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11 **Additional counsel listed on the following page.*

12
 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15
 16 Gina McLeod, individually and on behalf of all
 others similarly situated,

17 **Plaintiff,**

18 **v.**

19 Bank of America, N.A. and DOES 1 through
 20 10, inclusive,

21 **Defendant.**

Case No. 3:16-cv-03294-EMC

STIPULATED PROTECTIVE ORDER

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20 Attorneys for Plaintiff
21 Gina McLeod and the putative class
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1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Gina McLeod
2 (“Plaintiff”) and Defendant Bank of America, N.A. (“Defendant”), through their respective
3 undersigned counsel, that, during this action, all documents, information, tangible items, and
4 testimony designated as Confidential by the producing party in the above matter be, and hereby
5 are, subject to the following terms and conditions:

6 1. PURPOSES AND LIMITATIONS

7 Disclosure and discovery activity in this action are likely to involve production of
8 confidential, proprietary, or private information for which special protection from public
9 disclosure and from use for any purpose other than litigating this case would be warranted.
10 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
11 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
12 all disclosures or responses to discovery and that the protection it affords extends only to the
13 limited information or items that are entitled under the applicable legal principles to treatment as
14 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
15 Stipulated Protective Order creates no entitlement to file confidential information under seal;
16 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
17 that will be applied when a party seeks permission from the court to file material under seal.

18 2. DEFINITIONS

19 2.1. Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and outside counsel (and their support staff).

21 2.2. Disclosure or Discovery Material: all items or information, regardless of the
22 medium or manner generated, stored, or maintained (including, among other things, testimony,
23 transcripts, or tangible things) that are produced or generated in disclosures or responses to
24 discovery in this matter.

25 2.3. “Confidential” Information or Items: information (regardless of how generated,
26 stored, or maintained) or tangible things that qualify for protection under standards developed
27 under Fed. R. Civ. P. 26(c).

28 2.4. Receiving Party: a Party that receives Disclosure or Discovery Material from a

1 Producing Party.

2 2.5. Producing Party: a Party or non-party that produces Disclosure or Discovery
3 Material in this action.

4 2.6. 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 2.7. Protected Material: any Disclosure or Discovery Material that is designated as
7 “Confidential.”

8 2.8. Outside Counsel: attorneys who are not employees of a Party but who are retained
9 to represent or advise a Party in this action.

10 2.9. House Counsel: attorneys who are employees of a Party.

11 2.10. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
12 support staffs).

13 2.11. Expert: a person with specialized knowledge or experience in a matter pertinent to
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
15 consultant in this action and who is not a past or a current employee of a Party or of a competitor
16 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party
17 or a competitor to a Party. This definition includes a professional jury or trial consultant retained
18 in connection with this litigation.

19 2.12. Professional Vendors: persons or entities that provide litigation support services
20 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
21 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above) but also any information copied or extracted therefrom as well as all copies,
25 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
26 parties or counsel to or in court or in other settings that might reveal Protected Material.

27 4. DURATION

28 Even after the termination of this litigation, the confidentiality obligations imposed by this

1 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
2 otherwise directs.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party
5 or non-party that designates information or items for protection under this Order must take care to
6 limit any such designation to specific material that qualifies under the appropriate standards. A
7 Designating Party must take care to designate for protection only those parts of material,
8 documents, items, or oral or written communications that qualify so that other portions of the
9 material, documents, items, or communications for which protection is not warranted are not
10 swept unjustifiably within the ambit of this Order.

11 Indiscriminate routinized designations are prohibited. Designations that are shown to be
12 clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
13 encumber or retard the case development process or to impose unnecessary expenses and burdens
14 on other parties), expose the Designating Party to sanctions.

15 If it comes to a Party's or a non-party's attention that information or items that it
16 designated for protection do not qualify for protection at all, or do not qualify for the level of
17 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
18 withdrawing the mistaken designation.

19 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order
20 (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
21 material that qualifies for protection under this Order must be clearly so designated before the
22 material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (apart from transcripts of depositions
25 or other pretrial or trial proceedings), that the Producing Party affix the legend
26 "CONFIDENTIAL" at the bottom of each page that contains protected material. If only a portion
27 or portions of the material on a page qualifies for protection, the Producing Party also must
28 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

1 A Party or non-party that makes original documents or materials available for inspection
2 need not designate them for protection until after the inspecting Party has indicated which
3 material it would like copied and produced. During the inspection and before the designation, all
4 of the material made available for inspection shall be deemed CONFIDENTIAL. After the
5 inspecting Party has identified the documents it wants copied and produced, the Producing Party
6 must determine which documents, or portions thereof, qualify for protection under this Order;
7 then, before producing the specified documents, the Producing Party must affix the legend
8 “CONFIDENTIAL” at the bottom of each page that contains Protected Material. If only a
9 portion or portions of the material on a page qualifies for protection, the Producing Party also
10 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
11 margins).

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,
13 that Counsel for the deponent or witness providing testimony, within twenty (20) days after the
14 final version of the transcript has been received by such Counsel, designate any portions of the
15 transcript which contain testimony concerning CONFIDENTIAL information. Upon request of
16 Counsel on the record (*i.e.*, before the deposition or proceeding is concluded), deposition or other
17 pretrial hearing or trial testimony in its entirety shall be treated as CONFIDENTIAL until
18 expiration of the 20-day designation period.

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

24 5.3. Need for Higher Level of Confidentiality. In the event the Producing Party
25 believes that the material to be produced, or testimony to be given, is deserving of a higher level
26 of confidentiality than the protections currently provided herein for “Confidential” materials, the
27 Producing Party shall contact the party to whom disclosure would otherwise be made to explain
28 the need for and the specifics of the higher level of protection. The Parties shall meet and confer

1 in good faith to come to agreement on the designation and its scope. If the Parties cannot reach
2 agreement, the Producing Party shall submit the matter to the Court for resolution per paragraph
3 6.3 of this Order, and shall not be required to produce the material in question until the Court
4 issues a decision.

5 5.4. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items as “Confidential” or as some other level of
7 confidentiality, does not, standing alone, waive the Designating Party’s right to secure protection
8 under this Order for such material. If material is appropriately designated as “Confidential” or
9 some other level of confidentiality after the material was initially produced, the Receiving Party,
10 on timely notification of the designation, must make reasonable efforts to assure that the material
11 is treated in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party’s
14 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
15 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
16 waive its right to challenge a confidentiality designation by electing not to mount a challenge
17 promptly after the original designation is disclosed.

18 6.2. Meet and Confer. A Party that elects to initiate a challenge to a Designating
19 Party’s confidentiality designation must do so in good faith and must begin the process by
20 conferring directly (in voice to voice dialogue in person or by telephone; a mere exchange of
21 letters, e-mails, telephone calls, or facsimile transmissions is not sufficient) with counsel for the
22 Designating Party. In conferring, the challenging Party must explain the basis for its belief that
23 the confidentiality designation was not proper and must give the Designating Party an opportunity
24 to review the designated material, to reconsider the circumstances, and, if no change in
25 designation is offered, to explain the basis for the chosen designation. A challenging Party may
26 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
27 process first.

28 6.3. Judicial Intervention. A Party that elects to press a challenge to a confidentiality

1 designation after considering the justification offered by the Designating Party will, along with
2 the Designating Party, prepare a concise joint statement of 5 pages or less explaining the
3 Designating Party's basis for the chosen designation as well as the challenging Party's basis for
4 its belief that the confidentiality designation was not proper. The Designating Party and the
5 challenging party may each elect to submit a brief individual statement of 2 pages or less, and the
6 challenging party may file and serve a motion under Civil Local Rule 7 (and in compliance with
7 Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail
8 the basis for the challenge. Each such motion must be accompanied by a competent declaration
9 that affirms that the movant has complied with the meet and confer requirements imposed in the
10 preceding paragraph and that sets forth with specificity the justification for the confidentiality
11 designation that was given by the Designating Party in the meet and confer dialogue.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
13 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
14 question the level of protection to which it is entitled under the Producing Party's designation.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed
17 or produced by another Party or by a non-party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
19 to the categories of persons and under the conditions described in this Order. When the litigation
20 has been terminated, a Receiving Party must comply with the provisions of section 11, below
21 (FINAL DISPOSITION).

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

24 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
25 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
26 disclose any information or item designated CONFIDENTIAL only to:

27 (a) the Receiving Party and the Receiving Party's Outside Counsel of record in
28 this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose

1 the information for this litigation and who have signed the “Agreement to be Bound by Protective
2 Order” that is attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including in-house counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
5 signed the “Agreement to be Bound by Protective Order” that is attached hereto as Exhibit A;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to be
8 Bound by Protective Order” that is attached hereto as Exhibit A;

9 (d) the Court and its personnel;

10 (e) court reporters, their staffs, and Professional Vendors to whom disclosure
11 is reasonably necessary for this litigation and who have signed the “Agreement to be Bound by
12 Protective Order” that is attached hereto as Exhibit A;

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the “Agreement to be Bound by Protective Order” that
15 is attached hereto as Exhibit A; and,

16 (g) the author of the Protected Material or the original source of the
17 information.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
19 LITIGATION

20 If a Receiving Party is served with a subpoena or an order issued in other litigation that
21 would compel disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party in writing (by fax
23 or e-mail, if possible) immediately and, in no event, more than three court days after receiving the
24 subpoena or order. Such notification must include a copy of the subpoena or court order.

25 The Receiving Party also must immediately inform in writing the Party who caused the
26 subpoena or order to issue in the other litigation that some or all the material covered by the
27 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
28 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that

1 caused the subpoena or order to issue.

2 The purpose of imposing these duties is to alert the interested parties to the existence of
3 this Protective Order and to afford the Designating Party in this case an opportunity to try to
4 protect its confidentiality interests in the court from which the subpoena or order issued. The
5 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
6 confidential material – and nothing in these provisions should be construed as authorizing or
7 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

8 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
10 Material to any person or in any circumstance not authorized under this Stipulated Protective
11 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
12 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
13 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
14 Order, and (d) request such person or persons to execute the “Agreement to be Bound by
15 Protective Order” that is attached hereto as Exhibit A.

16 10. FILING PROTECTED MATERIAL

17 Without written permission from the Designating Party or a court order secured after
18 appropriate notice to all interested persons, a Party may not file in the public record in this action
19 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
20 with Civil Local Rule 79-5.

21 11. FINAL DISPOSITION

22 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60)
23 days after the final termination of this action, each Receiving Party must return all Protected
24 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all
25 copies, abstracts, compilations, summaries, or any other form of reproducing or capturing any of
26 the Protected Material. The Receiving Party may at its election destroy some or all of the
27 Protected Material instead of returning it. Whether the Protected Material is returned or
28 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if

1 not the same person or entity, to the Designating Party) by the sixty (60) day deadline that
2 identifies (by category, where appropriate) all the Protected Material that was returned or
3 destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
4 compilations, summaries, or other forms of reproducing or capturing any of the Protected
5 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
6 pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work
7 product even if such materials contain Protected Material. Any such archival copies that contain
8 or constitute Protected Material remain subject to this Protective Order as set forth in Section 4
9 (DURATION), above.

10 12. MEDIATION

11 This Order will apply to documents and information disclosed, formally or informally, in
12 connection with any mediation of this matter, regardless of whether or not the information is
13 expressly designated as “CONFIDENTIAL.” Additionally, all documents and information
14 produced in connection with a mediation will be promptly returned to the producing party or
15 destroyed (followed by a letter confirming such destruction) when the mediation process
16 concludes (regardless of whether the process is successful or unsuccessful), pursuant to the terms
17 of Section 11 herein – except to the extent the undersigned parties agree in writing to an alternate
18 process. The undersigned parties expressly understand and agree that the production and/or
19 disclosure of documents or information in connection with mediation will be without prejudice to
20 the producing party’s ability to argue against the disclosure of the same documents or information
21 in connection with litigation. Except to the extent that the terms of this Order provide greater
22 protection, the undersigned parties further expressly recognize and agree that documents and
23 information provided in connection with mediation or settlement will be governed by the
24 provisions of California Evidence Code § 1119 and Local Rule 16-8.

25 13. MISCELLANEOUS

26 13.1. Right to Further Relief. Nothing in this Order abridges the right of any person to
27 seek its modification by the Court in the future.

28 13.2. Right to Assert Other Objections. By stipulating to the entry of this Protective

1 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
2 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
3 no Party waives any right to object on any ground to use in evidence of any of the material
4 covered by this Protective Order.

5 Dated: March 23, 2017

6 APALLA U. CHOPRA
7 ADAM P. KOHSWEENEY
8 SUSANNAH K. HOWARD
9 O'MELVENY & MYERS LLP

10 By: /s/ Adam P. KohSweeney
11 Adam P. KohSweeney
12 Attorneys for Defendant
13 Bank of America, N.A.

14 Dated: March 23, 2017

15 AARON KAUFMANN
16 DAVID POGREL
17 ELIZABETH GROPMAN
18 LEONARD CARDER, LLP

19 By: /s/ Aaron Kaufman
20 Aaron Kaufmann
21 Attorneys for Plaintiff
22 Gina McLeod

23 Dated: March 23, 2017

24 EDWARD J. WYNNE
25 WYNNE LAW FIRM

26 By: /s/ Edward J. Wynne
27 Edward J. Wynne
28 Attorney for Plaintiff
Gina McLeod

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ATTESTATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to this document.

Dated: March 23, 2017

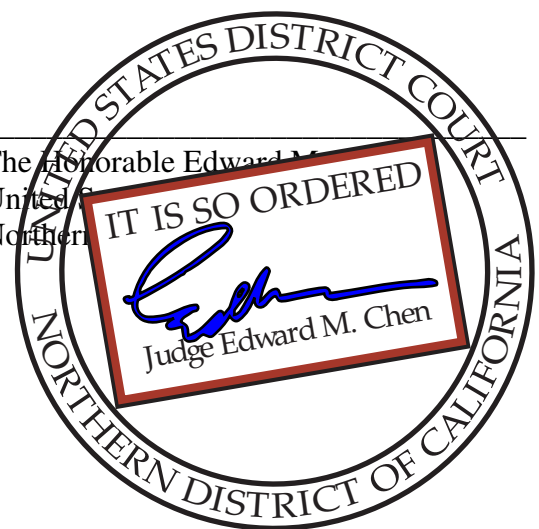
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PURSUANT TO THE PARTIES' STIPULATION, THE FOREGOING PROTECTIVE ORDER IS APPROVED, AND IT IS SO ORDERED.

Date: 3/31/17

The Honorable Edward M. Chen
United States District Court
Northern District of California



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EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Gina McLeod, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Bank of America, N.A. and DOES 1
through 10, inclusive,

Defendant.

Case No. 3:16-cv-03294-EMC

**CERTIFICATION OF AGREEMENT TO
BE BOUND BY PROTECTIVE ORDER**

1. My name is _____.

I live at _____.

I am employed as (state position) _____

by (state name and address of employer) _____.

2. I have read the Stipulated Protective Order Regarding Confidential Documents and Information that has been entered in this case, and a copy of it has been given to me. I understand the provisions of this Order and agree to comply with and to be bound by its provisions.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ (date)

by _____ (signature)