall immediately notify counsel for the Producing Party whose Confidential Material has been disclosed and provide to such counsel all known relevant information concerning the nature and circumstances of the disclosure. The responsible disclosing party shall also promptly take all

reasonable measures to retrieve the improperly disclosed Confidential Material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

17. Unauthorized or inadvertent disclosure does not change the status of Confidential Material or waive the right to hold the disclosed document or information as Protected.

18. **CHALLENGING A CONFIDENTIAL DESIGNATION.** A Receiving Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed. If the Receiving Party believes that any discoverable material is improperly designated as CONFIDENTIAL, the Receiving Party will identify the specific information that it believes is improperly designated and notify the Producing Party, in writing, of its good faith belief that the confidentiality designation was not proper and must give the Producing Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain, in writing within seven calendar days, the basis of the chosen designation. If a Receiving Party elects to challenge a confidentiality designation after considering the justification offered by the Producing Party, it shall arrange for a meet and confer conference to be held within ten calendar days to attempt to informally resolve the dispute. If the parties cannot resolve the matter, the Receiving Party may file a motion with the Court to resolve the dispute. Such motions must be filed within fourteen calendar days of the meet and confer conference. This Protective Order will not affect the burden of proof on any such motion or impose any burdens upon any party that would not exist had the Protective Order not been entered; as a general matter, the burden shall be on the Producing Party to establish good cause for preventing such disclosure. Until the Court rules on the challenge, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation. In the event that a

designation is changed by the Producing Party or by Court Order, the Producing Party shall provide replacement media, images, and associated production information as provided above.

19. INADVERTENT FAILURE TO DESIGNATE A DOCUMENT AS CONFIDENTIAL. The inadvertent failure by a Producing Party to designate Confidential Material with the correct confidentiality designation, shall not waive any such designation. If the Producing Party notifies all Receiving Parties of an inadvertent failure to designate materials as “CONFIDENTIAL,” the Producing Party shall reproduce the Confidential Material with the correct confidentiality designation within ten days upon its notification to the Receiving Party. Upon receiving the Confidential Material with the correct confidentiality designation, the Receiving Parties shall destroy all Confidential Material that was not designated properly.

- a. A Receiving Party shall not be in breach of this Order for any use of such inadvertently-non-designated or inadvertently-misdesignated Confidential Material before the Receiving Party receives notice of the inadvertent failure to designate. Once a Receiving Party has received notice of the inadvertent failure to designate pursuant to this provision, the Receiving Party shall treat such Confidential Material as Confidential pursuant to the terms of this Protective Order.

20. THIRD-PARTY REQUESTS. If Confidential Materials in the possession of a Receiving Party are subject to a third-party request pursuant to public records law or a subpoena by any court, administrative or legislative body, or any other person or entity purporting to have authority to subpoena such information and the Party to whom the request or subpoena is directed shall give written notice thereof (including the delivery of a copy thereof) to the attorneys for the Producing Party immediately, and in no event more than seven (7) calendar

days after receiving the request or subpoena. In the event that the request or subpoena purports to require production of such Confidential Materials in less than seven (7) calendar days' notice, the party to whom the request or subpoena is directed shall give prompt telephonic notice of the recipient thereof, and forthwith deliver by hand or email a copy thereof, to the attorneys for the Producing Party. With respect to a subpoena, absent a court order to the contrary, the party to whom such subpoena is directed may comply therewith, however, if application for a protective order is made promptly before the return date, the party to whom the request or subpoena is directed shall not produce such Confidential Materials prior to receiving a court order or the consent of the Producing Party. The Parties agree and acknowledge that nothing in this paragraph is intended to waive a party's right to challenge the appropriateness of the confidentiality designation. The Receiving Party to which the third-party request or subpoena is directed must immediately inform the party ("Requesting Party") who made the Request in writing that some or all of the requested material is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Protective Order promptly to the Requesting Party.

21. INADVERTENT DISCLOSURE OF PRIVILEGED INFORMATION. The Parties agree that they do not intend to disclose information subject to a claim of attorney-client privilege, attorney work product protection, common-interest privilege, or any other privilege, immunity or protection from production or disclosure ("Privileged Information"). If, nevertheless, a Producing Party discloses Privileged Information, such disclosure (as distinct from use) shall be deemed inadvertent without need of further showing and shall not constitute or be deemed a waiver or forfeiture of the privilege or protection from discovery in this case or any other federal or state proceeding by that party ("Disclosing Party")

- a. If a Party or non-party discover that it has produced Privileged Information, it shall promptly notify the Receiving Party of the production in writing, shall identify the produced Privileged Information by Bates range, and may demand that the Receiving Party return or destroy the Privileged Information. In the event that a Receiving Party receives information that it believes is subject to a good faith claim of privilege by the Producing Party, the Receiving Party shall immediately refrain from examining the information and shall promptly notify the Disclosing Party in writing that the Receiving Party possesses potentially Privileged Information. The Disclosing Party shall have seven calendar days to assert a privilege over the identified information. If the Disclosing Party does not assert a claim of privilege within the seven day period, the information in question shall be deemed non-privileged.
- b. If the Disclosing Party has notified the Receiving Party of production or has confirmed the production called to its attention by the Receiving Party, the Receiving Party shall within fourteen calendar days of receiving such notification or confirmation: 1) destroy or return to the Disclosing Party all copies or versions of the produced Privilege information; 2) delete from its work product or other materials any quoted or paraphrased portions of the produced Privilege Information; and 3) ensure that Privileged Information is not disclosed in any manner to any Party or non-party.
- c. The following procedures shall be followed to ensure all copies of such Electronically Stored Information (ESI) are appropriately removed from the Receiving Party's system:

- i. Locate each recalled document and any additional copies thereof, whether electronic or hard copy, in the document review/production database and delete the record from the database; and
 - ii. Confirm that the recall of ESI under this procedure is complete by way of letter to the party seeking to recall ESI.
- d. Within fourteen calendar days of the notification that such Privileged Information has been returned, destroyed, sequestered, or deleted (“Claw-Back Information”), the Disclosing Party shall produce a privilege log with respect to the Clawed-Back Information. After receiving the Disclosing Party’s privilege log with respect to such Clawed-Back Information, a receiving party may notify the Disclosing Party in writing of an objection to a claim of privilege and set a meet and confer pursuant to the Federal Rules of Civil Procedure within ten calendar days with respect to the Clawed-Back Information.
- e. If for any reason, the Disclosing Party and Receiving Party do not resolve their disagreement after conducting the meet and confer, the Receiving Party may file a motion with the Court to resolve the dispute.
- f. Nothing in this Order overrides an attorney’s ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Disclosing Party that such materials have been produced. The inadvertent production of any Protected Material without a confidentiality designation shall not constitute a waive of any claim of confidentiality.

22. **HANDLING OF CONFIDENTIAL MATERIAL AFTER TERMINATION OF LITIGATION.** Not later than ninety days after the final disposition of this case, each Party shall return all Confidential Material of a Producing Party to the respective outside counsel of the Producing Party or destroy such Material, at the option of the Producing Party. For purposes of this Order, “final disposition” occurs after an order, mandate, or dismissal finally terminating the above-captioned action with prejudice, including all appeals.

23. **SURVIVAL OBLIGATIONS.** The Parties agree that the terms of this Protective Order shall survive and remain in effect after the termination of the above-captioned matter. The Court shall retain jurisdiction for one year after termination of this matter to hear and resolve any disputes arising out of this Protective Order.

24. Nothing in this Protective Order or any action or agreement of a party under this Protective Order limits the Court's power to make any orders that may be appropriate with respect to the use and disclosure of any documents produced or use in discovery or at trial.

25. Nothing in this Protective Order is intended to either expand or limit a prevailing party's right under the federal rules to pursue costs and attorneys' fees incurred related to confidentiality designations or the abuse of the process described herein.

26. In the event anyone shall violate or threaten to violate the terms of this Protective Order, the Producing Party may immediately apply to obtain injunctive relief against any person violating or threatening to violate any of the term of this Protective Order, and in the event the Producing Party shall do so, the respondent person, subject to the provisions of this Protective Order, shall not employ as a defense thereto the claim that the Producing Party possesses an adequate remedy at law. Moreover, the Parties and nonparties acknowledge and agree that unauthorized use and/or disclosure of Confidential Material shall subject the offending party or

nonparty to sanctions contemplated by the Federal Rules of Civil Procedure, up to and including entry of judgment against the offending party in circumstances involving willful disobedience with this Order.

DONE AND ORDERED this 22nd day of May, 2024.


United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Texas on _____, 2024 in the case of *Consumer Data Industry Association v. State of Texas Through Ken Paxton, In His Official Capacity As Attorney General For The State of Texas*, Case No. 1:19-CV-00876-RP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State Where Sworn and Signed: _____

Printed Name: _____

Signature: _____