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24 *Metropolitan West Securities, LLC and*
25 *Wells Fargo Bank, N.A., successor by merger*
26 *to Wachovia Bank, N.A.*

27 UNITED STATES DISTRICT COURT
28 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

29 CALIFORNIA EARTHQUAKE
30 AUTHORITY,
31
32 Plaintiff,
33
34 v.

35 METROPOLITAN WEST SECURITIES,
36 LLC; WACHOVIA BANK, NATIONAL
37 ASSOCIATION; and DOES 1-25,
38 Defendants.

CASE NO. 2:10-CV-00291-MCE-GGH

**STIPULATION AND PROTECTIVE
ORDER RE PRODUCTION OF
METWEST GROUPWISE BACKUP
TAPE**

1 Plaintiff California Earthquake Authority (the “CEA”) and Defendants Metropolitan
2 West Securities, LLC (“MetWest”) and Wells Fargo Bank, N.A. (“Wells Fargo”), successor by
3 merger to Wachovia Bank, N.A. (“Wachovia Bank”) (collectively, “Wachovia”), by and
4 through their respective undersigned counsel, hereby stipulate and agree to the following
5 Stipulation and Protective Order re Production of MetWest GroupWise Backup Tape:

6 **1. PURPOSES AND LIMITATIONS**

7 Disclosure and discovery activity related to MetWest’s GroupWise Backup Tape as
8 described in the concurrently filed Backup Tape Protocol, attached hereto as Exhibit A, may
9 involve the production of highly confidential and highly sensitive proprietary and private
10 information for which special protection from public disclosure and from use for any purpose
11 other than prosecuting this litigation is warranted. Accordingly, the parties hereby stipulate to
12 and petition the Court to enter the following Stipulation and Protective Order re Production of
13 MetWest GroupWise Backup Tape.

14 **2. DEFINITIONS**

15 The definitions set forth in Exhibit A are incorporated herein.

16 **3. SCOPE**

17 The protections conferred by this Stipulation and Order cover only the MetWest
18 GroupWise Backup Tape and any data derived therefrom, including any copies, excerpts,
19 summaries, or compilations thereof.

20 **4. DURATION**

21 Even after the termination of this litigation, the confidentiality obligations imposed by
22 this Order shall remain in effect until Wachovia agrees otherwise in writing or a court order
23 otherwise directs.

1 that must be undertaken by the Vendor in order to transfer access to either the Initial Privilege
2 Set or the Relevant Data Set between Wachovia and the CEA, as described in the Backup Tape
3 Protocol (Exhibit A). The individuals listed in ¶ 5.1 are further prohibited from summarizing
4 or transcribing any portion of the Backup Tape Data, whether in hard copy or electronic form.
5 Notes or other annotations to the Backup Tape Data may be made within the Backup Tape
6 Database itself. These entries in the database shall be maintained in a manner that precludes
7 access to them by anyone other than the CEA's counsel, the CEA's Technical Expert, and the
8 Vendor in the course of its service to the CEA.

9 5.3 By virtue of its unfettered access to highly confidential and raw data, the CEA
10 and those counsel (including any independently contracted attorneys who are used for the
11 review of the Backup Tape Data and/or Backup Tape Database) who have signed the
12 Acknowledgement and Agreement to Be Bound (Exhibit B) are prohibited from bringing or
13 otherwise participating in any litigation against Wachovia Bank, MetWest, or their
14 subsidiaries, employees, agents, attorneys, representatives, or assigns. They are further
15 prohibited from bringing or otherwise participating in any litigation against Wells Fargo,
16 including its parents, subsidiaries, employees, agents, attorneys, representatives, or assigns, to
17 the extent Wells Fargo is named in litigation in which Wells Fargo's alleged liability is based
18 on any act of Wachovia or MetWest or their subsidiaries, employees, agents, attorneys,
19 representatives, or assigns. The above-described entities are referred to collectively as the
20 "Prohibited Entities". This prohibition does not apply to the instant litigation, or to any
21 actions to enforce a judgment arising from this litigation. These limitations shall be in effect
22 for a period of four (4) years from the date on which the Backup Tape Database was first made
23 accessible to those individuals described in ¶ 5.1(a) and (b). During that four-year period, if
24 any of the attorneys described in ¶ 5.1(a) or (b) are employed by or contracting with a law
25 practice that becomes involved in a litigation against one or more of the Prohibited Entities,
26 nothing in this Stipulation and Order shall be construed to limit the ability of that law practice
27 to engage in such litigation, provided that appropriate protections are put in place to prevent

1 the attorneys bound by this agreement from participating in or communicating with other
2 attorneys about that litigation.

3 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
4 **IN OTHER LITIGATION**

5 For the period beginning with its retrieval and ending with its destruction, as provided
6 for in the attached Backup Tape Protocol (Exhibit A), the Backup Tape Data shall at all times
7 remain in the possession, custody, and control of the Vendor and shall not be copied or
8 otherwise distributed. At no point will the Backup Tape Data be considered to be in the
9 possession, custody, or control of the California Earthquake Authority. The Backup Data shall
10 not be subject to disclosure in response to a subpoena or court order issued in any other
11 litigation or proceeding without all parties [to this stipulation having been given] the
12 opportunity to oppose disclosure.

13 **7. UNAUTHORIZED DISCLOSURE OF GROUPWISE BACKUP DATA**

14 If the CEA learns that, by inadvertence or otherwise, it has disclosed the Backup Tape
15 Data to any person or in any circumstance not authorized under this Order, it must
16 immediately (a) notify Wachovia in writing of the unauthorized disclosures, (b) use its best
17 efforts to retrieve all copies of the Backup Tape Data, (c) inform the person or persons to
18 whom unauthorized disclosures were made of all the terms of this Order, and (d) request such
19 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
20 attached hereto as Exhibit B. The unauthorized disclosure of any Backup Tape Data may,
21 upon noticed motion, result in the imposition of any sanction by this Court, up to and
22 including contempt.

23 **8. FINAL DISPOSITION**

24 At a time of the CEA’s choosing, but in any event no later than thirty days following
25 either the close of evidence at trial or the entry of a final judgment in this case, whichever
26 occurs first, all Backup Tape Data in every form shall be destroyed by the Vendor, who shall
27 certify the destruction in writing under penalty of perjury and provide such certification to all
28

1 parties. Every other person who has been given access to the Backup Tape Data, including the
2 CEA, its counsel, and the CEA's Technical Expert, shall provide written certification under
3 penalty of perjury that no copies or reproductions of, or notes about, the Backup Tape Data,
4 were made or retained. Such certification shall be provided to all parties.

5 **9. MISCELLANEOUS**

6 9.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
7 seek its modification by the Court in the future.

8 9.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no
9 party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Order. Similarly, no party waives any
11 right to object on any ground to the admissibility or use in evidence of any of the material
12 covered by this Protective Order, or produced pursuant to this Protective Order, including, but
13 not limited to, grounds of relevance.

14 9.3 No Waiver. By providing the CEA with access to the Backup Tape Data
15 Wachovia does not in any way waive any claim of attorney-client privilege, attorney work
16 product immunity, or any other such privilege as to any document.

17 9.4 The parties agree that either party may seek from the other modification of the
18 terms of this Stipulation and Protective Order, including its exhibits, due to circumstances
19 unforeseen at the time of its execution, such as unanticipated costs or volume of documents.
20 In such case, the parties shall meet and confer in an attempt to reach a mutually

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1 satisfactory resolution. If necessary, either party may seek an order of the Court modifying the
2 Protective Order, which will be heard in the ordinary course for motions before the Court.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5 DATED: August 7, 2012

STRUMWASSER & WOOCHEER LLP

6
7 /s/ Michael J. Strumwasser

Michael J. Strumwasser

8 Fredric D. Woocher

9 Patricia T. Pei

Attorneys for Plaintiff

10 CALIFORNIA EARTHQUAKE AUTHORITY

11
12 DATED: August 7, 2012

REED SMITH LLP

13
14 /s/ Jesse L. Miller

David C. Powell

15 Jesse L. Miller

16 Christopher C. Foster

Attorneys for Defendants

17 METROPOLITAN WEST SECURITIES, LLC and
18 WELLS FARGO BANK, N.A., successor by merger
19 to WACHOVIA BANK, N.A.

20 **IT IS SO ORDERED.**
21 **[denotes change by the court]**

22 DATED: August 8, 2012

/s/ Gregory G. Hollows

23
24 The Honorable Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE