

NOTE: CHANGES HAVE BEEN MADE TO THIS DOCUMENT

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13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 LAILA THOMPSON, individually and)
 16 on behalf of all others similarly situated,)

17 Plaintiff,)

18 v.)

19 CITIBANK, N.A.; and, DOES 1-20,)
 20 inclusive,)

21 Defendant.)

Case No. 2:13-cv-00021-MWF-PLAx

[Assigned to the Hon. Michael W. Fitzgerald]

[PROPOSED] PROTECTIVE ORDER GOVERNING USE AND DISSEMINATION OF CONFIDENTIAL DOCUMENTS AND MATERIALS

[Stipulation re Protective Order Governing Use and Dissemination of Confidential Documents and Materials filed concurrently]

Action Filed October 19, 2012

1 **RECITALS**

2 The parties in the above-captioned action may seek discovery that the
3 responding party asserts may contain certain sensitive, confidential, trade secret
4 information and documents.

5 The protective order sought herein (“Protective Order”) is warranted under the
6 circumstances and is sufficiently tailored to avoid unduly hindering the public’s
7 access to the Court’s records and files in this matter.

8 **CONFIDENTIALITY ORDER**

9 Upon stipulation of the parties, and good cause appearing for the entry of this
10 Protective Order,

11 IT IS HEREBY ORDERED that:

12 **I. PURPOSES AND LIMITATIONS**

13 Disclosure and discovery activity in this action are likely to involve
14 production of confidential, proprietary, or private information for which special
15 protection from public disclosure and from use for any purpose other than
16 prosecuting this litigation may be warranted. Accordingly, the Parties hereby
17 stipulate to and petition the court to enter the following Stipulated Protective Order.
18 The Parties acknowledge that this Order does not confer blanket protections on all
19 disclosures or responses to discovery and that the protection it affords from public
20 disclosure and use extends only to the limited information or items that are entitled
21 to confidential treatment under the applicable legal principles. The Parties further
22 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
23 Order does not entitle them to file confidential information under seal; Civil Local
24 Rule 79-5 sets forth the procedures that must be followed and the standards that will
25 be applied when a party seeks permission from the court to file material under seal.

26 **II. DEFINITIONS**

27 2.1 Challenging Party: a Party or Non-Party that challenges the designation
28 of information or items under this Order.

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2029 Century Park East
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1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c).

4 2.3 Counsel (without qualifier): Outside Counsel of Record and House
5 Counsel (as well as their support staff).

6 2.4 Designating Party: a Party or Non-Party that designates information or
7 items that it produces in disclosures or in responses to discovery as
8 “CONFIDENTIAL.”

9 2.5 Disclosure or Discovery Material: all items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, and tangible things), that are produced or
12 generated in disclosures or responses to discovery in this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as
15 an expert witness or as a consultant in this action.

16 2.7 House Counsel: attorneys who are employees of a Party to this action.
17 House Counsel does not include Outside Counsel of Record or any other outside
18 counsel.

19 2.8 Non-Party: any natural person, partnership, corporation, association, or
20 other legal entity not named as a Party to this action.

21 2.9 Outside Counsel of Record: attorneys who are not employees of a
22 Party to this action but are retained to represent or advise a Party to this action and
23 have appeared in this action on behalf of that Party or are affiliated with a law firm
24 which has appeared on behalf of that Party.

25 2.10 Party: any Party to this action, including all of its officers, directors,
26 employees, affiliates, consultants, retained experts, and Outside Counsel of Record
27 (and their support staffs).

28 2.11 Producing Party: a Party or Non-Party that produces Disclosure or

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
3 or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
5 including the time limits for filing any motions or applications for extension of time
6 pursuant to applicable law.

7 **V. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or Non-Party that designates information or items for protection
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate for
12 protection only those parts of material, documents, items, or oral or written
13 communications that qualify – so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept
15 unjustifiably within the ambit of this Order.

16 If it comes to a Designating Party’s attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must
18 promptly notify all other Parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents,
26 but excluding transcripts of depositions or other pretrial or trial proceedings), that
27 the Producing Party affix the legend “CONFIDENTIAL” to each page that contains
28 protected material. If only a portion or portions of the material on a page qualifies

1 for protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins). A Party or Non-Party that
3 makes original documents or materials available for inspection need not designate
4 them for protection until after the inspecting Party has indicated which material it
5 would like copied and produced. During the inspection and before the designation,
6 all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it
8 wants copied and produced, the Producing Party must determine which documents,
9 or portions thereof, qualify for protection under this Order. Then, before producing
10 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
11 legend to each page that contains Protected Material. If only a portion or portions of
12 the material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,
16 that the Designating Party identify on the record, before the close of the deposition,
17 hearing, or other proceeding, all protected testimony.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information or item is stored the
21 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
22 warrant protection, the Producing Party, to the extent practicable, shall identify the
23 protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
28 efforts to assure that the material is treated in accordance with the provisions of this

1 Order.

2 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
4 designation of confidentiality **within the time frame for discovery established by**
5 **the district judge.** Unless a prompt challenge to a Designating Party's
6 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
7 unnecessary economic burdens, or a significant disruption or delay of the litigation,
8 a Party does not waive its right to challenge a confidentiality designation by electing
9 not to mount a challenge promptly after the original designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
11 resolution process by providing written notice of each designation it is challenging
12 and describing the basis for each challenge. To avoid ambiguity as to whether a
13 challenge has been made, the written notice must recite that the challenge to
14 confidentiality is being made in accordance with this specific paragraph of the
15 Protective Order. The parties shall attempt to resolve each challenge in good faith
16 and must begin the process by conferring directly (in voice to voice dialogue; other
17 forms of communication are not sufficient) within 14 days of the date of service of
18 notice. In conferring, the Challenging Party must explain the basis for its belief that
19 the confidentiality designation was not proper and must give the Designating Party
20 an opportunity to review the designated material, to reconsider the circumstances,
21 and, if no change in designation is offered, to explain the basis for the chosen
22 designation. A Challenging Party may proceed to the next stage of the challenge
23 process only if it has engaged in this meet and confer process first or establishes that
24 the Designating Party is unwilling to participate in the meet and confer process in a
25 timely manner.

26 6.3 Judicial Intervention. If agreement cannot be reached, the party
27 challenging the confidential designation may move the court to lift the designation.
28 Central District of California Local Rules 37-1 and 37-2 shall apply to any motion

1 requesting that the confidential designation be lifted. Until the Court rules, the
2 confidential designation shall remain in effect. The burden of persuasion in any
3 such challenge proceeding shall be on the Designating Party.

4 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 case only for prosecuting, defending, or attempting to settle this litigation. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the litigation has been terminated, a
10 Receiving Party must comply with the provisions of section 13 below (FINAL
11 DISPOSITION). Protected Material must be stored and maintained by a Receiving
12 Party at a location and in a secure manner that ensures that access is limited to the
13 persons authorized under this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 “CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to
20 disclose the information for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
22 A;

23 (b) the officers, directors, and employees (including House Counsel) of the
24 Receiving Party to whom disclosure is reasonably necessary for this litigation and
25 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
27 disclosure is reasonably necessary for this litigation and who have signed the
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (d) the court and its personnel;
2 (e) court reporters and their staff, professional jury or trial consultants, mock
3 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
4 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
5 (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the “Acknowledgment and Agreement to
8 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
9 by the court. Pages of transcribed deposition testimony or exhibits to depositions
10 that reveal Protected Material must be separately bound by the court reporter and
11 may not be disclosed to anyone except as permitted under this Stipulated Protective
12 Order.

13 (g) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
16 **PRODUCED IN OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this action as
19 “CONFIDENTIAL,” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification shall
21 include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to
23 issue in the other litigation that some or all of the material covered by the subpoena
24 or order is subject to this Protective Order. Such notification shall include a copy of
25 this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be pursued
27 by the Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served with the

1 subpoena or court order shall not produce any information designated in this action
2 as “CONFIDENTIAL” before a determination by the court from which the subpoena
3 or order issued, unless the Party has obtained the Designating Party’s permission.
4 The Designating Party shall bear the burden and expense of seeking protection in
5 that court of its confidential material – and nothing in these provisions should be
6 construed as authorizing or encouraging a Receiving Party in this action to disobey a
7 lawful directive from another court.

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

10 (a) The terms of this Order are applicable to information produced by a Non-
11 Party in this action and designated as “CONFIDENTIAL.” Such information
12 produced by Non-Parties in connection with this litigation is protected by the
13 remedies and relief provided by this Order. Nothing in these provisions should be
14 construed as prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party’s confidential information in its possession, and the Party is
17 subject to an agreement with the Non-Party not to produce the Non-Party’s
18 confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party
20 that some or all of the information requested is subject to a confidentiality agreement
21 with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated
23 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
24 specific description of the information requested; and

25 (3) make the information requested available for inspection by the
26 Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court
28 within 14 days of receiving the notice and accompanying information, the Receiving

1 Party may produce the Non-Party’s confidential information responsive to the
2 discovery request. If the Non-Party timely seeks a protective order, the Receiving
3 Party shall not produce any information in its possession or control that is subject to
4 the confidentiality agreement with the Non-Party before a determination by the
5 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
6 expense of seeking protection in this court of its Protected Material.

7 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 Protected Material to any person or in any circumstance not authorized under this
10 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
11 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
12 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
13 persons to whom unauthorized disclosures were made of all the terms of this Order,
14 and (d) request such person or persons to execute the “Acknowledgment and
15 Agreement to Be Bound” that is attached hereto as Exhibit A.

16 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other protection,
20 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
21 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
22 may be established in an e-discovery order that provides for production without prior
23 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
24 parties reach an agreement on the effect of disclosure of a communication or
25 information covered by the attorney-client privilege or work product protection, the
26 parties may incorporate their agreement in the stipulated protective order submitted
27 to the court.

28

XII. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5.3 is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

XIII. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to

1 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
2 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
3 that the Receiving Party has not retained any copies, abstracts, compilations,
4 summaries or any other format reproducing or capturing any of the Protected
5 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
6 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
7 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
8 work product, and consultant and expert work product, even if such materials
9 contain Protected Material. Any such archival copies that contain or constitute
10 Protected Material remain subject to this Protective Order as set forth in Section 4
11 (DURATION).

12 **IT IS SO ORDERED.**

13 Dated: November 12, 2013



14 By: _____
15 Paul L. Abrams
16 United States Magistrate Judge
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1 **Attachment A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 The undersigned hereby acknowledges, under penalty of perjury, that (he)(she)
4 has been advised of the terms or has read the PROTECTIVE ORDER GOVERNING
5 USE AND DISSEMINATION OF CONFIDENTIAL DOCUMENTS AND
6 MATERIALS (“Order”) issued by the United States District Court for the Central
7 District of California in the action titled: Laila Thompson, individually and on
8 behalf of all others similarly situated v. Citibank, N.A., Case No. 2:13-cv-00021-
9 FWF-PLA.

10 I agree to comply with and to be bound by all the terms of this Order and I
11 understand and acknowledge that failure to so comply could expose me to sanctions
12 and punishment in the nature of contempt. I solemnly promise that I will not
13 disclose in any manner any information or item that is subject to this Order to any
14 person or entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Northern District of California for the purpose of enforcing the terms of this
17 Order, even if such enforcement proceedings occur after termination of this action.

18
19 Dated: _____

20 City and State where sworn and signed: _____

21
22 Printed Name: _____

23
24 Signature: _____