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14 ASSOCIATION

15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA  
17

18 NATHAN TODD DAVIS,  
19 Plaintiff,

20 v.

21 WELLS FARGO BANK, NATIONAL  
ASSOCIATION, a South Dakota  
22 Corporation, and DOES 1 through 100,  
inclusive,  
23 Defendants.  
24

Case No. 2:17-CV-01400-MCE-KJN

**STIPULATED PROTECTIVE ORDER**

1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve trade secrets, private  
3 customer information, private financial information, and other valuable proprietary information for  
4 which special protection from public disclosure and from use for any purpose other than prosecution  
5 of this action is warranted. Such confidential and proprietary materials and information consist of,  
6 among other things, confidential business or financial information, information regarding  
7 confidential business practices, or other confidential research, development, commercial, or personal  
8 information (including information implicating privacy rights of third parties), information otherwise  
9 generally unavailable to the public, or which may be privileged or otherwise protected from  
10 disclosure under state or federal statutes, court rules, case decisions, or common law.

11             Accordingly, the Parties hereby stipulate to and petition the court to enter the following  
12 Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket  
13 protections on all disclosures or responses to discovery and that the protection it affords from public  
14 disclosure and use extends only to the limited information or items that are entitled to confidential  
15 treatment under the applicable legal principles. It is the intent of the Parties that information will not  
16 be designated as confidential for tactical reasons and that nothing be so designated without a good  
17 faith belief that it has been maintained in a confidential, non-public manner, and there is good cause  
18 why it should not be part of the public record of this case. The Parties further acknowledge, as set  
19 forth in Section 12.3 below, that this Stipulated Protective Order does not entitle them to file  
20 confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be  
21 followed and the standards that will be applied when a Party seeks permission from the court to file  
22 material under seal.

23     2.     DEFINITIONS

24             2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
25 information or items under this Order.

26             2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
27 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of  
28

1 Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
3 as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

6 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium  
7 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
8 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
9 discovery in this matter.

10 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
11 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
12 consultant in this action.

13 2.7 House Counsel: attorneys who are employees of a Party to this action. House  
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
16 entity not named as a Party to this action.

17 2.9 Outside Counsel of Record: attorneys who are not employees of a Party to this action  
18 but are retained to represent or advise a Party to this action and have appeared in this action on  
19 behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

20 2.10 Party: any Party to this action, including all of its officers, directors, employees,  
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
23 Material in this action.

24 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
25 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
26 storing, or retrieving data in any form or medium) and their employees and subcontractors.

27 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
28 “CONFIDENTIAL.”

1           2.14   Receiving Party: a Party that receives Disclosure or Discovery Material from a  
2 Producing Party.

3           3.       SCOPE

4           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
5 defined above), but also: (1) any information copied or extracted from Protected Material; (2) all  
6 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
8 However, the protections conferred by this Stipulation and Order do not cover the following  
9 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
10 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
11 publication not involving a violation of this Order, including becoming part of the public record  
12 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
13 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
14 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
15 Protected Material at trial shall be governed by a separate agreement or order.

16          4.       DURATION

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

23          5.       DESIGNATING PROTECTED MATERIAL

24          5.1       Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
25 Non-Party that designates information or items for protection under this Order must take care to  
26 limit any such designation to specific material that qualifies under the appropriate standards. To the  
27 extent it is practical to do so, the Designating Party must designate for protection only those parts of  
28 material, documents, items, or oral or written communications that qualify – so that other portions of

1 the material, documents, items, or communications for which protection is not warranted are not  
2 swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
4 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
5 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
6 other Parties) expose the Designating Party to sanctions.

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

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
12 Discovery Material that qualifies for protection under this Order must be clearly so designated  
13 before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

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

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

1 appropriate markings in the margins).

2 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
3 Designating Party identify on the record, before the close of the deposition, hearing, or other  
4 proceeding, all protected testimony. When it is impractical to identify separately each portion of  
5 testimony that is entitled to protection and it appears that substantial portions of the testimony may  
6 qualify for protection, the Designating Party may invoke on the record (before the deposition,  
7 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific  
8 portions of the testimony as to which protection is sought and to specify the level of protection being  
9 asserted. Only those portions of the testimony that are appropriately designated for protection within  
10 the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a  
11 Designating Party may specify, at the deposition or up to 21 days afterwards if that period is  
12 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL.”

13 The use of a document as an exhibit at a deposition shall not in any way affect its designation  
14 as “CONFIDENTIAL”

15 Transcripts containing Protected Material shall have an obvious legend on the title page that  
16 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
17 (including line numbers as appropriate) that have been designated as Protected Material. The  
18 Designating Party shall inform the court reporter of these requirements. Any transcript that is  
19 prepared before the expiration of a 21-day period for designation shall be treated during that period  
20 as if it had been designated “CONFIDENTIAL” in its entirety unless otherwise agreed. After the  
21 expiration of that period, the transcript shall be treated only as actually designated.

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

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely correction of a  
2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
3 accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
8 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
9 confidentiality designation by electing not to mount a challenge promptly after the original  
10 designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
12 by providing written notice of each designation it is challenging and describing the basis for each  
13 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
14 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
15 of the Protective Order. The Parties shall attempt to resolve each challenge in good faith and must  
16 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
17 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
18 Party must explain the basis for its belief that the confidentiality designation was not proper and  
19 must give the Designating Party an opportunity to review the designated material, to reconsider the  
20 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
21 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
22 has engaged in this meet and confer process first or establishes that the Designating Party is  
23 unwilling to participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
25 intervention, the Designating Party shall file and serve a motion for protective order under Local  
26 Civil Rule 141.1 within 21 days of the initial notice of challenge or within 14 days of the Parties  
27 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. In  
28 addition, the Challenging Party may file a motion challenging a confidentiality designation at any

1 time if there is good cause for doing so, including a challenge to the designation of a deposition  
2 transcript or any portions thereof.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
7 the categories of persons and under the conditions described in this Order. When the litigation has  
8 been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL  
9 DISPOSITION).

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

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
13 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
14 information or item designated "CONFIDENTIAL" only to:

15 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
17 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
18 Bound" that is attached hereto as Exhibit A;

19 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
20 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
21 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
23 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement  
24 to Be Bound" (Exhibit A);

25 (d) the Court and its personnel, court reporters and their staff, and the jury;

26 (e) professional jury or trial consultants, mock jurors, and Professional Vendors to  
27 whom disclosure is reasonably necessary for this litigation and who have signed the  
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);



1 (f) any non-Party deposition, hearing, or trial witness may be shown, examined on,  
2 and testify concerning a document designated as “CONFIDENTIAL” provided that such witness is  
3 advised that “CONFIDENTIAL” materials are being disclosed pursuant to, and are subject to, the  
4 terms of this Stipulated Protective Order and that they may not be disclosed other than pursuant to its  
5 terms. A witness shall not retain or copy any “CONFIDENTIAL” information or items that were  
6 shown to the witness during his or her testimony or any portion of the transcript that contains such  
7 information. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
8 Protected Material must be separately bound by the court reporter and may not be disclosed to  
9 anyone except as permitted under this Stipulated Protective Order.

10 (g) the author or recipient of a document containing the information or a custodian or  
11 other person who otherwise possessed or knew the information.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
13 LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation that  
15 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
16 Party must:

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with the  
25 subpoena or court order shall not produce any information designated in this action as  
26 “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued,  
27 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear  
28 the burden and expense of seeking protection in that court of its confidential material – and nothing

1 in these provisions should be construed as authorizing or encouraging a Receiving Party in this  
2 action to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
4 LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Non-  
6 Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-  
7 Parties in connection with this litigation is protected by the remedies and relief provided by this  
8 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
9 additional protections.

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

- 13 1. promptly notify in writing the Requesting Party and the Non-Party that some  
14 or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 15 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
16 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
17 information requested; and
- 18 3. make the information requested available for inspection by the Non-Party.

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

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
28 Protected Material to any person or in any circumstance not authorized under this Stipulated

1 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
2 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
3 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of  
4 all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment  
5 and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
7 MATERIAL

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

16 12. MISCELLANEOUS

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

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

24 12.3 Filing Protected Material. Without written permission from the Designating Party or a  
25 court order secured after appropriate notice to all interested persons, a Party may not file in the  
26 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
27 Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal  
28 pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

1 13. FINAL DISPOSITION

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

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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4 Dated: December 8, 2017

LITTLER MENDELSON, P.C.

5  
6 By: /s/ John H. Adams Jr.

BENJAMIN L. WEBSTER  
JOHN H. ADAMS, JR.  
Attorneys for Defendant  
WELLS FARGO BANK, NATIONAL  
ASSOCIATION

7  
8  
9 Dated: December 8, 2017

OTKUPMAN LAW FIRM, ALC

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11 By: /s/ Nidah Farishta (as authorized on 12/7/17)

ROMAN OTKUPMAN  
NIDAH FARISHTA  
Attorneys for Plaintiff  
NATHAN TODD DAVIS

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15 **ORDER**

16 **GOOD CAUSE APPEARING**, the Court hereby approves this Stipulated Protective Order.

17 **IT IS SO ORDERED.**

18 Dated: December 12, 2017

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20 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in  
its entirety and understand the Stipulated Protective Order that was issued by the United States  
District Court for the Eastern District of California on \_\_\_\_\_ [date] in the case of *Davis v.*  
*Wells Fargo Bank, N.A.* Case No. 2:17-cv-01400-MCE-KJN. I agree to comply with and to be bound  
by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to  
so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with the provisions of  
this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number] as  
my California agent for service of process in connection with this action or any proceedings related  
to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_