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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM DAN GOTSES, an individual,
Plaintiff,

vs.

U.S. BANCORP, a Delaware corporation;
U.S. BANCORP INSURANCE
SERVICES, LLC, a Wisconsin limited
liability company; U.S. BANCORP
INVESTMENTS, INC., a Delaware
corporation; U.S. BANK, a national bank
association; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 2:17-cv-08670 CBM(AFMx)

**~~[PROPOSED]~~ ORDER GRANTING
STIPULATED PROTECTIVE ORDER**

Complaint filed: November 30, 2017

1
2 TO THE HONORABLE COURT AND ALL INTERESTED PARTIES:

3 Plaintiff William Dan Gotses (“Plaintiff”), on the one hand, and Defendants U.S.
4 Bancorp, U.S. Bancorp Insurance Services, LLC, U.S. Bancorp Investments, Inc., and U.S.
5 Bank (collectively “Defendants”) move the Court for a Protective Order Pursuant to Rule
6 26(c) of the Federal Rules of Civil Procedure concerning the treatment of Confidential
7 Information (as hereinafter defined) and, as grounds therefore, state as follows:

8 **1. A. PURPOSES AND LIMITATIONS**

9 Discovery in this action is likely to involve production of confidential, proprietary,
10 or private information for which special protection from public disclosure and from use for
11 any purpose other than prosecuting this litigation may be warranted. Accordingly, the
12 parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
13 Order. The parties acknowledge that this Order does not confer blanket protections on all
14 disclosures or responses to discovery and that the protection it affords from public
15 disclosure and use extends only to the limited information or items that are entitled to
16 confidential treatment under the applicable legal principles.

17 **B. GOOD CAUSE STATEMENT**

18 This action is likely to involve private and confidential information regarding
19 Defendants’ current and former employees (including nonparties) as well as Defendants’
20 trade secrets, commercial, financial, technical and/or proprietary information for which
21 special protection from public disclosure and from use for any purpose other than
22 prosecution of this action is warranted. Such confidential information consists of, among
23 other things, confidential and private personal information of Defendants’ current and
24 former employees (including nonparties), confidential business or financial information,
25 information regarding confidential business practices, or other confidential research,
26 development, or commercial information (including information implicating privacy rights
27 of third parties), information otherwise generally unavailable to the public, or which may
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1 be privileged or otherwise protected from disclosure under state or federal statutes, court
2 rules, case decisions, or common law. Accordingly, to expedite the flow of information, to
3 facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
4 adequately protect information the parties are entitled to keep confidential, to ensure that
5 the parties are permitted reasonable necessary uses of such material in preparation for and
6 in the conduct of trial, to address their handling at the end of the litigation, and serve the
7 ends of justice, a protective order for such information is justified in this matter. It is the
8 intent of the parties that information will not be designated as confidential for tactical
9 reasons and that nothing be so designated without a good faith belief that it has been
10 maintained in a confidential, non-public manner, and there is good cause why it should not
11 be part of the public record of this case.

12 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
13 **SEAL**

14 The parties further acknowledge, as set forth in Section 12.3, below, that this
15 Stipulated Protective Order does not entitle them to file confidential information under
16 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
17 standards that will be applied when a party seeks permission from the court to file material
18 under seal. There is a strong presumption that the public has a right of access to judicial
19 proceedings and records in civil cases. In connection with non-dispositive motions, good
20 cause must be shown to support a filing under seal. See *Kamakana v. City and County of*
21 *Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d
22 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577
23 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a
24 specific showing of good cause or compelling reasons with proper evidentiary support and
25 legal justification, must be made with respect to Protected Material that a party seeks to
26 file under seal. The parties' mere designation of Disclosure or Discovery Material as
27 CONFIDENTIAL does not— without the submission of competent evidence by
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1 declaration, establishing that the material sought to be filed under seal qualifies as
2 confidential, privileged, or otherwise protectable—constitute good cause. Further, if a
3 party requests sealing related to a dispositive motion or trial, then compelling reasons, not
4 only good cause, for the sealing must be shown, and the relief sought shall be narrowly
5 tailored to serve the specific interest to be protected. See *Pintos v. Pacific Creditors Ass’n.*,
6 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or
7 thing sought to be filed or introduced under seal in connection with a dispositive motion or
8 trial, the party seeking protection must articulate compelling reasons, supported by specific
9 facts and legal justification, for the requested sealing order. Again, competent evidence
10 supporting the application to file documents under seal must be provided by declaration.
11 Any document that is not confidential, privileged, or otherwise protectable in its entirety
12 will not be filed under seal if the confidential portions can be redacted. If documents can
13 be redacted, then a redacted version for public viewing, omitting only the confidential,
14 privileged, or otherwise protectable portions of the document, shall be filed. Any
15 application that seeks to file documents under seal in their entirety should include an
16 explanation of why redaction is not feasible.

17 **2. DEFINITIONS**

18 2.1 Action: The present lawsuit, *William Dan Gotses v. U.S. Bancorp, et*
19 *al.*, USDC Case No. 2:17-cv-8670 CBM (AFMx).

20 2.2 Challenging Party: a Party or Non-Party that challenges the designation
21 of information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for protection
24 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
25 Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
27 their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless
4 of the medium or manner in which it is generated, stored, or maintained (including, among
5 other things, testimony, transcripts, and tangible things), that are produced or generated in
6 disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
9 expert witness or as a consultant in this Action.

10 2.8 House Counsel: attorneys who are employees of a party to this Action.
11 House Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party
15 to this Action but are retained to represent or advise a party to this Action and have
16 appeared in this Action on behalf of that party or are affiliated with a law firm which has
17 appeared on behalf of that party, and includes support staff.

18 2.11 Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their support
20 staffs).

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.13 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
26 their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 **3. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only Protected
7 Material (as defined above), but also (1) any information copied or extracted from
8 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
9 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel
10 that might reveal Protected Material.

11 Any use of Protected Material at trial shall be governed by the orders of the trial
12 judge. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION**

14 Once a case proceeds to trial, information that was designated as CONFIDENTIAL
15 or maintained pursuant to this protective order used or introduced as an exhibit at trial
16 becomes public and will be presumptively available to all members of the public, including
17 the press, unless compelling reasons supported by specific factual findings to proceed
18 otherwise are made to the trial judge in advance of the trial. See Kamakana, 447 F.3d at
19 1180-81 (distinguishing “good cause” showing for sealing documents produced in
20 discovery from “compelling reasons” standard when merits-related documents are part of
21 court record). Accordingly, the terms of this protective order do not extend beyond the
22 commencement of the trial.

23 **5. DESIGNATING PROTECTED MATERIAL**

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.
25 Each Party or Non-Party that designates information or items for protection under this
26 Order must take care to limit any such designation to specific material that qualifies under
27 the appropriate standards. The Designating Party must designate for protection only those
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1 parts of material, documents, items, or oral or written communications that qualify so that
2 other portions of the material, documents, items, or communications for which protection
3 is not warranted are not swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that
5 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
6 to unnecessarily encumber the case development process or to impose unnecessary
7 expenses and burdens on other parties) may expose the Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
13 or ordered, Disclosure or Discovery Material that qualifies for protection under this Order
14 must be clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but
17 excluding transcripts of depositions or other pretrial or trial proceedings), that the
18 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
19 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
20 portion or portions of the material on a page qualifies for protection, the Producing Party
21 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
22 the margins).

23 A Party or Non-Party that makes original documents available for inspection need
24 not designate them for protection until after the inspecting Party has indicated which
25 documents it would like copied and produced. During the inspection and before the
26 designation, all of the material made available for inspection shall be deemed
27 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
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1 copied and produced, the Producing Party must determine which documents, or portions
2 thereof, qualify for protection under this Order.

3 Then, before producing the specified documents, the Producing Party must affix the
4 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion
5 or portions of the material on a page qualifies for protection, the Producing Party also must
6 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
7 margins).

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

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

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material. Upon
19 timely correction of a designation, the Receiving Party must make reasonable efforts to
20 assure that the material is treated in accordance with the provisions of this Order.

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s Scheduling
24 Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37-1 et seq.

6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint stipulation pursuant to Local Rule 37-2.

6.4 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating 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.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

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(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

1 (b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this Action;

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

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
9 to whom disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (g) the author or recipient of a document containing the information or a custodian
12 or other person who otherwise possessed or knew the information;

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

21 (i) any mediator or settlement officer, and their supporting personnel, mutually
22 agreed upon by any of the parties engaged in settlement discussions.

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24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
25 **PRODUCED IN OTHER LITIGATION**
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1 If a Party is served with a subpoena or a court order issued in other litigation that
2 compels disclosure of any information or items designated in this Action as
3 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

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

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

6 (2) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably specific
8 description of the information requested; and

9 (3) make the information requested available for inspection by the
10 Non-Party, if requested.

11 (c) If the Non-Party fails to seek a protective order from this court within
12 14 days of receiving the notice and accompanying information, the Receiving Party may
13 produce the Non-Party's confidential information responsive to the discovery request. If
14 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
15 information in its possession or control that is subject to the confidentiality agreement with
16 the Non-Party before a determination by the court. Absent a court order to the contrary, the
17 Non-Party shall bear the burden and expense of seeking protection in this court of its
18 Protected Material.

19 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
21 Protected Material to any person or in any circumstance not authorized under this
22 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
23 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
24 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
25 persons to whom unauthorized disclosures were made of all the terms of this Order,
26 and (d) request such person or persons to execute the "Acknowledgment and
27 Agreement to Be Bound" that is attached hereto as Exhibit A.

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
2 **OTHERWISE PROTECTED MATERIAL**

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

12 **12. MISCELLANEOUS**

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to disclosing
17 or producing any information or item on any ground not addressed in this Stipulated
18 Protective Order. Similarly, no Party waives any right to object on any ground to use in
19 evidence of any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only
22 be filed under seal pursuant to a court order authorizing the sealing of the specific Protected
23 Material at issue. If a Party's request to file Protected Material under seal is denied by the
24 court, then the Receiving Party may file the information in the public record unless
25 otherwise instructed by the court.

26 **13. FINAL DISPOSITION**
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1 After the final disposition of this Action, as defined in paragraph 4, within 60 days of
2 a written request by the Designating Party, each Receiving Party must return all Protected
3 Material to the Producing Party or destroy such material. As used in this subdivision, “all
4 Protected Material” includes all copies, abstracts, compilations, summaries, and any other
5 format reproducing or capturing any of the Protected Material. Whether the Protected
6 Material is returned or destroyed, the Receiving Party must submit a written certification to
7 the Producing Party (and, if not the same person or entity, to the Designating Party) by the
8 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
9 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any
10 copies, abstracts, compilations, summaries or any other format reproducing or capturing any
11 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
12 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
13 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
14 work product, and consultant and expert work product, even if such materials contain
15 Protected Material. Any such archival copies that contain or constitute Protected Material
16 remain subject to this Protective Order as set forth in Section 4 (DURATION).

17 **14. VIOLATIONS**

18 Any violation of this Order may be punished by any and all appropriate measures
19 including, without limitation, contempt proceedings and/or monetary sanctions.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: February 19, 2019

JACKSON LEWIS P.C.

4
5 By: /s/ Theresa M. Marchlewski
6 Theresa M. Marchlewski
7 Jason M. Yang

8 Attorneys for Defendants
9 U.S. BANCORP; U.S. BANCORP
10 INSURANCE SERVICES, LLC; U.S.
11 BANCORP INVESTMENTS, INC.; U.S.
12 BANK

13 Dated: February 19, 2019

REIF LAW GROUP, P.C.

14
15 By: /s/ Brandon S. Reif
16 Brandon S. Reif
17 Rachel Dardashti

18 Attorneys for Plaintiff
19 WILLIAM DAN GOTSES

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21 DATED: 3/15/2019

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23
24 ALEXANDER F. MacKINNON
25 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by
the United States District Court for the Central District of California on
_____ [date] in the case of William Dan Gotes v. U.S. Bancorp., *et*
al. USDC Case No. 2:17-cv-8670 CBM (AFMx. I agree to comply with and to be bound
by all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order. I further agree to submit to the
jurisdiction of the United States District Court for the Central District of California for
enforcing the terms of this Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of _____
[print or type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____