

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

UNILOC 2017 LLC,

Plaintiff,

vs.

PAYCHEX, INC.,

Defendant.

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Civil Action No. 1:19-CV-11272-RGS

PROTECTIVE ORDER

WHEREAS, Plaintiff Uniloc 2017 LLC (“Uniloc”), and Defendant Paychex, Inc. (“Paychex”), (Plaintiff and Defendant hereinafter collectively referred to as “the Parties”), believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document,

information or material as follows: “CONFIDENTIAL.” The word “CONFIDENTIAL” shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word “CONFIDENTIAL” shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL.”

2. Any document produced under Local Rule 16.6 before issuance of this Order with the designation “Confidential,” “Confidential Pursuant to the Court’s Default PO,” or “Confidential - Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “RESTRICTED - ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is redesignated to have a different classification under this Order.

3. With respect to documents, information or material designated “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” (“DESIGNATED MATERIAL”),¹ subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing, or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings, and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests,

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE,” both individually and collectively.

and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (*i.e.*, “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE”) may be made at any time. Inadvertent or unintentional production of documents, information, or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the Producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.

5. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 13 herein:

- (a) for each of the individual consolidated actions respectively, outside counsel of record for the Receiving Party in that particular action (“Action”);
- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of that Action;
- (c) up to and including three in-house counsel for the Receiving Party in that action who either have responsibility for making decisions dealing directly with the litigation of that Action, or who are assisting outside counsel in the litigation of that Action; such persons shall not be provided with copies of materials that are designated “RESTRICTED CONFIDENTIAL SOURCE CODE,”

- (d) up to and including three designated representatives of the Receiving Party in that Action to the extent reasonably necessary for the litigation of the Action, except that either Party may in good faith request the other Party's consent to designate one or more additional representatives, the other Party shall not unreasonably withhold such consent, and the requesting Party may seek leave of Court to designate such additional representative(s) if the requesting Party believes the other Party has unreasonably withheld such consent; such persons shall not be provided with copies of materials that are designated "RESTRICTED - ATTORNEYS' EYES ONLY," or "RESTRICTED CONFIDENTIAL SOURCE CODE,"
- (e) outside consultants or experts (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of the Action, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than the Action, or other patent litigation; (2) before access is given, the consultant or expert has completed the Undertaking attached as Exhibit A hereto and the same is served upon the Producing Party with a current curriculum vitae of the consultant or expert at least ten days before access to the Protected Material is to be given to that consultant; and (3) the Producing Party did not object to and notify the Receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order;
- (f) independent litigation support services, including persons working graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of the Action; such persons shall not be provided with copies of materials that are designated "RESTRICTED - ATTORNEYS' EYES ONLY" or "RESTRICTED CONFIDENTIAL SOURCE CODE," and
- (g) the Court and its personnel.

6. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information, or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

7. Documents, information, or material produced pursuant to any discovery request in the particular Action, and designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of the particular Action in which the information was disclosed and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries, or descriptions of such DESIGNATED MATERIAL or any portion thereof, except as may be reasonably necessary in the litigation of the Action in which the information was produced. Any such copies, duplicates, extracts, summaries, or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material “RESTRICTED - ATTORNEYS’ EYES ONLY,” or to the extent such Protected Material includes computer source code or live data (that is, data as it exists residing in a database or databases) (“Source Code Material”), the producing Party may designate such Protected Material as “RESTRICTED CONFIDENTIAL SOURCE CODE.”

9. For Protected Material designated RESTRICTED -- ATTORNEYS’ EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals specified in paragraph 5(a)-(b) and (e) - (g) above.

10. For Protected Material designated RESTRICTED CONFIDENTIAL SOURCE CODE, the following additional restrictions apply:

- (a) Access to a Party’s Source Code Material shall be provided only on “stand-alone”

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