

1 SEYFARTH SHAW LLP  
 Andrew M. Paley (SBN 149699)  
 2 E-mail: apaley@seyfarth.com  
 2029 Century Park East, Suite 3500  
 3 Los Angeles, CA 90067-3021  
 Telephone: (310) 277-7200  
 4 Facsimile: (310) 201-5219

5 SEYFARTH SHAW LLP  
 Alfred L. Sanderson, Jr. (SBN 186071)  
 6 E-mail: asanderson@seyfarth.com  
 Brandon R. McKelvey (SBN 217002)  
 7 E-mail: bmckelvey@seyfarth.com  
 400 Capitol Mall, Suite 2350  
 8 Sacramento, California 95814-4428  
 Telephone: (916) 448-0159  
 9 Facsimile: (916) 558-4839

10 Attorneys for Defendants  
 PROSPECT MORTGAGE, LLC

11 NICHOLS KASTER, LLP  
 12 Robert L. Schug (SBN 249640)  
 Email: rschug@nka.com  
 13 Matthew C. Helland (SBN 250451)  
 Email: helland@nka.com  
 14 One Embarcadero Center, Suite 720  
 San Francisco, CA 94111  
 15 Phone: 415-277-7235  
 Fax: 415-277-7238

16 Attorneys for Plaintiffs

17  
 18 UNITED STATES DISTRICT COURT  
 19 EASTERN DISTRICT OF CALIFORNIA

20 ELIZABETH SLIGER, CAROL DION and )	Case No. 2:11-CV-00465-LKK-EFB
SCOTT AVILA, individually, on behalf of )	
21 others similarly situated, and on behalf of the )	<b>STIPULATION AND PROTECTIVE</b>
general public, )	<b>ORDER REGARDING DISCOVERY</b>
22 )	
Plaintiffs, )	
23 )	
v. )	Complaint Filed: October 18, 2010
24 )	
PROSPECT MORTGAGE, LLC, and DOES 1- )	
25 50, inclusive, )	
26 )	
Defendants. )	

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1 In accordance with Federal Rule of Civil Procedure 26(c), and for good cause shown, IT  
2 IS HEREBY ORDERED:

3 1. This Protective Order shall apply to all information produced by the parties to this  
4 action during the course of discovery in this litigation, including document productions,  
5 interrogatory answers, responses to requests for admissions, depositions, and discovery materials  
6 otherwise produced or provided to the parties by non-parties pursuant to judicial procedures  
7 (collectively defined as “Litigation Materials”).

8 2. In producing or disclosing Litigation Materials, any party may designate as  
9 “Confidential” any portion of any Litigation Materials that it believes, in good faith, constitutes  
10 or contains non-public, highly sensitive, private, confidential, trade secret information or  
11 proprietary information (collectively defined as “Confidential Materials”).

12 3. In producing or disclosing Litigation Materials, any party may designate as  
13 “Highly Confidential Information – Attorneys’ Eyes Only,” any Litigation Materials that are  
14 particularly sensitive and constitute or contain non-public, highly sensitive, private, confidential,  
15 trade secret information or proprietary information (collectively defined as “Highly Confidential  
16 Materials”).

17 4. All Confidential Materials and Highly Confidential Materials made available in  
18 the course of the litigation of this case shall be used solely for the purposes of preparing for and  
19 conducting the litigation of this case and for no other purpose whatsoever. No Confidential  
20 Materials or Highly Confidential Materials may be used or disseminated except in accordance  
21 with the terms of this Protective Order.

22 5. The parties may designate Litigation Materials as “Confidential” or “Highly  
23 Confidential Information-Attorneys’ Eyes Only” at or before production or disclosure by (a)  
24 stamping or otherwise writing the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-  
25 ATTORNEYS’ EYES ONLY” on the Litigation Materials or (b) by an alternative method  
26 acceptable to all parties. In the event that Litigation Materials that are not designated initially as  
27 confidential or highly confidential-attorneys’ eyes only are later designated as such, they shall  
28 thereafter be treated as confidential or highly confidential-attorneys’ eyes only Litigation

1 Materials in accordance with this Protective Order.

2           6. Parties may designate depositions or other testimony as confidential or highly  
3 confidential-attorneys' eyes only by any one of the following means: (a) stating orally on the  
4 record that the information is confidential or highly confidential-attorneys' eyes only and the  
5 portions for which such designation is made, on the day that testimony is given; or (b) sending  
6 written notice designating information as confidential or highly confidential-attorneys' eyes only  
7 within fifteen days after receipt of a final transcript thereof. All information disclosed during a  
8 deposition shall be treated as if it were confidential unless and until the fifteen-day period set  
9 forth in this paragraph has expired without any written designation notice having been sent.  
10 Failure to designate depositions or other testimony as confidential or highly confidential-  
11 attorneys' eyes only within this fifteen-day period, however, does not preclude a party from  
12 doing so later in accordance with this order.

13           7. Litigation Materials designated "Confidential" and any copies thereof or  
14 information contained therein shall be maintained in confidence by the attorney of record to  
15 whom such Litigation Materials are produced or disclosed and such Litigation Materials and/or  
16 the information contained in such Litigation Materials shall be disclosed only to the following  
17 Qualified Persons:

18           (a) Parties to the litigation, including employees of parties to the extent deemed  
19 reasonably necessary by counsel for the party for assistance in prosecuting or defending this  
20 case;

21           (b) Counsel for the parties, including both outside counsel and in-house counsel for  
22 the parties;

23           (c) Legal, paralegal, non-technical, and clerical staff employed by counsel for the  
24 parties for the preparation of and trial of this action who have been advised of this Order;

25           (d) Private court reporters or notaries public engaged by the parties in their official  
26 capacities;

27           (e) Persons appearing as deponents or witnesses on behalf of the party who has  
28 produced or disclosed the confidential Litigation Materials, or on whose behalf such confidential

1 Litigation Materials have been produced or disclosed;

2 (f) Independent third-party experts or consultants retained by the parties to furnish  
3 expert services or advice or to give expert testimony who have been advised of this Order and  
4 who are not employed by any competitors of Prospect Mortgage, LLC;

5 (g) Former and current employees of defendant who do not fall into the categories  
6 above;

7 (h) Any third-party mediator selected by the parties or appointed by the Court; and

8 (i) The Court and court personnel.

9 8. Litigation Materials designated “Highly Confidential-Attorneys’ Eyes Only” and  
10 any copies thereof or information contained therein shall be maintained in confidence by the  
11 attorney of record to whom such Litigation Materials are produced or disclosed and such  
12 Litigation Materials and/or the information contained in such Litigation Materials shall be  
13 disclosed only to the following Qualified Persons:

14 (a) Counsel for the parties, including both outside counsel and in-house counsel for  
15 the parties;

16 (b) Legal, paralegal, non-technical, and clerical staff employed by counsel for the  
17 parties for the preparation of and trial of this action who have been advised of this Order;

18 (c) Private court reporters or notaries public engaged by the parties in their official  
19 capacities;

20 (d) Independent third-party experts or consultants retained by the parties to furnish  
21 expert services or advice or to give expert testimony who have been advised of this Order and  
22 who are not employed by any competitors of Prospect Mortgage, LLC;

23 (e) Any third-party mediator selected by the parties or appointed by the Court; and

24 (f) The Court and court personnel.

25 9. Before any person is given access to Confidential Materials pursuant to ¶7(b)-(d)  
26 or Highly Confidential Materials pursuant to ¶8(a)-(c), such person shall be specifically advised  
27 of the existence and requirements of this Protective Order. In addition, before any person is  
28 given access to Confidential Materials pursuant to ¶7(a), (e)-(h) or Highly Confidential Materials

1 pursuant to ¶8(d)-(e), such person shall be provided with a copy of this Protective Order and  
2 shall sign Exhibit A attached to this Protective Order to demonstrate that person's agreement to  
3 be bound by its terms. Counsel of record shall maintain possession of an executed copy of this  
4 Protective Order and shall provide a copy of it to each Qualified Person executing the  
5 acknowledgment and agreement appended as Exhibit A. A copy of the acknowledgment and  
6 agreement to be bound by the terms of this Protective Order signed by each person falling within  
7 the terms of this Protective Order shall be made available to opposing counsel upon request.  
8 Nothing in this paragraph, however, shall require the disclosure of the identity of experts retained  
9 by the parties. Any individual who is a plaintiff in this matter may be shown Litigation Materials  
10 marked "Confidential," pursuant to this paragraph, but they may not retain copies of any  
11 Litigation Materials marked "Confidential," except for periods of short duration necessary to  
12 prepare for hearings, depositions, or trial in this matter.

13           10. If Litigation Material designated confidential or quotations from or references to  
14 such materials are to be included in papers filed with or otherwise disclosed to the Court, such  
15 papers shall be labeled "Confidential."

16           11. If any party objects to the designation of any Litigation Materials as  
17 "Confidential" or "Highly Confidential-Attorneys' Eyes Only," that party shall so state its  
18 objection in a letter to counsel for the party making the designation. If the dispute cannot be  
19 resolved by agreement, the party challenging the designation of any Litigation Material as  
20 "Confidential" or "Highly Confidential-Attorneys' Eyes Only" shall have the right, on  
21 reasonable notice but in any event not less than five (5) days prior to the use of the documents or  
22 submission of the documents to the Court, to apply to the Court to have materials designated as  
23 not confidential. Until the Court rules on the motion, Confidential Material and Highly  
24 Confidential Material shall continue to be treated as so designated and any papers filed with the  
25 Court may not include such Confidential Material or Highly Confidential Material (except as  
26 provided for in Paragraph 10), but may refer to them by proper identification, such as Bates  
27 Stamp number or date and author.

1           12.     If counsel for any party to the action determines to file with, or submit to, the  
2 Court (other than at trial) (a) any Confidential Materials or Highly Confidential Materials, or (b)  
3 any pleading or other Document making any reference to the specific content of Confidential  
4 Materials or Highly Confidential Materials, the filing party will file a motion for an order  
5 permitting filing under seal with the Court in accordance with current District Court procedures  
6 and requirements for seeking such filings. However, if the party filing the Confidential Materials  
7 or Highly Confidential Materials was the only party who designated the information and/or  
8 documents as Confidential or Highly Confidential-Attorneys' Eyes Only, the filing party may  
9 elect at its sole discretion to not file a motion seeking permission to file under seal, but may  
10 instead file its own Confidential Materials or Highly Confidential Materials in accordance with  
11 regular court practices. Except by mutual agreement or in the case of an emergency motion, any  
12 motion seeking permission from the Court to file under seal must be filed at least five (5)  
13 business days before the due date, and, if the Court does not issue a ruling on such motion within  
14 two (2) business days preceding the due date, the parties agree that the filing party may file an  
15 uncontested motion for an extension of the due date pending the Court's ruling.

16           If the Court permits the Confidential Materials or Highly Confidential Materials to be  
17 filed under seal, the filing may be made electronically or by hand in accordance with the Court's  
18 rules and practices. In the event the Confidential Materials or Highly Confidential Materials are  
19 not electronically filed under seal, the sealed envelope in which such Confidential Materials or  
20 Highly Confidential Materials are filed shall be prominently marked "CONFIDENTIAL  
21 INFORMATION." The envelope shall also be prominently marked with the case caption and  
22 shall state "This envelope, which is being filed under seal, pursuant to the Court's order of  
23 [date], contains documents which include Confidential Material." The envelope in addition to  
24 enclosing a hard copy of the Confidential Materials or Highly Confidential Materials shall have a  
25 disk or CD-ROM containing the Confidential Materials or Highly Confidential Materials in PDF  
26 format. One copy of any Confidential Materials or Highly Confidential Materials filed with the  
27 Court shall be furnished to the other Party.

1 A party who files a motion for an order permitting the filing of Confidential Materials or  
2 Highly Confidential Materials under seal, whether contested or uncontested, may include in the  
3 same motion a request for an authorization to redact confidential information not relevant to the  
4 purpose of the filing of the Confidential Materials or Highly Confidential Materials.

5 13. Nothing in this Protective Order shall prevent any party from disclosing its own  
6 confidential Litigation Materials as it deems appropriate and any such disclosure shall not be  
7 deemed a waiver of any kind whatsoever or a waiver of any other party's obligation under the  
8 Protective Order.

9 14. If a party to this Protective Order in possession of Litigation Materials receives a  
10 subpoena from a non-party seeking the production or other disclosure of Litigation Materials,  
11 whether or not such materials have been designated as confidential, that party shall immediately  
12 give written notice to counsel of record for the party who provided the Litigation Materials being  
13 sought, which such notice shall include a copy of the subpoena. Where possible, at least ten  
14 days' notice before production or other disclosure should be given. In no event shall production  
15 or disclosure be made before telephone notice is given and, whenever possible, sufficiently in  
16 advance of production or disclosure to afford the party to whom such notice has been given, at  
17 least ten business days, to take appropriate action, including seeking judicial relief.

18 15. By this Protective Order, the parties do not waive any rights to object to any  
19 discovery request, seek any further protective order, or seek relief from the Court from any  
20 provision of this Protective Order by application on notice on any grounds.

21 16. This Protective Order shall not control the use of any evidence during the trial or  
22 any hearing of this case. However, nothing herein shall preclude either party from seeking the  
23 assistance of the Court in maintaining the confidential nature of any evidence that is presented at  
24 hearing or trial.

25 17. The fact that discovery material is designated confidential or that such material is  
26 disclosed in this litigation shall not be construed in any other context or proceeding before any  
27 court, agency or tribunal as a waiver or admission that such information is or is not confidential  
28 or proprietary.

1           18.     This Protective Order shall not apply to any materials that are publicly available.

2           19.     The inadvertent production or disclosure of any Litigation Material in discovery  
3 or otherwise shall not effect a waiver of any privilege at law or in equity or any rights or  
4 obligations arising from or related to this Protective Order, provided the party making such  
5 production or disclosure acts promptly to notify the relevant parties or persons of the inadvertent  
6 production or disclosure and to remedy the inadvertent production or disclosure upon the  
7 discovery thereof.

8           20.     The parties may modify the provisions of this Protective Order at any time by  
9 stipulation approved by order of the Court, or, if no stipulation can be obtained, by motion.

10          21.     Upon final resolution of this matter, all Confidential Materials and Highly  
11 Confidential Materials will be returned to the producing party, or destroyed and certified as  
12 destroyed, at the option of the producing party, within forty-five days. Notwithstanding anything  
13 contained herein to the contrary, counsel for the Parties may retain copies of all transcripts and  
14 work product, including, but not limited to pleadings, briefs, correspondence and memoranda  
15 that are claimed to contain Confidential Information or Highly Confidential Information. Such  
16 materials shall remain subject to this Protective Order, which shall survive the termination date.

17          22.     This Protective Order shall be binding upon the parties upon their signature hereto  
18 and by signing hereto each party agrees to comply with the terms of this Protective Order and to  
19 be bound thereby, even prior to the Court's entry of the proposed Protective Order based upon  
20 this stipulation, and even if the Court does not enter the proposed Protective Order based upon  
21 this stipulation. In the event that the Court does not enter the proposed Protective Order based  
22 upon this stipulation, the parties shall in good faith negotiate any terms that the Court finds  
23 objectionable.

24 DATED: February 27, 2012.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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AGREED TO:

NICHOLS KASTER, LLP

By /s/ Robert L. Schug  
Matthew C. Hellend  
Robert L. Schug  
Attorneys for Plaintiffs  
ELIZABETH SLIGER, CAROL DION and  
SCOTT AVILA, et al.

SEYFARTH SHAW LLP

By /s/ Brandon R. McKelvey  
Brandon R. McKelvey  
Attorneys for Defendants  
PROSPECT MORTGAGE, LLC

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**EXHIBIT A**

**ACKNOWLEDGMENT**

1. I, the undersigned, hereby acknowledge that I have read the Order entered into in the United States District Court, Eastern District of California, in the action titled *Elizabeth Sliger, Carol Dion And Scott Avila et al. v. Prospect Mortgage, LLC*, Case Number 2:11-CV-00465-LKK-EFB, governing confidential information disclosed in this action.

2. I understand the terms of the Order and agree to be bound by such terms.

3. I understand and agree that any documents, material or information designated or marked Confidential or Highly Confidential-Attorneys' Eyes Only shall only be used for purposes of this litigation.

4. I consent to personal jurisdiction within the State of California with respect to any proceeding commenced to enforce the Order, including proceedings relative to contempt of Court.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2011, at \_\_\_\_\_ [city],  
\_\_\_\_\_ [state].

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Employer: \_\_\_\_\_