

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
THOMAS R. KAUFMAN, Cal. Bar No. 177936
3 tkaufman@sheppardmullin.com
1901 Avenue of the Stars, Suite 1600
4 Los Angeles, California 90067-6055
Telephone: 310.228.3700
5 Facsimile: 310.228.3701

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
7 Including Professional Corporations
MARLENE M. NICOLAS, Cal. Bar No. 245298
8 mnicolas@sheppardmullin.com
HILARY A. HABIB, Cal. Bar No. 293431
9 hhabib@sheppardmullin.com
333 S. Hope Street, 43rd Floor
10 Los Angeles, California 90071
Telephone: 213.620-1780
11 Facsimile: 213.620.1398

Attorneys for Defendant
12 WELLS FARGO BANK, N.A.,
erroneously sued as Wells Fargo Bank
13

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT

16 KIMBERLY SUE BIRD,
17 Plaintiff,
18 v.
19 WELLS FARGO BANK., a California
Corporation, and Does I-XX, inclusive
20 Defendants.
21

Case No. 1:16-CV-01130-DAD-EPG
Assigned to the Honorable Dale A. Drozd
Courtroom 5

**STIPULATED PROTECTIVE ORDER
RE CONFIDENTIAL AND HIGHLY
CONFIDENTIAL MATERIALS**

[Complaint Filed: March 4, 2016]

22
23
24
25
26
27
28

1 **IT IS HEREBY STIPULATED** by and between the Parties to *Kimberly Sue Bird,*
2 *Plaintiff, v. Wells Fargo Bank, a California Corporation, and Does I-XX, inclusive,* Case No.
3 1:16-CV-01130-DAD-EPG, by and through their respective counsel of record, that in order to
4 facilitate the exchange of information and documents which may be subject to confidentiality
5 limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate as
6 follows:

7 1. In this Stipulation and Protective Order, the words set forth below shall have the
8 following meanings:

9 a. "Proceeding" means the above-entitled proceeding, *Kimberly Sue Bird,*
10 *Plaintiff, v. Wells Fargo Bank, a California Corporation, and Does I-XX, inclusive,* Case No.
11 1:16-CV-01130-DAD-EPG.

12 b. "Court" means the Hon. Dale A. Drozd and the Hon. Erica P. Grosjean, or
13 any other judge to which this Proceeding may be assigned, including Court staff participating in
14 such proceedings.

15 c. "Confidential Materials" means any Documents or Information designated
16 as "Confidential" or "Highly Confidential" pursuant to the definitions and provisions of this
17 Stipulation and Protective Order, which is in the possession of a Designating Party who believes
18 in good faith that such information is entitled to confidential treatment under applicable law.

19 d. "Designating Party" means the Party that designates Materials as "Highly
20 Confidential."

21 e. "Disclose" or "Disclosed" or "Disclosure" means to reveal, divulge, give, or
22 make available Materials, or any part thereof, or any information contained therein.

23 f. "Documents" mean documents, writings, tangible things, recordings, and
24 photographs as defined in FED. R. CIV. P. 34(a) and FED. R. EVID. 1001.

25 g. "Information" means the content of Documents.

26 2. The Designating Party shall have the right to designate as "Confidential" the
27 following nonpublic, sensitive company information which the Designating Party in good faith
28

1 believes has a low risk of negatively impacting Defendant, its customers or team members, and/or
2 resulting in regulatory, reputational, or financial consequences:

3 a. Details on the development of systems, projects, processes, know-how,
4 technology, learning transcripts, trainings, organizational charts, and internal standards, policies
5 protocols, procedures, information previously classified as "Internal Use;"

6 b. Information collected about competitors;

7 c. Communications and information shared with a limited group with a
8 business need to know, as required to perform a particular business function or activity;

9 3. The Designating Party shall have the right to designate as "Highly Confidential"
10 the following nonpublic, sensitive company and consumer information which the Designating
11 Party in good faith believes has a medium to high risk of negatively impacting Defendant, its
12 customers or team member, and/or resulting in regulatory, reputational, or financial consequences:

13 i. Details on the development of systems, projects, processes, know-
14 how, technology, learning transcripts, trainings, organizational charts, and internal standards;
15 information previously classified as "Confidential," "Restricted," or "Do not reproduce;"

16 ii. Information that, if disclosed, is likely to provide significant
17 advantage to a competitor;

18 iii. Defendant's private financial information, including: revenue,
19 profits, forward-looking statements or comments on Defendant's stock, earnings, a competitor's
20 business outlook;

21 iv. Customer lists, vendor lists, development of new products and
22 services, selling opportunities, performance goals assigned, performance goals obtained, number
23 of loans closed, and loan amounts;

24 v. Personnel records of Defendant's team members other than Plaintiff,
25 including, personnel files, corrective actions, coaching, counseling, performance reviews,
26 performance evaluations, pay information, commissions, performance goals, compensation and
27 benefits information, background information (such as credit history, professional qualifications,
28 education);

1 vi. Information of Defendant's security systems, protocols, security
2 plans, compliance with legal obligations, and management of the business; and

3 vii. Private information of customers, including customer names,
4 personal contact information, email addresses, Social Security numbers, financial account
5 numbers, check images, loan numbers, loan amounts, loan terms, financial transaction details,
6 creditworthiness, issues with obtaining a loan, private financial information, passwords, PINs,
7 credit card validation numbers (CCV), secure one-time authentication, code of the day.

8 b. The entry of this Stipulation and Protective Order does not alter, waive,
9 modify, or abridge any right, privilege or protection otherwise available to any Party with respect
10 to the discovery of matters, including but not limited to any Party's right to assert the attorney-
11 client privilege, the attorney work product doctrine, or other privileges, or any Party's right to
12 contest any such assertion.

13 4. Any Documents or Information to be designated as "Confidential" or "Highly
14 Confidential" must be clearly so designated before the Document or Information is Disclosed or
15 produced. The designation should not obscure or interfere with the legibility of the designated
16 Information.

17 a. For Documents, the Designating Party must affix the legend "Confidential"
18 or "Highly Confidential" on each page of any Document containing such designated Confidential
19 Material;

20 5. The inadvertent production by any of the undersigned Parties or non-Parties to the
21 Proceedings of any Document or Information during discovery in this Proceeding without a
22 "Confidential" or "Highly Confidential" designation, shall be without prejudice to any claim that
23 such item is "Confidential" or "Highly Confidential" and such Party shall not be held to have
24 waived any rights by such inadvertent production. In the event that any Document or Information
25 that is subject to a "Confidential" or "Highly Confidential" designation is inadvertently produced
26 without such designation, the Party that inadvertently produced the document shall give written
27 notice of such inadvertent production within twenty (20) days of discovery of the inadvertent
28 production, together with a further copy of the subject Document or Information designated as

1 “Confidential” or “Highly Confidential” (the “Inadvertent Production Notice”). Upon receipt of
2 such Inadvertent Production Notice, the Party that received the inadvertently produced Document
3 or Information shall promptly destroy the inadvertently produced Document or Information and all
4 copies therefore, or at the expense of the producing Party, return such together with all copies of
5 such Document or Information to counsel for the producing Party and shall retain only the
6 “Confidential” or “Highly Confidential” designated Materials. Should the receiving Party choose
7 to destroy such inadvertently produced Document or Information, the receiving Party shall notify
8 the producing Party in writing of such destruction within ten (10) days of receipt of written notice
9 of the inadvertent production. This provision is not intended to apply to any inadvertent
10 production of any Information protected by attorney-client or work product privileges. In the event
11 that this provision conflicts with any applicable law regarding waiver of confidentiality through
12 the inadvertent production of Documents or Information, such law shall govern.

13 6. In the event that counsel for a Party receiving Documents or Information in
14 discovery designated as “Confidential” or “Highly Confidential” objects to such designation with
15 respect to any or all of such items, said counsel shall advise counsel for the Designating Party, in
16 writing, of such objections, the specific Documents or Information to which each objection
17 pertains, and the specific reasons and support for such objections (the “Designation Objections”).
18 Counsel for the Designating Party shall have fifteen (15) days from receipt of the written
19 Designation Objections to either (a) agree in writing to de-designate Documents or Information
20 pursuant to any or all of the Designation Objections and/or (b) file a motion with the Court
21 seeking to uphold any or all designations on Documents or Information addressed by the
22 Designation Objections (the “Designation Motion”). Pending a resolution of the Designation
23 Motion by the Court, any and all existing designations on the Documents or Information at issue
24 in such Motion shall remain in place. The Designating Party shall have the burden on any
25 Designation Motion of establishing the applicability of its “Confidential” or “Highly Confidential”
26 designation. In the event that the Designation Objections are neither timely agreed to nor timely
27 addressed in the Designation Motion, then such Documents or Information shall be de-designated
28 in accordance with the Designation Objection applicable to such material.

1 7. Access to and/or Disclosure of Confidential Materials designated as “Confidential”
2 or "Highly Confidential" shall be permitted only to the following, persons:

3 a. the Court;

4 b. the Plaintiff – who shall be advised that such Confidential Materials are
5 being Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order
6 and that they may not be Disclosed other than pursuant to its terms;

7 c. attorneys of record in the Proceedings and their affiliated attorneys,
8 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved in
9 the Proceedings and are not employees of any Party. (2) In-house counsel to the undersigned
10 Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided,
11 however, that each non-lawyer given access to Confidential Materials shall be advised that such
12 Materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and
13 Protective Order and that they may not be Disclosed other than pursuant to its terms;

14 d. those officers, directors, partners, members, employees and agents of all
15 non-designating Parties that counsel for such Parties deems necessary to aid counsel in the
16 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of
17 Confidential Materials to any such officer, director, partner, member, employee or agent, counsel
18 for the Party making the Disclosure shall deliver a copy of this Stipulation and Protective Order to
19 such person, shall explain that such person is bound to follow the terms of such Order, and shall
20 secure the signature of such person on a statement in the form attached hereto as Exhibit A;

21 e. court reporters in this Proceeding (whether at depositions, hearings, or any
22 other proceeding);

23 f. any deposition, trial or hearing witness in the Proceeding; provided,
24 however, that each such witness given access to Confidential Materials shall be advised that such
25 Materials are being Disclosed pursuant to. and are subject to, the terms of this Stipulation and
26 Protective Order and that they may not be Disclosed other than pursuant to its terms;

27 g. mock jury participants, provided, however, that prior to the Disclosure of
28 Confidential Materials to any such mock jury participant, counsel for the Party making the

1 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
2 explain that such person is bound to follow the terms of such Order, and shall secure the signature
3 of such person on a statement in the form attached hereto as Exhibit A.

4 h. outside experts or expert consultants consulted by the undersigned Parties
5 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
6 hearing; provided, however, that prior to the Disclosure of Confidential Materials to any such
7 expert or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of this
8 Stipulation and Protective Order to such person, shall explain its terms to such person, and shall
9 secure the signature of such person on a statement in the form attached hereto as Exhibit A. It shall
10 be the obligation of counsel, upon learning of any breach or threatened breach of this Stipulation
11 and Protective Order by any such expert or expert consultant, to promptly notify counsel for the
12 Designating Party of such breach or threatened breach; and

13 i. any other person that the Designating Party agrees to in writing.

14 8. Confidential Materials shall be used by the persons receiving them only for the
15 purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or
16 defending the Proceeding, and not for any business or other purpose whatsoever.

17 9. Any Party to the Proceeding (or other person subject to the terms of this Stipulation
18 and Protective Order) may ask the Court, after appropriate notice to the other Parties to the
19 Proceeding, to modify or grant relief from any provision of this Stipulation and Protective Order.

20 10. Entering into, agreeing to, and/or complying with the terms of this Stipulation and
21 Protective Order shall not:

22 a. operate as an admission by any person that any particular Document or
23 Information marked "Confidential" or "Highly Confidential" contains or reflects trade secrets,
24 proprietary, confidential or competitively sensitive business, commercial, financial or personal
25 information; or

26 b. prejudice in any way the right of any Party (or any other person subject to
27 the terms of this Stipulation and Protective Order):

28

1 i. to seek a determination by the Court of whether any particular
2 Confidential Material should be subject to protection as "Confidential" or "Highly Confidential"
3 under the terms of this Stipulation and Protective Order; or

4 ii. to seek relief from the Court on appropriate notice to all other
5 Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order, either
6 generally or as to any particular Document, Material or Information.

7 11. Any Party to the Proceeding who has not executed this Stipulation and Protective
8 Order as of the time it is presented to the Court for signature may thereafter become a Party to this
9 Stipulation and Protective Order by its counsel's signing and dating a copy thereof and filing the
10 same with the Court, and serving copies of such signed and dated copy upon the other Parties to
11 this Stipulation and Protective Order.

12 12. Any Information that may be produced by a non-Party witness in discovery in the
13 Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
14 "Confidential" or "Highly Confidential" under the terms of this Stipulation and Protective Order,
15 and any such designation by a non-Party shall have the same force and effect, and create the same
16 duties and obligations, as if made by one of the undersigned Parties hereto. Any such designation
17 shall also function as a consent by such producing Party to the authority or the Court in the
18 Proceeding to resolve and conclusively determine any motion or other application made by any
19 person or Party with respect to such designation, or any other matter otherwise arising under this
20 Stipulation and Protective Order.

21 13. If any person subject to this Stipulation and Protective Order who has custody of
22 any Confidential Materials receives a subpoena or other process ("Subpoena") from any
23 government or other person or entity demanding production of Confidential Materials, the
24 recipient of the Subpoena shall promptly give notice of the same by electronic mail transmission,
25 followed by either express mail or overnight delivery to counsel of record for the Designating
26 Party, and shall furnish such counsel with a copy of the Subpoena. Upon receipt of this notice, the
27 Designating Party may, in its sole discretion and at its own cost, move to quash or limit the
28 Subpoena, otherwise oppose production of the Confidential Materials, and/or seek to obtain

1 confidential treatment of such Confidential Materials from the subpoenaing person or entity to the
2 fullest extent available under law. The recipient of the Subpoena may not produce any Documents
3 or Information pursuant to the Subpoena prior to the date specified for production on the
4 Subpoena.

5 14. Nothing in this Stipulation and Protective Order shall be construed to preclude
6 either Party from asserting in good faith that certain Confidential Materials require additional
7 protection. The Parties shall meet and confer to agree upon the terms of such additional protection.

8 15. If, after execution of this Stipulation and Protective Order, any Confidential
9 Materials submitted by a Designating Party under the terms of this Stipulation and Protective
10 Order is Disclosed by a non-Designating Party to any person other than in the manner authorized
11 by this Stipulation and Protective Order, the non-Designating Party responsible for the Disclosure
12 shall bring all pertinent facts relating to the Disclosure of such Confidential Materials to the
13 immediate attention of the Designating Party.

14 16. A Party that seeks to file under seal any Confidential Materials must comply with
15 Local Civil Rule 141. Protected Material may only be filed under seal pursuant to a court order
16 authorizing the sealing of the specific Confidential Material at issue. If a Party's request to file
17 Confidential Material under seal is denied by the court, then the Receiving Party may file the
18 information in the public record unless otherwise instructed by the court.

19 17. The Parties shall meet and confer regarding the procedures for use of Confidential
20 Materials at trial and shall move the Court for entry of an appropriate order. Any cost burden
21 associated with providing clean copies of documents previously stamped CONFIDENTIAL or
22 HIGHLY CONFIDENTIAL shall be borne solely by the party designating such documents as
23 confidential.

24 18. Nothing in this Stipulation and Protective Order shall affect the admissibility into
25 evidence of Confidential Materials, or abridge the rights of any person to seek judicial review or to
26 pursue other appropriate judicial action with respect to any ruling made by the Court concerning
27 the issue of the status of Protected Material.

28

1 19. This Stipulation and Protective Order shall continue to be binding after the
2 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding, except
3 that a Party may seek the written permission of the Designating Party or may move the Court for
4 relief from the provisions of this Stipulation and Protective Order. To the extent permitted by law,
5 the Court shall retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective
6 Order, even after the Proceeding is terminated.

7 20. Upon written request made within thirty (30) days after the settlement or other
8 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)
9 promptly return to counsel for each Designating Party all Confidential Materials and all copies
10 thereof (except that counsel for each Party may maintain in its files, in continuing compliance with
11 the terms of this Stipulation and Protective Order, all work product, and one copy of each pleading
12 filed with the Court , one copy of all discovery materials exchanged between the parties and
13 received from third-parties, once copy of all documents produced by the parties and any third-
14 parties, and one copy of each deposition together with the exhibits marked at the deposition), (b)
15 agree with counsel for the Designating Party upon appropriate methods and certification of
16 destruction or other disposition of such Confidential Materials, or (c) as to any Documents or
17 other Information not addressed by sub-paragraphs (a) and (b), file a motion seeking a Court order
18 regarding proper preservation of such Materials. To the extent permitted by law the Court shall
19 retain continuing jurisdiction to review and rule upon the motion referred to in sub-paragraph (c)
20 herein.

21 21. After this Stipulation and Protective Order has been signed by counsel for all
22 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms set
23 forth herein with regard to any Confidential Materials that have been produced before the Court
24 signs this Stipulation and Protective Order.

25 22. The Parties and all signatories to the Certification attached hereto as Exhibit A
26 agree to be bound by this Stipulation and Protective Order pending its approval and entry by the
27 Court. In the event that the Court modifies this Stipulation and Protective Order, or in the event
28 that the Court enters a different Protective Order, the Parties agree to be bound by this Stipulation

1 and Protective Order until such time as the Court may enter such a different Order. It is the Parties'
2 intent to be bound by the terms of this Stipulation and Protective Order pending its entry so as to
3 allow for immediate production of Confidential Materials under the terms herein.

4 This Stipulation and Protective Order may be executed in counterparts.

5
6 Dated: June 29, 2017

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8
9
10 By



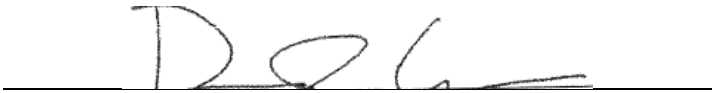
11 THOMAS R. KAUFMAN
12 MARLENE M. NICOLAS
13 HILARY A. HABIB

14 Attorneys for Defendant
15 WELLS FARGO BANK, N.A.

16
17 Dated: June 28, 2017

18 CRAVENS & ASSOCIATES

19 By



20 DAN CRAVENS

21 Attorney for Plaintiff Kimberly Bird
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

The Court has reviewed the stipulated protective order and adopts it. The Court modifies paragraph 6 to describe the procedure for seeking leave of court to file a motion challenging a confidentiality designation: Counsel must receive permission from the Court following an informal telephone conference. A party wishing to schedule such a conference should contact chambers to receive available dates. The Court will schedule the conference as soon as possible, taking into consideration the urgency of the issue. Prior to the conference, the Court will require the parties to submit letter briefs of no more than 3 pages in length to chambers for review. Telephonic conferences will not be on the record and the Court will not issue a formal ruling at that time. Nevertheless, the Court will attempt to provide guidance to the parties to narrow or dispose of the dispute. If no resolution is reached, the Court will consider whether the filing of a formal motion is appropriate.

IT IS SO ORDERED.

Dated: June 30, 2017

/s/ Eric P. Groj
UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____ [NAME],

[POSITION AND EMPLOYER], am about to receive Confidential Materials supplied in connection with the Proceeding, *Kimberly Sue Bird, Plaintiff, v. Wells Fargo Bank, a California Corporation, and Does I-XX, inclusive*, Case No. 1:16-CV-01130-DAD-EPG, I certify that I understand that the Confidential Materials are provided to me subject to the terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have been given a copy of the Stipulation and Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulation and Protective Order, including any notes or other records that may be made regarding any such materials, shall not be Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the purposes of this Proceeding, any Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to me in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed this ____ day of _____, 20__, at _____.

DATED _____ BY:

Title

Address

City, State, Zip

Telephone Number