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10 *Attorneys for Defendant Wells Fargo Bank, N.A.*

11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 PHILLIP R. CORVELLO, On Behalf of Himself  
 and All Others Similarly Situated,  
 15  
 Plaintiff,

Case No. 10-CV-05072-JSW  
 The Hon. Jeffrey S. White

16 v.

17 WELLS FARGO BANK, N.A. d/b/a WELLS  
 18 FARGO HOME MORTGAGE d/b/a  
 AMERICA'S SERVICING COMPANY,  
 19  
 Defendant.

21 KAREN LUCIA and JEFFREY LUCIA, on  
 behalf of themselves and others similarly situated,  
 22  
 Plaintiffs,

Case No. 10-CV-04749-JSW  
 The Hon. Jeffrey S. White

23 v.

24 WELLS FARGO BANK, N.A. d/b/a WELLS  
 25 FARGO HOME MORTGAGE and DOES 1  
 through 10,  
 26  
 Defendants.

27  
 28 **STIPULATED ORDER REGARDING NON-WAIVER OF PRIVILEGED AND**  
**CONFIDENTIAL MATERIAL**

1 WHEREAS, the parties hereto have agreed to produce documents deemed discoverable under the  
2 Federal Rules of Civil Procedure, that are responsive to each other's discovery requests and not  
3 privileged or otherwise exempted from discovery under the Federal Rules of Evidence, Federal Rules  
4 of Civil Procedure, or other applicable law;

5 WHEREAS, some of the documents exchanged in this matter may contain attorney-client or  
6 common interest privileged communications or other information subject to privilege protections  
7 recognized under federal or state law or the Federal Rules of Evidence and accordingly not subject to  
8 discovery under the Federal Rules of Civil Procedure or the Federal Rules of Evidence ("Privileged  
9 Material");

10 WHEREAS, some of the documents exchanged in this matter may contain protected attorney  
11 work-product material prepared or compiled in anticipation of litigation and accordingly not subject  
12 to discovery under the Federal Rules of Civil Procedure or the Federal Rules of Evidence ("Work-  
13 Product Material");

14 WHEREAS, despite each party's best efforts to conduct an appropriate pre-production review  
15 of all documents, some Privileged Material and/or Work Product Material (together, "Protected  
16 Material") may inadvertently be disclosed to the other party during the course of this litigation;

17 WHEREAS, this Stipulated Order is intended to supplement the terms of the parties'  
18 Stipulated Protective Order filed with the Court on April 8, 2014 ("Protective Order"); and

19 WHEREAS, the undersigned parties desire to establish a mechanism to avoid waiver of  
20 privilege or any other applicable protective evidentiary doctrine as a result of the inadvertent  
21 disclosure of Protected Material;

22 IT IS HEREBY STIPULATED BY THE PARTIES AND ORDERED BY THE COURT that  
23 the following terms shall govern the disclosure of Protected Material in this action.

24 **1. NON-WAIVER OF PRIVILEGE OR OTHER PROTECTIVE DOCTRINE BY**  
25 **INADVERTENT DISCLOSURE**

26 1.1. Pursuant to Fed. R. Evid. 502(d), the inadvertent disclosure of any document that is  
27 subject to a legitimate claim that the document should have been withheld from disclosure as  
28 Protected Material shall NOT waive any privilege or other applicable protection for that document or

1 for the subject matter of the inadvertently disclosed document if the producing party, upon becoming  
2 aware of the disclosure, promptly requests its return and had taken reasonable precautions to avoid  
3 such inadvertent disclosure.

4 1.2. Except in the event that the receiving party disputes the claim, any documents that the  
5 producing party deems to contain inadvertently disclosed Protected Material shall be, upon written  
6 request, promptly returned to the producing party or destroyed, at the producing party's option. This  
7 includes all copies, electronic or otherwise, of any such documents, including specifically the  
8 electronic load files of any documents produced electronically; any copies maintained as part of  
9 another party's counsel's electronic document database(s); any copies of such documents that have  
10 been emailed among another party's counsel or that counsel's staff or agents; any copies of such  
11 documents that have been shared, whether in hard copy or electronically with a party or with any  
12 third-party; or any electronic or hard copy versions of electronic documents that have been collected  
13 together as part of another counsel's work-product relating to this litigation (*e.g.*, witness notebooks).  
14 In the event that the producing party requests destruction, the receiving party shall provide written  
15 certification of compliance within thirty (30) days of such written request unless the claim is  
16 disputed.

17 1.3. In the event that the receiving party disputes the producing party's claim as to the  
18 privileged or otherwise protected nature of the inadvertently disclosed material, a single set of copies  
19 may be sequestered and retained by the receiving party for the sole purpose of seeking court  
20 determination of the issue pursuant to Federal Rule of Civil Procedure 26(b)(5)(B) and/or Rule 502 of  
21 the Federal Rules of Evidence.

22 1.4. Any Protected Material inadvertently disclosed by the producing party to the receiving  
23 party pursuant to this Stipulated Order shall be and remain the property of the producing party.

24 1.5. To the extent that there may be inconsistency between the stipulations in this  
25 Stipulated Order and Federal Rule of Civil Procedure 26(b)(5), including Rule 26(b)(5)(B), and Rule  
26 502 of the Federal Rules of Evidence (the "Rules"), the Rules shall control.

27 1.6. If Protected Material is disclosed through inadvertence or otherwise to any person not  
28 a party to this Stipulated Order, the party causing such disclosure shall inform the person receiving

1 the Protected Material that the information is covered by this Stipulated Order, make its best efforts  
2 to retrieve the Protected Material, and promptly inform the producing party of the disclosure.

3 1.7. This Stipulated Order shall be effective and binding on the parties hereto when signed  
4 regardless of whether or when the court enters its Order thereon.

5 1.8 Nothing herein shall prevent any party from applying to the Court for a modification  
6 of this Stipulated Order should the moving party believe the terms herein, as originally agreed upon,  
7 are hampering its efforts to prepare for trial; or from applying to the Court for further or additional  
8 protective orders; or from a stipulation between the parties to any modification of this Stipulated  
9 Order, subject to the approval of the Court.

10 1.9. This Stipulated Order shall survive the final termination of this case regarding any  
11 retained documents or contents thereof.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

2 Dated: April 8, 2014

3  
4 /s/ Irene C. Freidel

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**Attorneys for Plaintiff Phillip R. Corvello**

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
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4 DATED: April 9, 2014  
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Hon. Jeffrey S. White

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