

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

**Michael Russell, Joseph Preston, and James Tosches, individually, on
behalf of all others similarly situated, and on behalf of the general
public v. Dave Inc. and Evolve Bank & Trust**

Russell v. Dave Inc. · No. 2:25-cv-04029-MRA-MBKx · Decided October 2, 2025

OPINION

Michael Russell, Joseph Preston, and James Tosches, individually, on behalf of all others similarly
situated, and on behalf of the general public v. Dave Inc. and Evolve Bank & Trust

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 SOUTHERN DIVISION

11 Michael Russell, Joseph Preston, and CASE NO. 2:25-cv-04029-MRA-MBKx 12 James
Tosches, individually, on behalf of all others similarly situated, and on behalf [PROPOSED]
STIPULATED 13 of the general public, PROTECTIVE ORDER 14 Plaintiffs, 15 vs. 16 Dave Inc.
and Evolve Bank & Trust, 17 Defendants. 18

1. GENERAL

19 1.1 Purposes and Limitations. Discovery in this action is likely to involve 20 production of
confidential, proprietary, or private information for which special 21 protection from public
disclosure and from use for any purpose other than prosecuting 22 this litigation may be
warranted. Accordingly, the parties hereby stipulate to and 23 petition the Court to enter the
following Stipulated Protective Order. The parties 24 acknowledge that this Order does not confer
blanket protections on all disclosures or 25 responses to discovery and that the protection it
affords from public disclosure and 26 use extends only to the limited information or items that are
entitled to confidential 27 treatment under the applicable legal principles. The parties further
acknowledge, as 28 1 set forth in Section 12.3, below, that this Stipulated Protective Order does
not entitle 2 them to file confidential information under seal; Civil Local Rule 79-5 sets forth the 3
procedures that must be followed and the standards that will be applied when a party 4 seeks
permission from the court to file material under seal. 5 1.2 Good Cause Statement. 6 This action is
likely to involve trade secrets, customer and pricing lists, and 7 other valuable research,
development, commercial, financial, technical and/or 8 proprietary information for which special
protection from public disclosure and from 9 use for any purpose other than prosecution of this
action is warranted. Such 10 confidential and proprietary materials and information consist of,

among other things, 11 confidential business or financial information, information regarding confidential 12 business practices, or other confidential research, development, or commercial 13 information (including information implicating privacy rights of third parties), 14 information otherwise generally unavailable to the public, or which may be privileged 15 or otherwise protected from disclosure under state or federal statutes, such as the 16 Gramm-Leach-Bliley Act 15 U.S.C. § 6801 et seq., court rules, case decisions, or 17 common law. Accordingly, to expedite the flow of information, to facilitate the 18 prompt resolution of disputes over confidentiality of discovery materials, to 19 adequately protect information the parties are entitled to keep confidential, to ensure 20 that the parties are permitted reasonable necessary uses of such material in preparation 21 for and in the conduct of trial, to address their handling at the end of the litigation, 22 and serve the ends of justice, a protective order for such information is justified in this 23 matter. It is the intent of the parties that information will not be designated as 24 confidential for tactical reasons and that nothing be so designated without a good faith 25 belief that it has been maintained in a confidential, non-public manner, and there is 26 good cause why it should not be part of the public record of this case.

27 2. DEFINITIONS

28 2.1 Action: The above-captioned pending federal lawsuit. 1 2.2 Challenging Party: a Party or Non-Party that challenges the designation 2 of information or items under this Order. 3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of 4 how it is generated, stored or maintained) or tangible things that qualify for protection 5 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good 6 Cause Statement. 7 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their 8 support staff). 9 2.5 Designating Party: a Party or Non-Party that designates information or 10 items that it produces in disclosures or in responses to discovery as

11 “CONFIDENTIAL.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless 13 of the medium or manner in which it is generated, stored, or maintained (including, 14 among other things, testimony, transcripts, and tangible things), that are produced or 15 generated in disclosures or responses to discovery in this matter. 16 2.7 Expert: a person with specialized knowledge or experience in a matter 17 pertinent to the litigation who has been retained by a Party or its counsel to serve as 18 an expert witness or as a consultant in this Action. 19 2.8 House Counsel: attorneys who are employees of a party to this Action. 20 House Counsel does not include Outside Counsel of Record or any other outside 21 counsel. 22 2.9 Non-Party: any natural person, partnership, corporation, association, or 23 other legal entity not named as a Party to this action. 24 2.10 Outside Counsel of Record: attorneys who are not employees of a party 25 to this Action but are retained to represent or advise a party to this Action and have 26 appeared in this Action on behalf of that party or are affiliated with a law firm that 27 has appeared on behalf of that party, including support staff. 28 2.11 Party: any party to this Action, including all of its officers, directors, 1

employees, consultants, retained experts, and Outside Counsel of Record (and their 2 support staffs). 3 2.12 Producing Party: a Party or Non-Party that produces Disclosure or 4 Discovery Material in this Action. 5 2.13 Professional Vendors: persons or entities that provide litigation support 6 services (e.g., photocopying, videotaping, translating, preparing exhibits or 7 demonstrations, and organizing, storing, or retrieving data in any form or medium) 8 and their employees and subcontractors. 9 2.14 Protected Material: any Disclosure or Discovery Material that is 10 designated as “CONFIDENTIAL.” 11 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material 12 from a Producing Party.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only 15 Protected Material (as defined above), but also (1) any information copied or extracted 16 from Protected Material; (2) all copies, excerpts, summaries, or compilations of 17 Protected Material; and (3) any testimony, conversations, or presentations by Parties 18 or their Counsel that might reveal Protected Material. 19 Any use of Protected Material at trial shall be governed by the orders of the 20 trial judge. This Order does not govern the use of Protected Material at trial.

21 4. DURATION

22 Once a case proceeds to trial, all of the court-filed information to be introduced 23 that was previously designated as confidential or maintained pursuant to this 24 protective order becomes public and will be presumptively available to all members 25 of the public, including the press, unless compelling reasons supported by specific 26 factual findings to proceed otherwise are made to the trial judge in advance of the 27 trial. See *Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 28 2006) (distinguishing “good cause” showing for sealing documents produced in 1 discovery from “compelling reasons” standard when merits-related documents are 2 part of court record). Accordingly, the terms of this protective order do not extend 3 beyond the commencement of the trial.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. 6 Each Party or Non-Party that designates information or items for protection under this 7 Order must take care to limit any such designation to specific material that qualifies 8 under the appropriate standards. The Designating Party must designate for protection 9 only those parts of material, documents, items, or oral or written communications that 10 qualify so that other portions of the material, documents, items, or communications 11 for which protection is not warranted are not swept unjustifiably within the ambit of 12 this Order. 13 Mass, indiscriminate, or routinized designations are prohibited. Designations 14 that are shown to be clearly unjustified or that have been made for an improper 15 purpose (e.g., to unnecessarily encumber the case development process or to impose 16 unnecessary expenses and burdens on other parties) may expose the Designating Party 17 to sanctions. 18 If it comes to a Designating Party’s attention that information or items that it 19 designated for protection do not qualify for protection, that Designating Party must 20

promptly notify all other Parties that it is withdrawing the inapplicable designation. 21 5.2 Manner and Timing of Designations. Except as otherwise provided in 22 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise 23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection 24 under this Order must be clearly so designated before the material is disclosed or 25 produced. 26 Designation in conformity with this Order requires: 27 (a) for information in documentary form (e.g., paper or electronic 28 documents, but excluding transcripts of depositions or other pretrial or trial 1 proceedings), that the Producing Party affix, at a minimum, the legend 2 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that 3 contains protected material. 4 A Party or Non-Party that makes original documents available for inspection 5 need not designate them for protection until after the inspecting Party has indicated 6 which documents it would like copied and produced. During the inspection and 7 before the designation, all of the material made available for inspection shall be 8 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents 9 it wants copied and produced, the Producing Party must determine which documents, 10 or portions thereof, qualify for protection under this Order. Then, before producing 11 the specified documents, the Producing Party must affix the “CONFIDENTIAL 12 legend” to each page that contains Protected Material. 13 (b) for testimony given in depositions that the Designating Party identify 14 the Disclosure or Discovery Material on the record, before the close of the deposition. 15 (c) for information produced in some form other than documentary and 16 for any other tangible items, that the Producing Party affix in a prominent place on 17 the exterior of the container or containers in which the information is stored the legend 18 “CONFIDENTIAL.” If only a portion or portions of the information warrants 19 protection, the Producing Party, to the extent practicable, shall identify the protected 20 portion(s). 21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent 22 failure to designate qualified information or items does not, standing alone, waive the 23 Designating Party’s right to secure protection under this Order for such material. 24 Upon timely correction of a designation, the Receiving Party must make reasonable 25 efforts to assure that the material is treated in accordance with the provisions of this 26 Order. 27 28

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a 3 designation of confidentiality at any time that is consistent with the Court’s 4 Scheduling Order. 5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute 6 resolution process under Local Rule 37-1, et seq, as modified by Judge Kaufman’s 7 Procedures. See <https://www.cacd.uscourts.gov/honorable-michael-b-kaufman>. Any 8 discovery motion must strictly comply with these procedures. 9 6.3 Burden. The burden of persuasion in any such challenge proceeding 10 shall be on the Designating Party. Frivolous challenges, and those made for an 11 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on 12 other parties) may expose the Challenging Party to sanctions. Unless the Designating 13 Party has

waived or withdrawn the confidentiality designation, 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 until the Court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is 18 disclosed or produced by another Party or by a Non-Party in connection with this 19 Action only for prosecuting, defending, or attempting to settle this Action. Such 20 Protected Material may be disclosed only to the categories of persons and under the 21 conditions described in this Order. When the Action has been terminated, a Receiving 22 Party must comply with the provisions of section 13 below (FINAL DISPOSITION). 23 Protected Material must be stored and maintained by a Receiving Party at a 24 location and in a secure manner that ensures that access is limited to the persons 25 authorized under this Order. 26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless 27 otherwise ordered by the Court or permitted in writing by the Designating Party, a 28 1 Receiving Party may disclose any information or item designated 2 "CONFIDENTIAL" only to: 3 (a) the Receiving Party's Outside Counsel of Record in this Action, as 4 well as employees of said Outside Counsel of Record to whom it is reasonably 5 necessary to disclose the information for this Action; 6 (b) the officers, directors, and employees (including House Counsel) of 7 the Receiving Party to whom disclosure is reasonably necessary for this Action; 8 (c) Experts (as defined in this Order) of the Receiving Party to whom 9 disclosure is reasonably necessary for this Action and who have signed the 10 "Acknowledgment and Agreement to Be Bound" (Exhibit A); 11 (d) the Court and its personnel; 12 (e) court reporters and their staff; 13 (f) professional jury or trial consultants, mock jurors, and Professional 14 Vendors to whom disclosure is reasonably necessary for this Action and who have 15 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); 16 (g) the author or recipient of a document containing the information or 17 a custodian or other person who otherwise possessed or knew the information; 18 (h) during their depositions, witnesses, and attorneys for witnesses, in 19 the Action to whom disclosure is reasonably necessary provided: (1) the deposing 20 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they 21 will not be permitted to keep any confidential information unless they sign the 22 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise 23 agreed by the Designating Party or ordered by the Court. Pages of transcribed 24 deposition testimony or exhibits to depositions that reveal Protected Material may be 25 separately bound by the court reporter and may not be disclosed to anyone except as 26 permitted under this Stipulated Protective Order; and 27 (i) any mediator or settlement officer, and their supporting personnel, 28 mutually agreed upon by any of the parties engaged in settlement discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED

2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation 4 that compels

disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must: (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order; (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party seeks a protective order within 14 days, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections. (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall: (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party; (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and (3) make the information requested available for inspection by the Non-Party, if requested. (c) If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party seeks a protective order within 14 days, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected

Material to any person or in any circumstance not authorized under this 24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in 25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts 26 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or 27 persons to whom unauthorized disclosures were made of all the terms of this Order, 28 1 and (d) request such person or persons to execute the “Acknowledgment and 2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE

4 PROTECTED MATERIAL

5 When a Producing Party gives notice to Receiving Parties that certain 6 inadvertently produced material is subject to a claim of privilege or other protection, 7 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

8 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

9 may be established in an e-discovery order that provides for production without prior 10 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the 11 parties reach an agreement on the effect of disclosure of a communication or 12 information covered by the attorney-client privilege or work product protection, the 13 parties may incorporate their agreement in the stipulated protective order submitted 14 to the Court.

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any 17 person to seek its modification by the Court in the future. 18 12.2 Right to Assert Other Objections. By stipulating to the entry of this 19 Protective Order, no Party waives any right it otherwise would have to object to 20 disclosing or producing any information or item on any ground not addressed in this 21 Stipulated Protective Order. Similarly, no Party waives any right to object on any 22 ground to use in evidence of any of the material covered by this Protective Order. 23 12.3 Filing Protected Material. A Party that seeks to file under seal any 24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may 25 only be filed under seal pursuant to a court order authorizing the sealing of the specific 26 Protected Material at issue; good cause must be shown in the request to file under 27 seal. If a Party’s request to file Protected Material under seal is denied by the Court, 28 1 then the Receiving Party may file the information in the public record unless 2 otherwise instructed by the Court.

3 13. FINAL DISPOSITION

4 After the final disposition of this Action, within 60 days of a written request by 5 the Designating Party, each Receiving Party must return all Protected Material to the 6 Producing Party or destroy such material. As used in this subdivision, “all Protected 7 Material” includes all copies, abstracts, compilations, summaries, and any other 8 format reproducing or capturing any of the Protected Material. Whether the Protected 9 Material is returned or destroyed, the Receiving Party must submit a written 10 certification to the Producing Party (and, if not the same person or entity, to the 11 Designating Party) by the 60 day deadline that (1) identifies (by

category, where 12 appropriate) all the Protected Material that was returned or destroyed, and (2) affirms 13 that the Receiving Party has not retained any copies, abstracts, compilations, 14 summaries or any other format reproducing or capturing any of the Protected Material. 15 Notwithstanding this provision, counsel are entitled to retain an archival copy of all 16 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, 17 correspondence, deposition and trial exhibits, expert reports, attorney work product, 18 and consultant and expert work product, even if such materials contain Protected 19 Material. Any such archival copies that contain or constitute Protected Material 20 remain subject to this Protective Order as set forth in Section 4 (DURATION).

21 14. VIOLATION OF ORDER

22 Any violation of this Order may be punished by any and all appropriate 23 measures including, without limitation, contempt proceedings and/or monetary 24 sanctions. 25 26 27 28 1 2 DATED:

October 1, 2025 PAUL HASTINGS LLP 3 By: /s/ Derek E. Wetmore 4

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Joseph Preston, James Tosches, and the 12 Proposed Classes 13 14 || SO ORDERED. 15 ; 16 ||
DATED: _October2 2025 LACEY;

17 MICHAEL B. KAUFMAN

UNITED STATES MAGISTRATE JUDGE

18 19 20 21 22 23 24 25 26 27 28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of 4 _____ [print
or type full address], declare under penalty of perjury that 5 I have read in its entirety and
understand the Stipulated Protective Order that was 6 issued by the United States District Court
for the Central District of California on 7 [date] in the case of Russell et al. v. Dave Inc., et al.,
Case No. 2:25-cv-04029-MRA- 8 MBKx. I agree to comply with and to be bound by all the terms
of this Stipulated 9 Protective Order and I understand and acknowledge that failure to so comply
could 10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise 11
that I will not disclose in any manner any information or item that is subject to this 12 Stipulated
Protective Order to any person or entity except in strict compliance with 13 the provisions of this
Order. 14 I further agree to submit to the jurisdiction of the United States District Court 15 for the
Central District of California for the purpose of enforcing the terms of this 16 Stipulated
Protective Order, even if such enforcement proceedings occur after 17 termination of this action.
18 I hereby appoint _____ [print or type full name] of 19
_____ [print or type full address and 20 telephone
number] as my California agent for service of process in connection with 21 this action or any
proceedings related to enforcement of this Stipulated Protective 22 Order. 23 Date:
_____ 24 City and State where sworn and signed:

_____ 25 Printed name: _____
26 [printed name] 27 Signature: _____ 28 [signature]

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