

1 BERMAN DeVALERIO  
 2 Joseph J. Tabacco, Jr. (SBN 75484)  
 3 *jtabacco@bermandevalerio.com*  
 4 Nicole Lavallee (SBN 165755)  
 5 *nlavallee@bermandevalerio.com*  
 6 Christopher T. Heffelfinger (SBN 118058)  
 7 *cheffelfinger@bermandevalerio.com*  
 8 One California Street, Suite 900  
 9 San Francisco, CA 94111  
 10 Telephone: (415) 433-3200  
 11 Facsimile: (415) 433-6382

12 *Attorneys for Plaintiff State Treasurer*  
 13 *Of The State Of Michigan, As Custodian of The Michigan Public School Employees*  
 14 *Retirement System, State Employees' Retirement System,*  
 15 *Michigan State Police Retirement*  
 16 *System And Michigan Judges'*  
 17 *Retirement System*

18 **UNITED STATES DISTRICT COURT**  
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 STATE TREASURER OF THE 21 STATE OF MICHIGAN,  22 Plaintiff,  23 vs.  24 COUNTRYWIDE FINANCIAL 25 CORPORATION, et al.,  26 Defendants.
--

CASE NO.: CV-11-00809-MRP  
(MANx)

**~~PROPOSED~~ ORDER GOVERNING  
 THE TREATMENT OF  
 CONFIDENTIAL INFORMATION**

Courtroom: 12  
 Judge: Mariana R. Pfaelzer

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS HEREBY ORDERED AS FOLLOWS:

1. This Stipulation and Order Governing the Treatment of Confidential Information (the “Stipulation”) shall govern the disclosure and use of Confidential Discovery Material (as defined below) and all other discovery material as applicable provided during the course of this Action by the Parties to the Action or by nonparties, either voluntarily or as required by discovery demands made pursuant to the Federal Rules of Civil Procedure.

2. As used in this Stipulation, “person” includes any individual, entity, natural person, or any business, legal or governmental entity or association. “Producing Person” refers to any person that produces discovery material. “Receiving Person” refers to any person that receives discovery material subject to this Stipulation.

3. This Protective Order designates as “Confidential Discovery Material” documents or discovery responses that may be produced during discovery that are designated as such by a Producing Person because they contain any of the following: confidential, sensitive, or nonpublic financial information and statements; proprietary business information, including business plans and records of internal deliberations and decision-making; policies and procedures not generally published, including those concerning business operations, employee benefits and risk management procedures; surveys concerning customers, competitors and employees; and individual personal information that is protected from disclosure under state or federal law, including identifying personal information and personal financial information, about any Party, any employee of any Party, or any third party. It is possible that disclosure of this Confidential Discovery Material may cause harm to the Producing Persons and their employees, as well as to third parties.

4. All documents designated as Confidential Discovery Material shall be so designated, by Bates range, in a letter accompanying their production to a Party, by stamping the media in which the documents are transmitted, or by stamping the first

1 page of a document “CONFIDENTIAL,” “CONFIDENTIAL DISCOVERY  
2 MATERIAL,” or “CONFIDENTIAL TREATMENT REQUESTED BY [and the  
3 name of the producing party].” Documents may be designated as Confidential  
4 Discovery Material at any time. Without limiting the foregoing sentence in any way, a  
5 Party may designate a document as CONFIDENTIAL after it was earlier produced  
6 without such a designation, and such production, in and of itself, shall not prejudice or  
7 otherwise constitute a waiver of, or estoppel as to, any claim of confidentiality to  
8 which the Producing Person would otherwise be entitled. Any documents designated  
9 as Confidential Discovery Material prior to entry of this Order shall be treated the  
10 same in all respects as documents designated as Confidential Discovery Material after  
11 the entry of this Order. This Order also treats as Confidential Discovery Material oral  
12 communications designated as confidential either orally (provided that such  
13 designation was recorded by a court reporter) or in writing.

14 5. It is the intent of the Parties and the Court that materials will not be  
15 designated as Confidential Discovery Material for tactical reasons in this case and that  
16 nothing be so designated without a good faith belief that there is good cause why it  
17 should not be part of the public record in this case.

18 6. Confidential Discovery Material also includes those portions of any  
19 notes, work papers or other work product that contain confidential information from  
20 documents designated as Confidential Discovery Material without the need for a  
21 separate confidential designation on the notes, work paper, or other work product.

22 7. If discovery material is inspected at the Producing Person’s choice of  
23 location, all such discovery material shall be presumed at such inspection to have been  
24 designated as Confidential Discovery Material by the Producing Person until such  
25 time as the Producing Person provides copies to the Party that requested the discovery  
26 material. Production of Confidential Discovery Material for inspection and copying  
27 shall not constitute a waiver of confidentiality.

1           8. Confidential Discovery Material shall be subject to the following  
2 restrictions:

3           (a) Confidential Discovery Material shall be used solely for the  
4 purpose of preparing for, and conducting, the prosecution or defense of this Action,  
5 including any appeals thereof, and shall not be used by the Parties or any other person  
6 for any commercial, business, competitive or other purpose.

7           (b) Confidential Discovery Material shall not be given, shown, made  
8 available or communicated in any way to anyone except those persons specified in  
9 subparagraph (c) below to whom it is necessary that such Confidential Discovery  
10 Material be given or shown for the purposes permitted under subparagraph (a) above.

11           (c) Confidential Discovery Material may be disclosed, for the  
12 purposes set forth in subparagraph (a) above, only to a “Qualified Person,” defined as  
13 follows:

14                   (i) counsel of record for the Parties, and attorneys, paralegal,  
15 clerical and other staff employed or retained by such counsel who are assisting in the  
16 conduct of the Action;

17                   (ii) those officers, directors, and representatives (including legal  
18 representatives) of the Parties deemed necessary to aid counsel in the conduct of the  
19 Action;

20                   (iii) any and all individual Defendants in this Action;

21                   (iv) witnesses (other than Parties) at any deposition or hearing in  
22 the Action;

23                   (v) such consultants, experts, and investigators (including their  
24 professional staffs) retained by the Parties, or their respective counsel, as they in good  
25 faith deem necessary to provide assistance in connection with the conduct of the  
26 Action;

27                   (vi) the Court, court personnel, and jurors, potential jurors or  
28 alternate jurors;

1 (vii) court reporters and videographers used in connection with  
2 the conduct of this Action;

3 (viii) outside photocopying, graphic production services, litigation  
4 support services, and document hosting vendors retained by the Parties, or their  
5 respective counsel, as they in good faith deem necessary to provide assistance in  
6 connection with the conduct of the Action;

7 (ix) persons who are or were authors or recipients of the  
8 Confidential Discovery Material; and

9 (x) any person carrying on an insurance business that may be  
10 liable to satisfy part or all of any judgment which may be entered in the action or to  
11 indemnify or reimburse for payments made to satisfy a judgment.

12 9. Except for Qualified Persons defined in subsections 8(vi), 8(vii), and  
13 8(viii), each person described in subparagraph 8(c) to whom Confidential Discovery  
14 Material is disclosed shall first be advised that such Confidential Discovery Material  
15 is being disclosed pursuant and subject to the terms of this Stipulation and that  
16 Confidential Discovery Material may not be disclosed other than pursuant to the terms  
17 hereof. Prior to disclosing Confidential Discovery Material to any person described in  
18 subparagraph 8(c)(v) above, counsel shall cause each such person to execute a  
19 Certificate in the form annexed hereto as Exhibit A. Counsel shall be responsible for  
20 retaining executed certificates.

21 10. If any Receiving Person inadvertently discloses Confidential Discovery  
22 Material to persons who are not Qualified Persons, such disclosure shall be reported in  
23 writing, via overnight delivery service or email, to the Producing Person who  
24 produced such inadvertently disclosed Confidential Discovery Material within three  
25 (3) business days of the discovery of such disclosure. In that event, counsel for the  
26 Receiving Person shall make all reasonable efforts to retrieve the Confidential  
27 Discovery Material and to obtain the agreement of persons to whom inadvertent  
28

1 disclosure was made to treat the Confidential Discovery Material in accordance with  
2 the terms of this Stipulation.

3 11. Information or testimony disclosed at a deposition may be designated as  
4 Confidential Discovery Material by the person providing such testimony, by a Party,  
5 or by a Producing Person if such person either: (a) identifies on the record at the  
6 deposition those portions of the testimony that are designated as Confidential  
7 Discovery Material; or (b) provides written notification to all Parties within thirty (30)  
8 days of the court reporter's release of the transcript of the deposition as to those pages  
9 and lines of the transcript that are designated as Confidential Discovery Material.  
10 Except to the extent the Parties otherwise agree, the entire transcript of any deposition  
11 shall be treated as Confidential Discovery Material until thirty (30) days after the  
12 court reporter's release of the transcript of the deposition. Each page of a deposition  
13 transcript designated as Confidential shall be stamped, as set forth in paragraph 4  
14 above, by the court reporter or by counsel. If counsel for any Party believes that a  
15 question put to a witness being examined in pretrial deposition will disclose  
16 Confidential Discovery Material, or that the answer to any question or questions  
17 requires such disclosure, or if documents to be used as exhibits during the  
18 examination contain such Confidential Discovery Material, such counsel may so  
19 notify requesting counsel, and, in that event, that portion of the deposition shall be  
20 taken in the presence only of counsel, parties to the Litigation, the court reporter,  
21 video operator and their assistants, and persons who have signed a receipt  
22 acknowledging the receipt of this Protective Order. The court reporter shall indicate in  
23 the transcript the portion of the transcript that is to be kept confidential, and shall mark  
24 the cover page of the transcript accordingly.

25 12. In the event that any person discloses Confidential Discovery Material in  
26 any pleading, court filing, attachment or exhibit thereto, or other papers filed with the  
27 Court pre-trial, the disclosing person shall conditionally file the confidential  
28 information under seal with the Clerk of this Court pursuant to Local Rule 79-5;

1 provided, however, that the paper shall be furnished to the Court and the attorneys for  
2 the Parties and a duplicate copy with the confidential information deleted will be  
3 placed in the public record insofar as possible. The Parties understand that designation  
4 of materials as Confidential Discovery Material does not automatically entitle the  
5 Parties to have such information kept under seal and that any submission of  
6 documents under seal should seek to file under seal only those portions of the  
7 documents that contain confidential information, *see, e.g., Kamaka v. City & County*  
8 *of Honolulu*, 447 F.3d 1172, 1178-81 (9th Cir. 2006), and should be made to the  
9 judicial officer presiding over the proceedings in question. This Protective Order does  
10 not address the use of Confidential Discovery Material for use at trial. The Parties  
11 agree to meet and confer regarding use of Confidential Discovery Material in  
12 connection with trial and to raise the issue with the Court at an appropriate time.

13       13. No Party concedes that any discovery material designated by any other  
14 person as Confidential Discovery Material under any provision of this Stipulation in  
15 fact contains or reflects trade secrets, proprietary or confidential information, or has  
16 been properly designated as Confidential Discovery Material, and entering into this  
17 Stipulation shall not prejudice the right of a Party to seek, at any time, a determination  
18 by the Court of whether any particular document or information should be subject to  
19 the terms of this Stipulation.

20       14. A Receiving Person shall not be obliged to challenge the propriety of a  
21 designation of documents or other material as Confidential Discovery Material at the  
22 time made, and failure to do so shall not preclude a subsequent challenge thereof. If at  
23 any time a Receiving Person objects to a Confidential Discovery Material designation  
24 under this Stipulation, the Objecting Party shall notify the Producing Person in  
25 writing. The Objecting Party shall identify the information in question and shall  
26 specify in reasonable detail the reason or reasons for the objection, and shall otherwise  
27 comply with Local Civil Rule 37-1. Within ten (10) calendar days of the receipt of  
28 such written notice, the Producing Person and Objecting Party shall meet-and-confer

1 in an effort to resolve their differences. If the disagreement cannot be resolved, the  
2 Producing Person may apply to the Court within ten (10) calendar days for a  
3 protective order affirming the Producing Person's Confidential Discovery Material  
4 designation. The application of the Producing Person shall comply with Local Civil  
5 Rules 37-2 and 37-3, and the Producing Person shall have the burden of  
6 demonstrating that the document or material designated as Confidential Discovery  
7 Material is deserving of confidential treatment or other protection under the terms of  
8 this Stipulation. If the Producing Person does not make such an application to the  
9 Court, the documents or material to which an objection was directed will no longer be  
10 considered Confidential Discovery Material under this Stipulation. While any such  
11 application is pending, the documents or material subject to that application will  
12 remain Confidential until the Court rules.

13 15. In the event that the Court determines that there is an actual or threatened  
14 breach of the agreement by a Receiving Person, the Parties agree that the Producing  
15 Person would not have an adequate remedy at law and would be entitled to specific  
16 performance, and/or injunctive relief, to enforce the terms of this Protective Order, in  
17 addition to any other remedy the party may be entitled at law or in equity.

18 16. If any Receiving Person (a) is subpoenaed in another action, (b) is served  
19 with a demand in another action to which he, she, or it is a party, or (c) receives a  
20 demand or request for documents from a legal or regulatory organization with  
21 jurisdiction over it and such subpoena, demand or request seeks Confidential  
22 Discovery Material under the Stipulation, the Receiving Person shall (unless  
23 prohibited by law or regulation) give written notice, by hand or by e-mail, within  
24 seven (7) business days of receipt of such subpoena, demand, or request for  
25 documents to all Parties, and to any Non-Party who produced or designated the  
26 discovery material as Confidential, and in no event shall produce such requested  
27 material prior to providing such notice. Any Party or Producing Person may seek a  
28 protective order or similar court-ordered relief to prevent the requested production.



1 Should a Party or Producing Person seek a protective order or similar court-ordered  
2 relief, then the Receiving Person shall not produce any of the Producing Person's  
3 Confidential Discovery Material, until a final decision that is no longer subject to  
4 appellate review orders such production, provided that a Party or Producing Person  
5 must file a Notice of Appeal or Motion for permission to Appeal from a lower court  
6 order not later than thirty (30) days after Notice of Entry of that order is served. If a  
7 Party is subpoenaed or requested to produce Confidential Discovery Material by a  
8 regulatory or self-regulatory agency with jurisdiction over it, through a process which  
9 by law, regulation, interpretive letter, regulatory policy or compulsory process,  
10 requires the Party to produce requested materials without objection, notice to other  
11 parties or delay, it shall be permitted to do so notwithstanding any provisions of this  
12 Order, including the advance notice provisions, to the contrary.

13 17. Absent consent from a Producing Person, no Confidential Discovery  
14 Material produced by such Producing Person may be used in connection with any  
15 other litigation, matter, or proceeding.

16 18. Upon notification that a document or other discovery material has been  
17 inadvertently produced and/or that a claim of attorney-client privilege, attorney work  
18 product, or other applicable privilege or protection will be made with regard to such  
19 document or other discovery material, the party receiving such notice shall promptly  
20 return or, at the Producing Person's option, destroy any and all copies of such  
21 document or other discovery material and shall refrain from reading or reviewing said  
22 document or discovery material beyond the extent necessary to identify it as the  
23 inadvertently produced material, or from utilizing it in any manner or form including  
24 specifically but not exclusively, use during the course of a deposition, review with  
25 witnesses, or any other disclosure or review whatsoever. The Receiving Person shall  
26 also remove all references to such material from any attorney work product. Together  
27 with notification of inadvertent production, the Producing Person shall supply a  
28 privilege log to the Receiving Person describing said document or other discovery

1 material in compliance with Rule 26(b)(5)(A) of the Federal Rules of Civil Procedure.  
2 The inadvertent production of any document or discovery that is subsequently  
3 retrieved or destroyed pursuant to this paragraph shall not be deemed to be a waiver of  
4 the claim of privilege or protection asserted. Notwithstanding the foregoing, nothing  
5 in this paragraph shall prevent a Receiving Person, after promptly returning or  
6 destroying the discovery material, from challenging the Producing Person's  
7 designation of the document or discovery as subject to attorney-client privilege,  
8 attorney work product, or other applicable privilege or protection or otherwise not  
9 subject to production, provided that (a) such challenge complies with Local Rules 37-  
10 1 through 37-4, (b) any review by the Court of the materials in question is conducted  
11 in camera, and (c) the challenge shall not assert as ground or basis that the Producing  
12 Person waived any privilege or protection because of the inadvertent disclosure.

13         19. This Stipulation shall be without prejudice to the rights of a Producing  
14 Person to seek further limits on disclosure or protections for the confidentiality of any  
15 discovery material (whether or not designated as Confidential) in addition to the limits  
16 and protections provided herein, including, without limitation, that access or  
17 disclosure of any discovery material be limited solely to counsel for a Party or to other  
18 specified persons and without prejudice to the rights of any other person to contest  
19 such application.

20         20. Other Parties and Third Parties. Other parties to this Litigation, including  
21 any additional parties that join or are joined in this Litigation, may have access to  
22 Confidential Discovery Material only by additional order of the Court or by the  
23 party's executing and filing with the Court a stipulation agreeing to be fully bound by  
24 this Protective Order. Third parties providing discovery materials in response to a  
25 subpoena may gain the benefits of this Order with respect to any documents or  
26 discovery materials they produce by executing a Certificate in the form annexed  
27 hereto as Exhibit A; by so signing, those parties will also assume all the duties and  
28 obligations required under this Order.

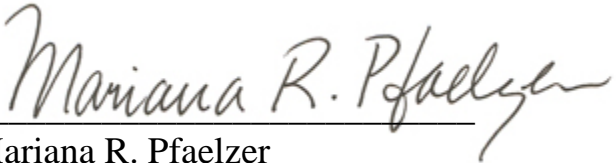
1           21. Within thirty (30) days after the final termination of this Litigation,  
2 including any appeals, each counsel shall at the option of the disclosing party either  
3 return all Confidential Discovery Material in his possession, custody or control, and  
4 all copies, portions, summaries, or abstracts thereof to counsel for the disclosing party  
5 or shall certify destruction thereof; provided, however, that counsel for a party may  
6 retain a file copy of work product created in connection with this Litigation that  
7 includes Confidential Discovery Material, but such work product shall continue to be  
8 kept confidential pursuant to this Protective Order.

9           22. The Parties may jointly seek to amend or modify this Stipulation subject  
10 to Court approval.

11           23. Notwithstanding any provision contained herein, nothing in this  
12 Stipulation shall restrict in any way the right of a Party to make use of its own  
13 discovery material in any way it deems fit.

14           24. Nothing in this Protective Order shall be deemed a waiver of any of the  
15 Parties' rights to oppose any discovery on any grounds or to object on any ground to  
16 the admission in evidence at any motion hearing or the trial of this Litigation of any  
17 matter discovered.

18  
19  
20 Dated: November 8, 2011

  
Mariana R. Pfaelzer  
UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 AGREEMENT TO BE BOUND BY STIPULATION AND ORDER  
3 GOVERNING THE TREATMENT OF CONFIDENTIAL INFORMATION

4 I hereby certify that I have been provided with a copy of the Stipulation and  
5 Order Governing the Treatment of Confidential Information (the “Stipulation”)  
6 entered in the United States District Court for the Central District of California on  
7 \_\_\_\_\_, 2011 in the action titled *State Treasurer of the State of Michigan v.*  
8 *Countrywide Fin’l Corp.*, No. CV-11-00809-MRP (MANx).

9 I have read the Stipulation and I agree to be bound by its terms and conditions  
10 governing the disclosure of Confidential Discovery Material (as defined in the  
11 Stipulation).

12 I hereby consent to the exercise of jurisdiction over me in the United States  
13 District Court for the Central District of California in connection with any proceedings  
14 relating to the Stipulation, including but not limited to any action to enforce its terms  
15 and conditions.

16 Print name: \_\_\_\_\_

17 Firm/company: \_\_\_\_\_

18 Signature: \_\_\_\_\_

19 Dated: \_\_\_\_\_

20  
21  
22  
23  
24  
25  
26  
27  
28