

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 Mary J. Hackett (appearing *pro hac vice*)  
mhackett@reedsmith.com  
2 Sharon L. Rusnak (appearing *pro hac vice*)  
srusnak@reedsmith.com  
3 REED SMITH LLP  
225 Fifth Avenue  
4 Pittsburgh, PA 15222  
Telephone: +1 412 288 3131  
5 Facsimile: +1 412 288 3063  
6 David C. Powell (SBN 129781)  
dpowell@reedsmith.com  
7 David S. Reidy (SBN 225904)  
dreidy@reedsmith.com  
8 REED SMITH LLP  
101 Second Street, Suite 1800  
9 San Francisco, CA 94105-3659  
Telephone: +1 415 543 8700  
10 Facsimile: +1 415 391 8269  
11 Attorneys for Defendants Bank of America,  
N.A. and Bank of America Corporation

Niall P. McCarthy (SBN 160175)  
nmccarthy@cpmlegal.com  
Anne Marie Murphy (SBN 202540)  
amurphy@cpmlegal.com  
Eric J. Buescher (SBN 271323)  
ebuescher@cpmlegal.com  
COTCHETT, PITRE & McCARTHY, LLP  
840 Malcolm Road  
Burlingame, CA 94010  
Telephone: +1 650 697 6000  
Facsimile: +1 650 692 3606  
  
Derek G. Howard (SBN 118082)  
dhoward@minamitamaki.com  
Kevin R. Allen (SBN 237994)  
kallen@minamitamaki.com  
MINAMI TAMAKI, LLP  
360 Post Street, 8th Floor  
San Francisco, CA 94108  
Telephone: +1 415 788 9000  
Facsimile: +1 415 398 3887  
  
J. Brian McTigue (SBN 87224)  
bmctigue@mctiguelaw.com  
McTIGUE LAW LLP  
4530 Wisconsin Avenue, NW, Suite 300  
Washington, DC 20016  
Telephone: +1 202 364 6900  
Facsimile: +1 202 364 9960  
  
Attorneys for Plaintiff and the Putative Class

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA

19 ELLEN STOODY-BROSER, An Individual,  
Individually And On Behalf Of All Others  
Similarly Situated,  
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Plaintiff,  
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vs.  
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BANK OF AMERICA, N.A. and BANK OF  
23 AMERICA CORPORATION,  
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Defendants.

Case No. CV 08 2705 JSW  
**STIPULATION AND [PROPOSED]  
PROTECTIVE ORDER**  
  
*Honorable Jeffrey S. White*

1 This matter is before the Court for entry of an order, with consent and agreement of the  
2 parties, governing the disclosure and protection of confidential and proprietary business information  
3 and financial information that may be sought during discovery in this case. In order to facilitate  
4 discovery while preserving and maintaining the confidentiality of certain documents or testimony  
5 that may be sought by the parties, the Court having reviewed this Confidentiality Stipulation and  
6 Protective Order (the “Protective Order”), and for good cause shown, it is hereby ORDERED by the  
7 Court that:

8 1. This Protective Order shall govern the use and dissemination of all information,  
9 documents or materials that are produced in this action and designated as “Confidential.” Any Party  
10 may, in good faith, designate as “Confidential” any documents, interrogatory answers, responses to  
11 requests for admission, deposition transcripts, deposition videos, information or other written,  
12 recorded, or graphic material produced or disclosed in this litigation that the Party considers to be  
13 subject to this Protective Order. This Protective Order extends to any other person or entity,  
14 including any third party, who produces or supplies information, documents or other materials used  
15 in this action by subpoena, Court order or otherwise.

16 2. The term “Confidential Information,” as used in this Protective Order, shall mean (a)  
17 information not in the public domain that reflects confidential financial or commercial information,  
18 (b) matters that constitute or contain trade secrets pursuant to applicable law, and (c) the non-public  
19 personal information of third parties, including information that identifies the personal or financial  
20 information for a given person, including name, address, account number, telephone number, place  
21 or position of work, or other identifying information.

22 3. Nothing in this Protective Order shall limit the right of a party to use documents and  
23 information that (a) were lawfully in its possession prior to the initiation of this action; (b) were, are,  
24 or become public knowledge, not in violation of this Protective Order; (c) are acquired by the non-  
25 producing party from a third party who breached no legal obligation in providing the document(s) to  
26 the non-producing party; or (d) become declassified under the Protective Order. The parties shall  
27 not designate information as “Confidential” for the purpose of interfering with the rights of the  
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1 receiving party to conduct discovery or for the purpose of frustrating the public’s right of access to  
2 Court proceedings and documents, as protected by the First Amendment.

3 **Confidential Information**

4 4. Any party to this action or other person or entity, including any third party, who  
5 produces or supplies information, documents or other materials used in this action (hereinafter the  
6 “Designating Party” or the “Producing Party”) may designate as “Confidential” (also referred to as  
7 “Protected Material”) any such information, document or material that it reasonably and in good  
8 faith believes constitutes or contains Confidential Information under the terms of this Protective  
9 Order. The designation “Confidential” shall be made by affixing on the document or material  
10 containing such information, and upon each page so designated if practicable, a legend that in  
11 substance states: “**CONFIDENTIAL.**” To the extent that electronically stored or recorded  
12 information or data is produced in native or other form such that it cannot be stamped or imaged  
13 with a designation of “Confidential,” the Designating Party may designate such material as  
14 “Confidential” by cover letter referring to such material and by labeling that material to the extent  
15 possible.

16 5. Depositions may be designated “Confidential” by indicating that fact on the record at  
17 the deposition or by providing written notice to the other party within thirty (30) days of receipt of  
18 the official hard copy transcript. Within thirty (30) days of receipt of the official deposition  
19 transcript, the Designating Party shall advise the court reporter and opposing counsel of the specific  
20 pages and lines in which Confidential Information appears. If no indication on the record at the  
21 deposition is made, all information disclosed during a deposition shall be deemed to be Confidential  
22 Information until the time within which portions of the testimony may be appropriately designated as  
23 provided for herein has passed. Any party that wishes to disclose the transcript, or information  
24 contained therein, before the time within which it may be appropriately designated as “Confidential”  
25 has passed, may provide written notice of its intent to treat the transcript as non-confidential, after  
26 which time, any Party that wants to maintain any portion of the transcript as “Confidential” must  
27 designate the confidential portions within fourteen (14) days, or else the transcript may be treated as  
28 non-confidential. Any Confidential Information that is used as an exhibit in a deposition shall be

1 subject to the provisions of this Protective Order, along with the transcript pages of the deposition  
2 testimony dealing with such Confidential Information. If a Designating Party has advised the court  
3 reporter that Confidential Information has been disclosed or used during a deposition, the court  
4 reporter shall include on the cover page the following indication: **“DEPOSITION CONTAINS**  
5 **CONFIDENTIAL INFORMATION OF [NAME OF DESIGNATING PARTY] - SUBJECT**  
6 **TO PROTECTIVE ORDER.”** In the event the deposition is videotaped, the original and all copies  
7 of the video shall be marked by the video technician to indicate that: **“THIS VIDEOTAPE**  
8 **CONTAINS CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER.”**  
9 Counsel for any Producing Party shall have the right to exclude from oral depositions, other than the  
10 deponent, deponent’s counsel, the reporter and videographer (if any), any person who is not  
11 authorized by this Protective Order to receive or access Confidential Information. Such right of  
12 exclusion shall be applicable only during periods of examination or testimony regarding such  
13 Confidential Information.

- 14
- 15 6. Confidential Information used in this litigation may be disclosed only to:
  - 16 a. This Court and its personnel.
  - 17 b. Outside counsel of record and in-house counsel in this  
18 litigation (including staff persons employed by such  
19 counsel).
  - 20 c. The named Parties, including any past, present or future  
21 officer, director, or representative of the named Parties,  
22 but only to the extent necessary for the prosecution,  
23 defense, or settlement of this action. Confidential  
24 Information may not generally be made available to the  
25 named Parties’ officers, directors, or representatives.
  - 26 d. Any consultant, investigator or expert (collectively,  
27 “Expert”) who is assisting in the preparation and trial of  
28 this litigation, but only to the extent reasonably  
necessary to enable such Expert to render such  
assistance.
  - e. Any deponent or potential deponent, provided that he or  
she may be shown copies of designated material only  
during the course of preparation for his or her testimony  
or in the actual course of deposition, and he or she may  
not retain any designated material and must be  
informed of the confidential nature of the materials.

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- f. Court reporters and videographers engaged by counsel of record to transcribe testimony in connection with this case.
- g. Any outside vendor retained by counsel who is assisting in the preparation and trial of this litigation by making photocopies or providing graphic or technological support (collectively, "Outside Vendor"), including for the collection and production of electronically stored information, but only to the extent necessary to enable the Outside Vendor to render such assistance.
- h. Contract lawyers, contract paralegals, or other third parties (collectively "Contract Lawyers") hired to assist with the review of documents or electronically stored information.
- i. Any mock juror participating in mock jury trial research in connection with this case, provided that such persons may be shown copies of designated material only during mock jury trial research exercises, may not retain any designated material, and must be informed of the confidential nature of the materials.
- j. Any mediator, special master or other third parties (collectively, "Mediators") appointed by the Court or retained by the parties for settlement purposes or resolution of discovery or other disputes and their staff.
- k. Translators of or into foreign languages who are not employed by or affiliated with any of the parties, but are retained only to provide translations of any material or testimony designated as Confidential Information.

7. If a party wishes to disclose Confidential Information to any person not described in Paragraph 6 of this Protective Order, permission to so disclose must be requested from the Designating Party in writing. If within ten (10) business days of request for permission, the Designating Party objects to the proposed disclosure, such disclosure shall not be made unless, upon motion by the party requesting such permission, this Court orders otherwise.

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

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

14           10.       If the Parties cannot resolve a challenge without court intervention, within 14 days of  
15 the parties agreeing that the meet and confer process will not resolve their dispute, the parties will  
16 stipulate to a schedule whereby the Designating Party shall file and serve a motion to retain  
17 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General  
18 Order 62, if applicable). In addition, the Challenging Party may file a motion challenging a  
19 confidentiality designation at any time if there is good cause for doing so, including a challenge to  
20 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to  
21 this paragraph must be accompanied by a competent declaration affirming that the movant has  
22 complied with the meet and confer requirements imposed by the preceding paragraph.

23           The burden of persuasion in any such challenge proceeding shall be on the Designating  
24 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
25 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
26 All parties shall continue to afford the material in question the level of protection to which it is  
27 entitled under the Producing Party's designation until the Court rules on the challenge.

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1           11. Prior to obtaining access to Confidential Information, any Expert, deponent or  
2 potential deponent, Mediator, translator, Contract Lawyer, or mock juror to whom Confidential  
3 Information may be disclosed pursuant to Paragraphs 6 and 7 hereof shall be shown and shall read a  
4 copy of this Protective Order and shall agree in writing to be bound by its terms by signing a copy of  
5 the Confidentiality Acknowledgment attached hereto as Exhibit A (“Confidentiality  
6 Acknowledgment”). In the case of any Outside Vendor, it shall be sufficient for the manager,  
7 supervisor or owner of the Outside Vendor to agree in writing that he/she and all his/her employees  
8 are bound by this Protective Order by signing a copy of the Confidentiality Acknowledgment.  
9 Counsel for the party obtaining a person’s signature on the Confidentiality Acknowledgment shall  
10 retain the original signed acknowledgment.

11           12. If a witness at a deposition refuses to sign the Confidentiality Acknowledgment, any  
12 Party may adjourn the deposition to file a motion with the Court seeking to compel the witness to  
13 comply with the Protective Order. Any such motion must be filed within ten (10) days of the  
14 adjournment of the deposition. If no Party wishes to adjourn the deposition to file a motion with the  
15 Court, the deposition will proceed and that witness may be shown Confidential Information but  
16 counsel seeking to use the Confidential Information shall inform the witness that the witness is  
17 obligated to maintain the confidentiality of the Confidential Information pursuant to the terms of this  
18 Protective Order. Within fourteen (14) days following a deposition in which a witness refuses to  
19 sign the Confidentiality Acknowledgement, any Party may file a motion with the Court seeking to  
20 compel the witness to comply with the Protective Order.

21           13. Without written permission from the Designating Party or a court order secured after  
22 appropriate notice to all interested persons, a Party may not file in the public record in this action  
23 any Confidential Information or information derived from same. Any Party that seeks to file under  
24 seal any Confidential Information must comply with Civil Local Rule 79-5 and General Order 62.  
25 Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of  
26 the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
27 sealing order will issue only upon a request establishing that the Protected Material at issue is  
28 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a

1 Receiving Party’s request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d)  
2 and General Order 62 is denied by the Court, then the Receiving Party may file the information in  
3 the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

4 **General Provisions**

5 14. Confidential Information shall be stored and maintained by any party receiving such  
6 information in a secure manner that ensures that access is limited to the persons authorized under  
7 this Protective Order.

8 15. Any summary, compilation, notes, copy, electronic image or database containing  
9 Confidential Information shall be subject to the terms of this Protective Order to the same extent as  
10 the material or information from which such summary, compilation, notes, copy, electronic image or  
11 database is made or derived.

12 16. Unintentional failure to designate any information pursuant to this Protective Order  
13 shall not constitute a waiver of any otherwise valid claim for protection. Upon notification by the  
14 Designating Party to designate information “Confidential,” arrangements shall be made for the  
15 return to the Designating Party of all copies of the unintentionally misdesignated documents and for  
16 the substitution of properly labeled copies.

17 17. Nothing in this Protective Order shall be deemed to restrict in any manner the use by  
18 any Designating Party of any information in its own documents and materials.

19 18. If counsel for any party receives notice of any subpoena or court order commanding  
20 production of Confidential Information that a party has obtained under the terms of this Protective  
21 Order, counsel for such party shall, if there are fewer than ten (10) days to comply, within four (4)  
22 days, or if more than ten (10) days, within seven (7) days prior to the due date of compliance, notify  
23 the Designating Party in writing, and shall not produce the Confidential Information, until the  
24 Designating Party has had reasonable time to take appropriate steps to protect the material, or the  
25 due date of compliance if the Designating Party takes no action to protect the material. It shall be  
26 the responsibility of the Designating Party to obtain relief from the subpoena or order prior to the  
27 due date of compliance. To give the Designating Party an opportunity to obtain such relief, the party  
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1 from whom such information is sought shall not make the disclosure before the actual due date of  
2 compliance set forth in the subpoena or court order.

3 19. This Protective Order shall not prevent any party from moving this Court for an order  
4 that Confidential Information may be disclosed other than in accordance with this Protective Order.  
5 This Protective Order is without prejudice to the right of any party to seek modification of it from  
6 the Court. It shall remain in effect until such time as it is modified, amended, or rescinded by the  
7 Court.

8 20. This Protective Order is not intended to govern the use of Confidential Information at  
9 any hearing or trial in this action. Questions of the protection of Confidential Information during a  
10 hearing or trial will be presented to the Court and the Designating Party prior to or during the  
11 hearing or trial as each party deems appropriate.

12 21. This Protective Order does not affect any party's rights to object to discovery on any  
13 grounds. Nothing in this Protective Order shall be deemed to be a waiver of any party's right to  
14 oppose production or admissibility of any information or documents on any ground. Further, the  
15 production subject to this Protective Order of Confidential Information shall not be deemed a waiver  
16 of any objection to the admissibility of such documents or their contents that may exist under any  
17 applicable Rules of Evidence.

18 22. Nothing in this Protective Order shall require any party to produce Confidential  
19 Information and nothing in this Protective Order shall result in the waiver by any party of any  
20 objection based on the grounds that the information is confidential and not subject to disclosure.

21 23. This Protective Order shall not preclude any party from seeking and obtaining from  
22 the Court additional protection with respect to the issues addressed in the Protective Order. The  
23 parties agree that this Protective Order is without prejudice to any position either Plaintiff or  
24 Defendant may take in any other cases.

25 24. The unintentional production of any document or information protected by the  
26 attorney-client privilege, work product doctrine, and/or any other applicable privilege shall not  
27 constitute a waiver of any such privilege or doctrine. Upon receipt of notice of such unintentional  
28 production from the Producing Party, the receiving party shall, within fourteen (14) days of such

1 notice, return all copies of such document(s) (the “Identified Materials”) to the Producing Party  
2 other than copies containing attorney’s notes or other attorney work product that may have been  
3 placed thereon by counsel for the receiving party and shall destroy all copies of such documents that  
4 contain such notes or other attorney work product. The Identified Materials shall be deleted from  
5 any systems used to house the documents, including document review databases, e-rooms and any  
6 other location that stores the documents. The receiving party may make no use of the Identified  
7 Materials during any aspect of this matter or any other matter, including in depositions or at trial,  
8 unless the documents are later ordered by the Court as not privileged or protected. The contents of  
9 the Identified Materials shall not be disclosed to anyone who was not already aware of the contents  
10 of them before the notice was made. The party returning the Identified Materials may move the  
11 Court for an order compelling production of some or all of the materials returned or destroyed, but  
12 the basis for such a motion may not be the fact or circumstances of the production. This Protective  
13 Order does not constitute a concession by any party that any documents are subject to protection by  
14 the attorney-client privilege, the work product doctrine, or any other potentially applicable privilege  
15 or protection. This Protective Order also is not intended to waive or limit in any way either party’s  
16 right to contest any privilege claims that may be asserted with respect to any of the documents  
17 produced except to the extent stated herein.

18         25. This Court shall have continuing jurisdiction to modify, enforce, interpret or rescind  
19 this Protective Order, notwithstanding the termination of this action.

20         26. Within ninety (90) days of the conclusion of this action, including the exhaustion of  
21 all appeals, counsel for all parties shall use their best efforts to locate all Confidential Information  
22 produced in this litigation (other than exhibits in the official court of record) and either return it to  
23 the Designating Party or destroy such information. The parties acknowledge that the electronic  
24 nature of the documents produced in this action makes full and absolute compliance with this  
25 provision difficult. The parties further acknowledge that their duty to return or destroy all  
26 Confidential Information is a continuing duty and the parties agree to destroy or return any such  
27 information found in the future. Deposition transcripts and court transcripts that contain or reference  
28 Confidential Information need not be destroyed, although any deposition exhibits must be destroyed

1 or returned in accordance with this Order. Counsel for any party or third party receiving  
2 Confidential Information shall make written certification of having used their best efforts to comply  
3 with this provision and shall deliver the same to counsel for each Designating Party within one  
4 hundred twenty (120) days after the conclusion of this action, including the exhaustion of all  
5 appeals.

6 27. Any Party may seek a modification of this Order at any time by filing an appropriate  
7 motion with the Court.

8 DATED: February 20, 2013

**REED SMITH LLP**

9 By: /s/ David S. Reidy  
10 DAVID C. POWELL  
11 DAVID S. REIDY  
12 MARY J. HACKETT  
13 SHARON L. RUSNAK

*Counsel for Defendants Bank of America, N.A. and  
Bank of America Corporation*

**COTCHETT, PITRE & McCARTHY, LLP**

14 By: /s/ Eric J. Buescher  
15 NIALL P. McCARTHY  
16 ANNE MARIE MURPHY  
17 ERIC J. BUESCHER

**MINAMI TAMAKI, LLP**  
DEREK G. HOWARD  
KEVIN R. ALLEN

**McTIGUE LAW LLP**  
J. BRIAN McTIGUE

*Counsel for Plaintiff and the Putative Class*

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 February 21, 2013

25  
26 Date

  
27 Honorable Jeffrey S. White  
28 United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ELLEN STOODY-BROSER, An Individual,  
Individually And On Behalf Of All Others  
Similarly Situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A. and BANK OF  
AMERICA CORPORATION,

Defendants.

Case No. CV 08 2705 JSW

**EXHIBIT A TO STIPULATION AND  
PROTECTIVE ORDER,  
CONFIDENTIALITY  
ACKNOWLEDGEMENT**

I, \_\_\_\_\_, being duly sworn on oath, state the following:

1. I have read and understand the Confidentiality Stipulation and Protective Order (“Protective Order”) to which this Confidentiality Acknowledgment is attached and I attest to my understanding that access to information designated “Confidential” may be provided to me and that such access is pursuant to the terms and conditions and restrictions of the Protective Order. I agree to be bound by the terms of the Protective Order. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of this Confidentiality Acknowledgment and the Protective Order.

2. I shall not use or disclose to others, except in accordance with the Protective Order, any Confidential Information. I also shall use my best efforts to return all Confidential Information to the party who provided it to me within ninety (90) days after the conclusion of this action, including the exhaustion of all appeals. If I fail to abide by the terms of this Confidentiality Acknowledgment or the Protective Order, I understand that I may be subject to sanctions under the contempt power of this Court, which includes the power to impose compensatory damages to remedy contemptuous conduct.

3. If I am an “Outside Vendor,” as defined by the foregoing Protective Order, I agree to use all reasonable measures to ensure that my employees and/or direct reports comply with the terms of this Confidentiality Acknowledgment and the Protective Order. I understand that if I fail to take

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reasonable measures to ensure that my employees and/or direct reports comply with the terms of this Confidentiality Acknowledgment and Protective Order, I may be subject to sanctions under the contempt power of this Court, which includes the power to impose compensatory damages to remedy contemptuous conduct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

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Printed Name

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Individual or Entity Represented

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**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, David S. Reidy, hereby attest that concurrence in filing this document has been obtained from the other signatory(ies). 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 February 20, 2013 at San Francisco, California.

/s/ David S. Reidy

David S. Reidy