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David W. Slayton,  
Executive Officer/Clerk of Court,  
By J. Tang, Deputy Clerk

5 Attorneys for Specially-Appearing Defendants  
6 NORTHERN DATA US, INC., and  
7 NORTHERN DATA US HOLDINGS, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 JOSHUA PORTER, an individual, and  
12 GULSEN KAMA, an individual,

13 Plaintiffs,

14 v.

15 NORTHERN DATA US, INC., a Delaware  
corporation; NORTHERN DATA US  
16 HOLDINGS, INC., a Delaware corporation;  
and DOES 1 through 10, inclusive,

17 Defendants.

Case No. 24STCV05852

**APPLICATION FOR SEALING OF  
PORTIONS OF FILED DOCUMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

[Filed concurrently with Declaration of Keiko  
J. Kojima; Stipulation for Sealing; and  
[Proposed] Order]

Action Filed: March 8, 2024  
Trial Date: n/a

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19 TO THE COURT AND ALL PARTIES:

20 PLEASE TAKE NOTICE that Defendants Northern Data US, Inc. and Northern Data US  
21 Holdings, Inc. (“Defendants”) hereby apply for an order to seal portions of the Complaint filed in  
22 this action on March 8, 2024, with the Redacted Complaint (“Exhibit “1” to Declaration of Keiko  
23 J. Kojima) to remain on the public docket.

24 Defendants contest personal jurisdiction in California, particularly as to the claims of  
25 Plaintiff Gulsen Kama, a former New Jersey resident who had been employed by Northern Data in  
26 New Jersey, thus Defendants’ appearance for the purpose of the Application and supporting papers  
27 is a special appearance, and does not constitute a general appearance.  
28

1 This Application is made pursuant to California Rules of Court Rules 2.550 and 2.551.  
2 The Application will be based on the attached Memorandum of Points and Authorities, the  
3 Declaration of Keiko J. Kojima (“Kojima Decl.”), and the parties’ Stipulation for Sealing of  
4 Portions of Filed Document.  
5

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 In accordance with Rules 2.550 and 2.551 of the California Rules of Court, Defendants  
8 Northern Data US, Inc., and Northern Data US Holdings, Inc.<sup>1</sup> apply to this Court to seal the filed  
9 Complaint in this action, with the redacted complaint described herein remaining on the public  
10 docket. Good cause exists for the sealing, which is narrow, as follows.

11 **I. The Complaint and Sealing In The Federal Court**

12 On March 8, 2024, Plaintiffs filed their Complaint in this Court. [Kojima Decl., ¶2]  
13 Defendants were each served with the Complaint on March 25, 2024. [*Id.*]

14 On April 24, 2024, Defendants filed a Notice of Removal of Civil Action in the United  
15 States District Court for the Central District of California along with the Appendix of State Court  
16 Documents (“Appendix”), which was incorporated into the Notice of Removal. The Appendix  
17 contained as Exhibit “1” a redacted Complaint (“Redacted Complaint”). [Kojima Decl., ¶2; Exh.  
18 “1” to Kojima Decl.]

19 On April 25, 2024, Defendants filed in this Court a Notice of Removal of Civil Action,  
20 informing this Court that they had removed the instant proceeding to the Central District of  
21 California. [Kojima Decl., ¶3]

22 Defendants contend that the Complaint contains confidential and privileged information,  
23 including allegations regarding communications to/from/involving Northern Data’s former Chief  
24 Legal and Compliance Officer, Jim Black and/or Deputy General Counsel Europe, Martin  
25

26 <sup>1</sup> Northern Data US, Inc., and Northern Data US Holdings, Inc. are/were wholly-owned  
27 subsidiaries of Northern Data AG, a German public company. Northern Data US, Inc., Northern  
28 Data US Holdings, Inc., and Northern Data AG are collectively referred to herein as “Northern  
Data.”

1 Rinscheid. For example, Defendants maintain that the Complaint directly quotes the content of  
2 April 12, 2023 and April 19, 2023 emails sent by Jim Black providing legal advice [Complaint,  
3 ¶¶41-42], along with other allegations of communications and actions concerning Jim Black that,  
4 based on the allegations in the Complaint, Defendants contend were made for the purpose of  
5 obtaining or providing legal advice. [Kojima Decl., ¶4]

6 On April 24, 2024, Defendants sought sealing of the Complaint in the federal court action  
7 by filing an Application for Leave to File Document Under Seal. [Kojima Decl., ¶5; Exh. “2” to  
8 Kojima Decl.] The federal court sealing Application was filed concurrently with the Declaration  
9 of Rosanne Kincaid-Smith in Support of the Application to File Document Under Seal (“Kincaid-  
10 Smith Declaration”). [Kojima Decl., ¶5; Exh. “3” to Kojima Decl.]

11 On April 25, 2024, Judge Otis D. Wright II of the Central District of California issued an  
12 order (ECF No. 12) granting Defendants’ Application to File Document Under Seal (the “Federal  
13 Court Sealing Order”). [Kojima Decl., ¶6; Exh. “4” to Kojima Decl.]

14 **II. Defendants’ Application for Sealing**

15 Defendants’ Application for sealing in the Federal Court Action and the accompanying  
16 Kincaid-Smith Declaration explain the grounds for Defendants’ sealing request. [Exh. “2” and  
17 “3” to Kojima Decl.] Defendants seek sealing of portions of the Complaint on the grounds that  
18 these portions, which are redacted in the public filing, constitute confidential and privileged  
19 communications protected by the attorney-client privilege and attorney work product doctrine.  
20 Defendants maintain that the information is also protected as confidential under non-disclosure  
21 agreements signed by Plaintiffs Joshua Porter and Gulsen Kama.

22 California Rule of Court §2.550 *et seq.* governs the placement of documents under seal by  
23 a court. Court records are presumed open unless “confidentiality is required by law.” CRC  
24 §2.550(c). For purposes of a motion to seal, “[a] document which is protected by the lawyer-client  
25 privilege is not subject to the [Rule 2.550] findings requirements” because such documents “are  
26 required to be kept confidential by law.” *Huffy Corp. v. Superior Court*, 112 Cal. App. 4th 97,  
27 110 & n.6 (2003) (citing an extant portion of the predecessor rule to Rule 2.550); *NBC Subsidiary*  
28 *(KNBC-TV), Inc. v. Super. Ct.*, 20 Cal. 4th 1178, 1217-18 (1999) (acknowledging the overriding

1 interest in “protection of information within the attorney-client privilege”). California's attorney-  
2 client privilege allows a client “to refuse to disclose, and to prevent another from disclosing, a  
3 confidential communication between client and lawyer ....” Cal. Evid. Code § 954. “A corporation  
4 is a person whose confidential communications with its attorney are protected by the attorney-  
5 client privilege.” *Zurich Am. Ins. Co. v. Superior Ct.*, 155 Cal. App. 4th 1485, 1496 (2007)  
6 (internal citation and quotation marks omitted). ). “[T]he fundamental purpose behind the  
7 privilege is to safeguard the confidential relationship between clients and their attorneys so as to  
8 promote full and open discussion of the facts and tactics surrounding individual legal matters.  
9 *Mitchell v. Superior Ct.*, 37 Cal. 3d 591, 599 (1984) (internal citation omitted).

10 In his role as the Chief Legal and Compliance Officer at Northern Data, Jim Black was  
11 requested to and provided legal input and advice to Northern Data. As demonstrated by its  
12 content, Mr. Black’s April 12, 2023 and April 19, 2023 email communications quoted in  
13 Paragraphs 41 and 42 were made for the purpose of obtaining or providing legal advice, including  
14 rendering legal advice in anticipation of potential litigation. These emails are considered and  
15 maintained as privileged and confidential by Northern Data. [Exh. “3” to Kojima Decl., (Kincaid-  
16 Smith Decl., ¶¶5, 7)] The communications contain discussion of legal advice or strategy of  
17 counsel, which are protected under the attorney-client privilege. California Evidence Code § 952  
18 “provides that a ‘confidential communication’ ‘includes a legal opinion formed and the advice  
19 given by the lawyer in the course of that relationship.’ ” *Zurich Am. Ins. Co.*, 155 Cal. App. 4th at  
20 1503. The Complaint also describes Plaintiff Kama’s alleged discussions with Jim Black and  
21 contains allegations regarding Mr. Black’s statements, opinions, communications, and actions  
22 which, as demonstrated based on the allegations in the Complaint, were made for the purpose of  
23 obtaining or providing legal advice.

24 With respect to work product, “[a] writing that reflects an attorney's impressions,  
25 conclusions, opinions, or legal research or theories is not discoverable under any circumstances.”  
26 Cal. Civ. Proc. Code § 2018.030(a); *see also People v. Collie*, 30 Cal. 3d 43, 59, 634 P.2d 534,  
27 543 (1981) (“At its core, the work-product doctrine shelters the mental processes of the attorney,  
28 providing a privileged area within which he can analyze and prepare his client's case.”) Here,

1 based on the allegations of the Complaint, the protected communications constitute opinion  
2 attorney work product as the information and advice communicated were made in anticipation of  
3 litigation. [Exh. “3” to Kojima Decl., (Kincaid-Smith Decl., ¶¶5,7)].

4 Moreover, the Protected Communications with Mr. Black also constitute Confidential  
5 Information subject to non-disclosure provisions in the Confidential Information, Assignment and  
6 Non-Solicitation Agreement signed by Josh Porter and Gulsen Kama respectively on April 12,  
7 2022 and June 21, 2022. [Exh. “3” to Kojima Decl., (Kincaid-Smith Decl., ¶8)]

8 Accordingly, Defendants request that this Application be granted and that the unredacted  
9 Complaint be ordered to be placed under seal.

10 **III. Plaintiffs Agree to the Sealing of the Complaint, But Reserve their Rights**

11 The Parties have met and conferred, and agree to the sealing of the unredacted Complaint  
12 in this Court. Plaintiffs do not oppose the sealing, at least provisionally, but reserve their rights to  
13 contest any privilege or confidentiality protections afforded to the information alleged in the  
14 Complaint. Accordingly, the Parties have agreed that they do not waive and hereby reserve all  
15 rights and defenses as to confidentiality and privilege. The Parties further agree that they do not  
16 waive and hereby reserve all rights and defenses as to jurisdiction and venue.

17 **IV. The Court Has Jurisdiction to Issue the Seal Order**

18 This Court has jurisdiction to grant this Application and enter its order sealing the  
19 Complaint pursuant to its inherent authority to manage records on its docket pursuant to its  
20 inherent authority to manage records on its docket, including to seal them in appropriate cases.  
21 Although this Court no longer has authority over the merits of this action, the removal statute does  
22 not purport to divest a state court of its inherent authority to manage its docket following removal.  
23 [See, e.g. Exh. “5” to Kojima Decl. (state court order in *Tara O'Connor-Roche v. RBC Capital*  
24 *Markets, LLC, et al.*, Supreme Court of the State of New York, New York County Case No.  
25 650796/2022, dated May 4, 2022, ordering and placing documents under seal following removal  
26 of action to federal court)]. Moreover, the relief sought would not in any way affect or conflict  
27 with the proceedings in the Federal Court Action. The parties are seeking only to protect the same  
28 information on both dockets.

1 V. **Conclusion**

2 For the reasons set forth above, the redacted portions of the Complaint should be placed  
3 under seal as requested above.

4  
5 Dated: May 14, 2024

BURKE, WILLIAMS & SORENSEN, LLP

6  
7 By: 

8 Cheryl Johnson-Hartwell  
9 Keiko J. Kojima  
10 Attorneys for Defendants NORTHERN  
11 DATA US, INC., and NORTHERN DATA  
12 US HOLDINGS, INC.

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**PROOF OF SERVICE**

**Porter, et al., v., Northern Data US inc., et al.  
Case No. 24STCV05852**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 444 South Flower Street, Suite 2400, Los Angeles, CA 90071-2953.

On May 14, 2024, I served true copies of the following document(s) described as **APPLICATION FOR SEALING OF PORTIONS OF FILED DOCUMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

Russell M. Selmont, Esq.  
ERVIN COHEN & JESSUP, LLP  
9401 Wilshire Boulevard, Twelfth Floor  
Beverly Hills, California 90212-2974

Attorney for Plaintiffs  
Tel: 310.273.6333  
Fax: 310.859.2325  
Email: [rselmont@ecjlaw.com](mailto:rselmont@ecjlaw.com)

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Burke, Williams & Sorensen, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address [amcmaster@bwslaw.com](mailto:amcmaster@bwslaw.com) to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 14, 2024, at Los Angeles, California.



\_\_\_\_\_  
Alicia McMaster