

NOTE: CHANGES MADE BY THE COURT

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRED GOBER, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

WELLS FARGO & COMPANY, and
WELLS FARGO BANK, N.A.,

Defendants.

Case No. 2:15-CV-07120-DDP-PLAx

**STIPULATION PROTECTIVE
ORDER**

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PURPOSES AND LIMITATIONS

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

GOOD CAUSE STATEMENT

WHEREAS, Plaintiff asserts claims for violation of California’s Unfair Business Practices Act, as well as breach of contract, unjust enrichment and declaratory relief, relating to Defendants’ alleged practices in charging commercial real estate loan applicants undisclosed fees for appraisal review services performed internally by the Defendants,

WHEREAS, this action is likely to involve trade secrets,¹ customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public

¹ Cal. Civil Code § 3426.1 provides that trade secret “means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

1 disclosure and from use for any purpose other than prosecution of this action is
2 warranted. This action may also involve confidential customer information (*e.g.*,
3 names, addresses telephone numbers, transaction prices, among other things) that
4 should not be disclosed in the public record. Such confidential and proprietary
5 materials and information consist of, among other things, confidential business or
6 financial information, information regarding confidential business practices, or other
7 confidential research, development, or commercial information (including
8 information implicating privacy rights of third parties), information otherwise
9 generally unavailable to the public, or which may be privileged or otherwise
10 protected from disclosure under state or federal statutes, court rules, case decisions,
11 or common law. Accordingly, to expedite the flow of information, to facilitate the
12 prompt resolution of disputes over confidentiality of discovery materials, to
13 adequately protect information the parties are entitled to keep confidential, to ensure
14 that the parties are permitted reasonable necessary uses of such material in
15 preparation for and in the conduct of trial, to address their handling at the end of the
16 litigation, and serve the ends of justice, a protective order for such information is
17 justified in this Action. It is the intent of the parties that information will not be
18 designated as confidential for tactical reasons and that nothing be so designated
19 without a good faith belief that it has been maintained in a confidential, non-public
20 manner, and there is good cause why it should not be part of the public record of this
21 case.

22 **IT IS THEREFORE STIPULATED, AGREED, AND JOINTLY**
23 **REQUESTED** by Plaintiff Fred Gober, (“Plaintiff”) and Defendants Wells Fargo &
24 Company, and Wells Fargo Bank, N.A. (“Defendants”; collectively, the “Parties”),
25 by and through their respective counsel, that a protective order should be entered
26 according to the following terms and provisions:

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DEFINITIONS

- 1 1. “Action” means the above-captioned pending federal lawsuit.
- 2 2. “Challenging Party” means a Party or Non-Party that challenges the
3 designation of information or items under this Order.
- 4 3. “Confidential Information” means:
 - 5 a. Information (i) (regardless of how it is generated, stored or
6 maintained) or tangible things that qualify for protection under Federal Rule of Civil
7 Procedure 26(c), and as specified in the Good Cause Statement.
 - 8 b. Any testimony, conversations, or presentations by the Parties or
9 their counsel that reveal Confidential Information shall also be deemed
10 Confidential Information.
- 11 4. “Counsel” means Outside Counsel of Record and In-House Counsel (as
12 well as their support staffs).
- 13 5. “Designating Party” means a Party or Non-Party that designates
14 information or items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”
- 16 6. “Disclosure of Discovery Material” means all items or information,
17 regardless of the medium or manner in which it is generated, stored, or maintained
18 (including, among other things, testimony, transcripts, and tangible things), that are
19 produced or generated in disclosures or responses to discovery in this Action.
- 20 7. “Expert” means a person with specialized knowledge or experience in a
21 matter pertinent to the litigation who has been retained by a Party or its counsel to
22 serve as an expert witness or as a consultant in this Action.
- 23 8. “In-House Counsel” means attorneys who are employees of a party to
24 this Action. In-House Counsel does not include Outside Counsel of Record or any
25 other outside counsel.
- 26 9. “Non-Party” means any natural person, partnership, corporation,
27 association, or other legal entity not named as a Party to this action.
- 28 10. “Outside Counsel of Record” means attorneys who are not employees

1 of a party to this Action but are retained to represent or advise a party to this Action
2 and have appeared in this Action on behalf of that party or are affiliated with a law
3 firm which has appeared on behalf of that party, including their support staffs.

4 11. “Party” means any party to this Action, including all of its officers,
5 directors, employees, consultants, retained experts, and Outside Counsel of Record
6 (and their support staffs).

7 12. “Producing Party” means a Party or Non-Party that produces Disclosure
8 or Discovery Material in this Action.

9 13. “Professional Vendors” means persons or entities that provide litigation
10 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 14. “Protected Material” means any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL.”

15 15. “Receiving Party” means a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 16. “Qualified Person” means anyone who agrees to be bound by the terms
18 of this Protective Order and who also falls into one of the following categories:

- 19 a. Outside Counsel in this Action or any member, associate,
20 paralegal or employee of the firm where such attorney practices;
- 21 b. In-house counsel or designated legal personnel for all parties;
- 22 c. Any other officers, directors, or employees of the Parties, to the
23 extent disclosure is reasonably necessary in connection with this Action;
- 24 d. Up to three (3) designees from any Non-Party, including insurers,
25 that may have defense and/or indemnity obligations for claims against the Parties in
26 this Action, provided that each designee shall have signed an undertaking in the
27 form attached as Exhibit 1 before reviewing any Confidential Information pursuant
28 to this order;

1 e. Any person indicated on the face of a document or other materials
2 containing Confidential Information as having written or received such document or
3 other materials, or a custodian or other person who otherwise possessed or knew the
4 information;

5 f. Experts retained by such counsel or by the Parties as an
6 independent expert in connection with this Action, provided that each such Expert
7 shall have signed an undertaking in the form attached as Exhibit 1 before reviewing
8 any Confidential Information pursuant to this order;

9 g. Court reporters and their staff,

10 h. Professional jury or trial consultants, mock jurors, and
11 Professional Vendors to whom disclosure is reasonably necessary for this Action,
12 provided that each such individual shall have signed an undertaking in the form
13 attached as Exhibit 1 before reviewing any Confidential Information pursuant to this
14 order;

15 i. Officers of this Court and their supporting personnel or officers of
16 any appellate court to which any appeal may be taken or in which review is sought;
17 or

18 j. Any mediator or settlement officer, and their supporting
19 personnel, agreed upon by the Parties or otherwise ordered by the Court.

20 k. During their depositions, witnesses, and attorneys for witnesses,
21 in the Action to whom disclosure is reasonably necessary provided: (1) the deposing
22 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
23 they will not be permitted to keep any confidential information unless they sign the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
25 agreed by the Designating Party or ordered by the Court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material may
27 be separately bound by the court reporter and may not be disclosed to anyone except
28 as permitted under this Stipulated Protective Order;

1 1. Any other person to whom the Producing Party, in writing,
2 authorizes disclosure.

3 **DESIGNATION OF CONFIDENTIAL INFORMATION**

4 17. A Party or Non-Party may designate as “Confidential” those materials,
5 whether in written, oral, electronic, graphic, audiovisual or any other form, which
6 that Party or Non-Party in good faith believes contain Confidential Information.

7 18. Exercise of Restraint and Care in Designating Material for Protection.
8 Each Party or Non-Party that designates information or items for protection under
9 this Order must take care to limit any such designation to specific material that
10 qualifies under the appropriate standards. The Designating Party must designate for
11 protection only those parts of material, documents, items, or oral or written
12 communications that qualify so that other portions of the material, documents,
13 items, or communications for which protection is not warranted are not swept
14 unjustifiably within the ambit of this Order. If it comes to a Designating Party’s
15 attention that information or items that it designated for protection do not qualify for
16 protection, that Designating Party must promptly notify all other Parties that it is
17 withdrawing the inapplicable designation.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (e.g., to unnecessarily encumber the case development process or to impose
21 unnecessary expenses and burdens on other parties) are not permitted.

22 19. Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic
24 documents, but excluding transcripts of depositions or other pretrial or trial
25 proceedings), that the Producing Party affix at a minimum, the legend
26 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
27 contains protected material. If only a portion or portions of the material on a page
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1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins). Subject to the
3 terms of this Agreement, any Producing Party or any other Party may so designate
4 any materials in the reasonable exercise of such party's discretion; provided,
5 however, by agreeing to this Protective Order, no Party waives the right to challenge
6 any designation of any document as Confidential Information.

7 (b) for testimony given in depositions that the Designating Party identify the
8 Disclosure or Discovery Material on the record, before the close of the deposition,
9 all protected testimony.

10 (c) for information produced in some form other than documentary and for
11 any other tangible items, that the Producing Party affix in a prominent place on the
12 exterior of the container or containers in which the information is stored the legend
13 "CONFIDENTIAL." If only a portion or portions of the information warrants
14 protection, the Producing Party, to the extent practicable, shall identify the protected
15 portion(s).

16 **USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION**

17 20. Protected Material must be stored and maintained by a Receiving Party
18 at a location and in a secure manner that ensures that access is limited to the persons
19 authorized under this Order.

20 21. Confidential Information shall be used by a Party who receives the
21 information (the "Receiving Party") solely for the purposes of discovery, pleadings,
22 motions, briefs, potential settlement, and preparation for the trial or hearing in this
23 Action and on appeal, if any, and for no other purpose.

24 22. Confidential Information may be disclosed only to a Qualified Person
25 unless otherwise expressly provided in this Protective Order, or otherwise agreed to
26 in writing between the Designating Party and the Party wishing to disclose the
27 Confidential Information.

28 23. Any person making, or causing to be made, copies of any Confidential

1 Information shall make certain that each copy bears the legend “Confidential” on
2 each page.

3 **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 24. If a Receiving Party learns that, by inadvertence or otherwise, it has
5 disclosed Confidential Information to any person or in any circumstance not
6 authorized under this Stipulated Protective Order, the Receiving Party must
7 immediately:

- 8 a. notify in writing the Designating Party of the unauthorized
9 disclosures;
- 10 b. use its best efforts to retrieve all unauthorized copies of the
11 Confidential Information;
- 12 c. inform the person or persons to whom unauthorized disclosures
13 were made of all the terms of this Order; and,
- 14 d. request such person or persons to execute the attached Exhibit 1.

15 **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
16 **PROTECTED MATERIAL**

17 25. Except as set forth below, when a Producing Party gives notice to
18 Receiving Parties that certain inadvertently produced material is subject to a claim
19 of privilege or other protection, the obligations of the Receiving Parties are those set
20 forth in Federal Rule of Civil Procedure 26(b)(5)(B).

21 26. The inadvertent or unintentional disclosure by the Producing Party of
22 Confidential Information, regardless of whether the information was so designated
23 at the time of disclosure, shall not be deemed a waiver in whole or in part of a
24 Designating Party’s claim of confidentiality, either as to the specific information
25 disclosed or as to any other information relating thereto on the same or related
26 subject matter. Any such inadvertently or unintentionally disclosed Confidential
27 Information not designated as such shall be so designated by giving written notice to
28 all Parties, as soon as reasonably possible after the Producing Party becomes aware

1 of the inadvertent or unintentional disclosures. Upon such notice, and receipt of
2 substitute copies bearing the appropriate confidentiality legend, the Receiving Party
3 shall comply with the obligations of Federal Rule of Civil Procedure 26(b)(5)(B),
4 shall thereafter treat information contained in said documents and any summaries
5 and notes thereof as Confidential Information.

6 **CHALLENGE TO DESIGNATION OF CONFIDENTIAL INFORMATION**

7 27. Party who contests any designation of any document as Confidential
8 Information (the “Challenging Party”) shall attempt to resolve the dispute with the
9 Designating Party, and if an agreement cannot be reached, may challenge the
10 designation with the Judge presiding over this Action as provided herein.

11 28. Any Party or Non-Party may challenge a designation of confidentiality
12 at any time that is consistent with the Court’s Scheduling Order.

13 29. Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process under Local Rule 37.1 et seq.

15 30. The burden of persuasion in any such challenge proceeding shall be on
16 the Designating Party.

17 31. Frivolous challenges, and those made for an improper purpose (e.g., to
18 harass or impose unnecessary expenses and burdens on other parties) may expose
19 the Challenging Party to sanctions. Unless the Designating Party has waived or
20 withdrawn the confidentiality designation, all parties shall continue to afford the
21 material in question the level of protection to which it is entitled under the
22 Producing Party’s designation until the Court rules on the challenge.

23 **CONFIDENTIAL INFORMATION SUBPOENAED OR ORDERED**
24 **PRODUCED IN OTHER LITIGATION OR PROCEEDINGS**

25 32. If a Party is served with a subpoena or a court order issued in other
26 litigation or proceedings that compels disclosure of any information or items
27 designated in this action as Confidential Information, that party must:

- 28 a. promptly notify in writing the Designating Party. Such

1 notification shall include a copy of the subpoena or court order;

2 b. promptly notify in writing the entity who caused the subpoena or
3 order to issue in the other litigation or proceedings that some or all of the material
4 covered by the subpoena or order is subject to this Protective Order. Such
5 notification shall include a copy of this Stipulated Protective Order; and

6 c. cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Confidential Information may be affected.

8 33. If the Designating Party timely seeks a protective order or its equivalent
9 in the other litigation or proceedings, the Party served with the subpoena or court
10 order shall not produce any information designated in this action as
11 “CONFIDENTIAL” before a determination by the court from which the subpoena
12 or court order issued, unless the Party has obtained the Designating Party’s
13 permission. The Designating Party shall bear the burden and expense of seeking
14 protection in that court of its confidential material and nothing in these provisions
15 should be construed as authorizing or encouraging a Receiving Party in this action
16 to disobey a lawful directive from another court.

17 **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
18 **PRODUCED IN THIS LITIGATION**

19 34. The terms of this Order are applicable to information produced by a
20 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
21 produced by Non-Parties in connection with this litigation is protected by the
22 remedies and relief provided by this Order. Nothing in these provisions should be
23 construed as prohibiting a Non-Party from seeking additional protections.

24 35. In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is
26 subject to an agreement with the Non-Party not to produce the Non-Party’s
27 confidential information, then the Producing Party shall:

28 a. promptly notify in writing the Requesting Party and the Non-

1 Party that some or all of the information requested is subject to a confidentiality
2 agreement with a Non-Party;

3 b. promptly provide the Non-Party with a copy of the Stipulated
4 Protective Order in this litigation, the relevant discovery request(s), and a
5 reasonably specific description of the information requested; and

6 c. make the information requested available for inspection by the
7 Non-Party.

8 If the Non-Party fails to seek a protective order from this court within 14 days
9 of receiving the notice and accompanying information, the Producing Party may
10 produce the Non-Party's confidential information responsive to the discovery
11 request. If the Non-Party timely seeks a protective order, the Producing Party shall
12 not produce any information in its possession or control that is subject to the
13 confidentiality agreement with the Non-Party before a determination by the court.²
14 Absent a court order to the contrary, the Non-Party shall bear the burden and
15 expense of seeking protection in this court of its Confidential Information.

16 FINAL DISPOSITION

17 36. After the final disposition of this Action by final judgment (including
18 any appeal), settlement, or otherwise, and within 60 days of a written request by the
19 Designating Party, each Receiving Party shall either destroy or return all
20 Confidential Information, including any copies thereof, to the Producing Party, and
21 shall confirm in writing that all the Confidential Information, including copies
22 thereof in the Receiving Party's possession, custody or control, has been returned or
23 destroyed.

24 37. Notwithstanding the foregoing, Counsel to this Action may retain, and
25

26 ² The purpose of this provision is to alert the Requesting Party to the existence of
27 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to
28 protect its confidentiality interests in this court.

1 not return, an archival copy of all pleadings, motion papers, trial, deposition, and
2 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
3 expert reports, attorney work product, and consultant and expert work product, even
4 if such materials contain Protected Material. Any such archival copies that contain
5 or constitute Protected Material remain subject to this Protective Order.

6 **SCOPE OF STIPULATION AND PROTECTIVE ORDER**

7 38. The terms of this Order are applicable to information produced by a
8 Non-Party in this action and designated as Confidential Information. Such
9 information produced by non-parties in connection with this litigation is protected
10 by the remedies and relief provided by this Order. Nothing in these provisions
11 should be construed as prohibiting a non-party from seeking additional protections.

12 39. The protections conferred by this Stipulation and Order do not cover the
13 following information:

14 a. any information that is in the public domain at the time of
15 disclosure to a Receiving Party or becomes part of the public domain after its
16 disclosure to a Receiving Party as a result of publication not involving a violation of
17 this Order, including becoming part of the public record through trial or otherwise;
18 and

19 b. any information known to the Receiving Party prior to the
20 disclosure or obtained by the Receiving Party after the disclosure from a source who
21 obtained the information lawfully and under no obligation of confidentiality to the
22 Designating Party.

23 40. The Parties agree that they shall be bound by this Stipulation upon
24 signing by counsel and shall protect any and all Confidential Information as
25 provided herein even if this Stipulation is not approved by the Court.

26 41. No Party waives any right it otherwise would have to object to
27 disclosing or producing any information or item on any ground not addressed in this
28

1 Stipulation through entry of this Stipulation. Similarly, no Party waives any right to
2 object on any ground to use in evidence of any of the material covered by this
3 Stipulation.

4 42. In the event that the Court denies approval of this Stipulation as
5 submitted, any party receiving Confidential Information shall within thirty (30)
6 days, at the election of the Receiving Party, either destroy or return all Confidential
7 Information to the Producing Party and shall confirm in writing that the materials
8 that have been returned or destroyed constitute all the Confidential Information,
9 including copies thereof, in that party's possession, custody or control.

10 43. Any use of Confidential Information at trial may be governed by a
11 separate agreement or order.

12 MISCELLANEOUS

13
14 44. Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

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

21 46. Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5. Protected Material
23 may only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material at issue. **Good cause must be shown for the under**
25 **seal filing**. If a Party's request to file Protected Material under seal is denied by the
26 court, then the Party may file the information in the public record unless otherwise
27 instructed by the court.

28 **IT IS SO STIPULATED.**

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EXHIBIT 1

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

Gober v. Wells Fargo & Co. et al.

Central District of California

Case No. 2:15-CV-07120-DDP-PLA

I, _____ declare that my address
is _____.

My current employer is _____ and my occupation is
_____.

1. I have received a copy of the Stipulated Protective Order in the above-captioned action. I have carefully read and understand the provisions of the Stipulated Protective Order.

2. I will comply with all of the provisions of the Stipulated Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Stipulated Protective Order, and will use only for purposes of this action any and all Confidential Information that is disclosed to me.

3. Promptly upon termination of this action, I will return any materials containing Confidential Information that may come into my possession to the outside attorneys representing my employer or the attorneys who furnished those documents to me.

4. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Stipulated Protective Order in this action.

5. I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Signature: _____

Print Name: _____