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 10 OCWEN LOAN SERVICING, LLC

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 Alma Duran,
 14 Plaintiff,
 15 v.
 16 Ocwen Loan Servicing, LLC,
 17 Defendant.

18 Case No. 5:17-cv-00905-GW-KK
 19 **STIPULATED [~~PROPOSED~~]**
 20 **PROTECTIVE ORDER**

21 Plaintiff Alma Duran (“Plaintiff”) and Defendant Ocwen Loan Servicing,
 22 LLC (“Ocwen”) (collectively the “Parties”), by and through their counsel, hereby
 23 stipulate to and petition the court to enter the following Agreed Protective Order
 24 regarding confidential information in the above-caption action, Case No. 5:17-cv-
 25 00905-GW-KK (the “Action”).

26 This case is currently in discovery, and it appears that such discovery will
 27 involve the disclosure of personal, confidential, trade secret, proprietary, technical,
 28 business and/or financial information (hereinafter referred to collectively as
 “confidential information” or “confidential material”). Accordingly, all of the
 parties consent to the following terms and conditions of this Agreed Protective
 Order and further agree to the entry of this Agreed Protective Order by the Court:

1 1. PURPOSES AND LIMITATIONS

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

11 2. GOOD CAUSE STATEMENT

12 This action involves trade secrets, customer information, and other valuable
13 commercial, financial, technical and proprietary information for which special
14 protection from public disclosure and from use for any purpose other than
15 prosecution of this action is warranted. Such confidential and proprietary materials
16 and information consist of, among other things, confidential business and financial
17 information, information regarding confidential business practices, and other
18 confidential commercial information (including information implicating privacy
19 rights of third parties), information otherwise generally unavailable to the public,
20 and which may be privileged or otherwise protected from disclosure under state or
21 federal statutes, court rules, case decisions, or common law. Accordingly, to
22 expedite the flow of information, to facilitate the prompt resolution of disputes over
23 confidentiality of discovery materials, to adequately protect information the parties
24 are entitled to keep confidential, to ensure that the parties are permitted reasonable
25 necessary uses of such material in preparation for and in the conduct of trial, to
26 address their handling at the end of the litigation, and serve the ends of justice, a
27 protective order for such information is justified in this matter. It is the intent of the
28 parties that information will not be designated as confidential for tactical reasons

1 and that nothing be so designated without a good faith belief that it has been
2 maintained in a confidential, non-public manner, and there is good cause why it
3 should not be part of the public record of this case.

4 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
5 PROCEDURE

6 The parties further acknowledge, as set forth in Section 14.3, below, that this
7 Stipulated Protective Order does not entitle them to file confidential information
8 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
9 and the standards that will be applied when a party seeks permission from the court
10 to file material under seal. There is a strong presumption that the public has a right
11 of access to judicial proceedings and records in civil cases. In connection with non-
12 dispositive motions, good cause must be shown to support a filing under seal. See
13 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006),
14 Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-
15 Welbon v. Sony Elecs., Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
16 protective orders require good cause showing), and a specific showing of good
17 cause or compelling reasons with proper evidentiary support and legal justification,
18 must be made with respect to Protected Material that a party seeks to file under
19 seal. The parties' mere designation of Disclosure or Discovery Material as
20 CONFIDENTIAL does not—without the submission of competent evidence by
21 declaration, establish that the material sought to be filed under seal qualifies as
22 confidential, privileged, or otherwise protectable—constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial,
24 then compelling reasons, not only good cause, for the sealing must be shown, and
25 the relief sought shall be narrowly tailored to serve the specific interest to be
26 protected. See Pintos v. Pac. Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir.
27 2010). For each item or type of information, document, or thing sought to be filed
28 or introduced under seal, the party seeking protection must articulate compelling

1 reasons, supported by specific facts and legal justification, for the requested sealing
2 order. Again, competent evidence supporting the application to file documents
3 under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise protectable in
5 its entirety will not be filed under seal if the confidential portions can be redacted.
6 If documents can be redacted, then a redacted version for public viewing, omitting
7 only the confidential, privileged, or otherwise protectable portions of the document,
8 shall be filed. Any application that seeks to file documents under seal in their
9 entirety should include an explanation of why redaction is not feasible.

10 4. DEFINITIONS

11 4.1 Action: *Alma Duran v. Ocwen Loan Servicing, LLC*, Case No. 5:17-
12 cv-00905-GW-KK.

13 4.2 Challenging Party: a Party or Non-Party that challenges the
14 designation of information or items under this Order.

15 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
16 how it is generated, stored or maintained) or tangible things that qualify for
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
18 the Good Cause Statement.

19 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 4.5 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 4.6 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced
27 or generated in disclosures or responses to discovery.

28 4.7 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as
2 an expert witness or as a consultant in this Action.

3 4.8 House Counsel: attorneys who are employees of a party to this Action.
4 House Counsel does not include Outside Counsel of Record or any other outside
5 counsel.

6 4.9 Non-Party: any natural person, partnership, corporation, association or
7 other legal entity not named as a Party to this action.

8 4.10 Outside Counsel of Record: attorneys who are not employees of a
9 party to this Action but are retained to represent a party to this Action and have
10 appeared in this Action on behalf of that party or are affiliated with a law firm that
11 has appeared on behalf of that party, and includes support staff.

12 4.11 Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 4.13 Professional Vendors: persons or entities that provide litigation
18 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)
20 and their employees and subcontractors.

21 4.14 Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL.”

23 4.15 Receiving Party: a Party that receives Disclosure or Discovery
24 Material from a Producing Party.

25 5. SCOPE

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge and other applicable authorities. This Order does not govern the use of
5 Protected Material at trial.

6 6. DURATION

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

16 7. DESIGNATING PROTECTED MATERIAL

17 7.1 Exercise of Restraint and Care in Designating Material for

18 Protection. Each Party or Non-Party that designates information or
19 items for protection under this Order must take care to limit any such designation to
20 specific material that qualifies under the appropriate standards. The Designating
21 Party must designate for protection only those parts of material, documents, items
22 or oral or written communications that qualify so that other portions of the material,
23 documents, items or communications for which protection is not warranted are not
24 swept unjustifiably within the ambit of this Order.

25 Mass, indiscriminate or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to
28 impose unnecessary expenses and burdens on other parties) may expose the

1 Designating Party to sanctions.

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

5 7.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
7 that qualifies for protection under this Order must be clearly so designated before
8 the material is disclosed or produced.

9 Designation in conformity with this Order requires:

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

17 A Party or Non-Party that makes original documents available for inspection
18 need not designate them for protection until after the inspecting Party has indicated
19 which documents it would like copied and produced. During the inspection and
20 before the designation, all of the material made available for inspection shall be
21 deemed "CONFIDENTIAL." After the inspecting Party has identified the
22 documents it wants copied and produced, the Producing Party must determine
23 which documents, or portions thereof, qualify for protection under this Order. Then,
24 before producing the specified documents, the Producing Party must affix the
25 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
26 portion of the material on a page qualifies for protection, the Producing Party also
27 must clearly identify the protected portion(s) (e.g., by making appropriate markings
28 in the margins).

1 (b) for testimony given in depositions that the Designating Party
2 identifies the Disclosure or Discovery Material on the record, before the close of
3 the deposition all protected testimony.

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

10 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the Designating Party's right to secure protection under this Order for such
13 material. Upon timely correction of a designation, the Receiving Party must make
14 reasonable efforts to assure that the material is treated in accordance with the
15 provisions of this Order.

16 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37-1 et seq.

22 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
23 joint stipulation pursuant to Local Rule 37-2.

24 8.4 The burden of persuasion in any such challenge proceeding shall be on
25 the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party’s designation until the Court rules on the
3 challenge.

4 9. ACCESS TO AND USE OF PROTECTED MATERIAL

5 9.1 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 Action only for prosecuting, defending or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the Action has been terminated, a
10 Receiving Party must comply with the provisions of section 15 below (FINAL
11 DISPOSITION).

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

15 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 “CONFIDENTIAL” only to:

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

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

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

27 (d) the court and its personnel;

28 (e) court reporters and their staff;

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

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

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

15 (i) any mediators or settlement officers and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
18 PRODUCED IN OTHER LITIGATION

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

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

24 (b) promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena
26 or order is subject to this Protective Order. Such notification shall include a copy
27 of this Stipulated Protective Order; and
28

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected. If the
3 Designating Party timely seeks a protective order, the Party served with the
4 subpoena or court order shall not produce any information designated in this action
5 as “CONFIDENTIAL” before a determination by the court from which the
6 subpoena or order issued, unless the Party has obtained the Designating Party’s
7 permission. The Designating Party shall bear the burden and expense of seeking
8 protection in that court of its confidential material and nothing in these provisions
9 should be construed as authorizing or encouraging a Receiving Party in this Action
10 to disobey a lawful directive from another court.

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

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

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

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

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

28 (3) make the information requested available for inspection by the

1 Non-Party, if requested.

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

11 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
21 OTHERWISE PROTECTED MATERIAL

22 When a Producing Party gives notice to Receiving Parties that certain
23 inadvertently produced material is subject to a claim of privilege or other
24 protection, the obligations of the Receiving Parties are those set forth in Federal
25 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
26 whatever procedure may be established in an e-discovery order that provides for
27 production without prior privilege review. Pursuant to Federal Rule of Evidence
28 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure

1 of a communication or information covered by the attorney-client privilege or work
2 product protection, the parties may incorporate their agreement in the stipulated
3 protective order submitted to the court.

4 14. MISCELLANEOUS

5 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 14.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order, no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
11 any ground to use in evidence of any of the material covered by this Protective
12 Order.

13 14.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Local Civil Rule 79-5. Protected Material
15 may only be filed under seal pursuant to a court order authorizing the sealing of the
16 specific Protected Material. If a Party's request to file Protected Material under seal
17 is denied by the court, then the Receiving Party may file the information in the
18 public record unless otherwise instructed by the court.

19 15. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 6, within 60
21 days of a written request by the Designating Party, each Receiving Party must
22 return all Protected Material to the Producing Party or destroy such material. As
23 used in this subdivision, "all Protected Material" includes all copies, abstracts,
24 compilations, summaries, and any other format reproducing or capturing any of the
25 Protected Material. Whether the Protected Material is returned or destroyed, the
26 Receiving Party must submit a written certification to the Producing Party (and, if
27 not the same person or entity, to the Designating Party) by the 60-day deadline that
28 (1) identifies (by category, where appropriate) all the Protected Material that was

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

10
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12
13 DATED: 3/6/2018 /s/ Emily C. Beecham
14 Emily C. Beecham
15 Attorney for Plaintiff
16 Alma Duran

17
18 DATED: 3/6/2018 /s/ Chad R. Fuller
19 Chad R. Fuller
20 Virginia Bell Flynn
21 Attorneys for Defendant
22 Ocwen Loan Servicing, LLC

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24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: 3/6/18

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KENLY KIYA KATO
United States Magistrate Judge

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 6, 2018, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any counsel of record who have not consented to electronic service through the Court's CM/ECF system will be served by electronic mail, first class mail, facsimile and/or overnight delivery.

/s/ Chad R. Fuller
Chad R. Fuller