

1 TODD M. FRIEDMAN, Bar No. 216752
 tfriedman@toddfllaw.com
 2 MEGHAN E. GEORGE, Bar No. 274525
 mgeorge@toddfllaw.com
 3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
 21550 Oxnard Street, Suite 780
 4 Woodland Hills, CA 91367
 Telephone: 877.206.4741
 5 Facsimile: 866.633.0228

6 Attorneys for Plaintiff
 AMY KANATSKY

8 JOSHUA Z. FELDMAN, Bar No. 199207
 jfeldman@littler.com
 9 GEORGE BENJAMIN, Bar No. 273240
 gbenjamin@littler.com
 10 LITTLER MENDELSON, P.C.
 2049 Century Park East
 11 5th Floor
 Los Angeles, CA 90067.3107
 12 Telephone: 310.553.0308
 13 Facsimile: 310.553.5583

14 Attorneys for Defendant
 WELLS FARGO BANK, NATIONAL
 15 ASSOCIATION

16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 AMY KANATSKY,
 19
 20 Plaintiff,

21 v.

22 WELLS FARGO BANK, N.A.; and
 DOES 1 - 100 inclusive,,
 23 Defendant.

Case No. EDCV17-02304-JLS (KKx)

**STIPULATED PROTECTIVE
 ORDER**

Complaint Filed: October 10, 2017
 (Superior Court San Bernardino)
 Trial Date: None Set.

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting 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 the
8 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. The parties further acknowledge, as set forth in Section 12.3, below,
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from the
14 court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets, private third party information,
17 private financial information, and other proprietary information for which special
18 protection from public disclosure and from use for any purpose other than prosecution
19 of this action is warranted. Such confidential and proprietary materials and
20 information consist of, among other things, confidential business or financial
21 information, information regarding confidential business practices, or other
22 confidential commercial information (including information implicating privacy rights
23 of third parties), information otherwise generally unavailable to the public, or which
24 may be privileged or otherwise protected from disclosure under state or federal
25 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow
26 of information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the parties are entitled to keep
28 confidential, to ensure that the parties are permitted reasonable necessary uses of such

1 material in preparation for and in the conduct of trial, to address their handling at the
2 end of the litigation, and serve the ends of justice, a protective order for such
3 information is justified in this matter. It is the intent of the parties that information will
4 not be designated as confidential for tactical reasons and that nothing be so without a
5 good faith belief that it has been maintained in a confidential, non-public manner, and
6 there is good cause why it should not be part of the public record of this case.

7 2. DEFINITIONS

8 2.1 Action: this pending federal law suit, originally filed by Plaintiff Amy
9 Kanatsky in the Superior Court of California, County of San Bernardino.

10 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
13 is generated, stored or maintained) or tangible things that qualify for protection under
14 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
15 Statement.

16 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
17 support staff).

18 2.5 Designating Party: a Party or Non-Party that designates information or items
19 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among
22 other things, testimony, transcripts, and tangible things), that are produced or generated
23 in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
26 expert witness or as a consultant in this Action.

27 2.8 House Counsel: attorneys who are employees of a party to this Action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or other
3 legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
5 this Action but are retained to represent or advise a party to this Action and have
6 appeared in this Action on behalf of that party or are affiliated with a law firm which
7 has appeared on behalf of that party, and includes support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
16 their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is designated
18 as “CONFIDENTIAL.”

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 3. SCOPE

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

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

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
4 in writing or a court order otherwise directs. Final disposition shall be deemed to be
5 the later of (1) dismissal of all claims and defenses in this Action, with or without
6 prejudice; and (2) final judgment herein after the completion and exhaustion of all
7 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
8 for filing any motions or applications for extension of time pursuant to applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
11 Party or Non-Party that designates information or items for protection under this Order
12 must take care to limit any such designation to specific material that qualifies under the
13 appropriate standards. The Designating Party must designate for protection only those
14 parts of material, documents, items, or oral or written communications that qualify so
15 that other portions of the material, documents, items, or communications for which
16 protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
27 or ordered, Disclosure or Discovery Material that qualifies for protection under this
28 Order must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents,
3 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
5 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
6 portion or portions of the material on a page qualifies for protection, the Producing
7 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins).

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

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

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

28

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items does not, standing alone, waive the
3 Designating Party’s right to secure protection under this Order for such material. Upon
4 timely correction of a designation, the Receiving Party must make reasonable efforts to
5 assure that the material is treated in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
8 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
10 process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on the
12 Designating Party. Frivolous challenges, and those made for an improper purpose
13 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
14 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
15 withdrawn the confidentiality designation, all parties shall continue to afford the
16 material in question the level of protection to which it is entitled under the Producing
17 Party’s designation until the Court rules on the challenge.

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending, or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under the
23 conditions described in this Order. When the Action has been terminated, a Receiving
24 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving
3 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

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

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

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

28 (i) any mediator or settlement officer, and their supporting personnel, mutually

1 agreed upon by any of the parties engaged in settlement discussions.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
3 OTHER LITIGATION

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

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

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

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

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

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
24 THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-
26 Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the remedies
28 and relief provided by this Order. Nothing in these provisions should be construed as

1 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
26 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
27 all unauthorized copies of the Protected Material, (c) inform the person or persons to
28 whom unauthorized disclosures were made of all the terms of this Order, and (d)

1 request such person or persons to execute the “Acknowledgment and Agreement to Be
2 Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

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

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

1 13. FINAL DISPOSITION

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

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2

3 DATED: March 12, 2018

4 /s/Todd M. Friedman

5 TODD M. FRIEDMAN
6 MEGHAN E. GEORGE
7 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
8 Attorneys for Plaintiff

9 DATED: March 13, 2018

10 /s/ George S. Benjamin

11 JOSHUA Z. FELDMAN
12 GEORGE BENJAMIN
13 LITTLER MENDELSON, P.C.
14 Attorneys for Defendant
15 WELLS FARGO BANK, NATIONAL ASSOCIATION

16 **Attestation of Authorization to Use E-Signature**

17 Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), I hereby attest that all other signatories
18 listed, and on whose behalf the filing is submitted, concur in the filing's content and
19 have authorized the filing.

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

21 DATED: 3/13/18

22 

23

24 **Honorable Kenly Kiya Kato**
25 United States Magistrate Judge

26

27

28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Central District of California on [date] in the
7 case of *Amy Kanatsky v. Wells Fargo Bank, N.A.; and Does 1 - 100 Inclusive*, United
8 Stated District Court, Central District of California, Case No. 17-cv-02304-JLS-KK.
9 I agree to comply with and to be bound by all the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the provisions
14 of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print or
19 type full name] of _____ [print or type full
20 address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this Stipulated
22 Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

27
28 Firmwide:153234388.2 051995.1127