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10  
 11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

14  
 15 DAVID A. WATTS, et al.,  
 16 Plaintiffs,  
 17 v.  
 18 WASHINGTON MUTUAL BANK, et al.,  
 19 Defendants.

Case No. C 11-02780 LHK (PSG)

**STIPULATED PROTECTIVE ORDER**

20  
 21 1. PURPOSES AND LIMITATIONS

22 Disclosure and discovery activity in this action are likely to involve production of  
 23 confidential, proprietary, or private information for which special protection from public  
 24 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
 25 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 26 Protective Order. The parties acknowledge that this Order does not impact the power of the Court  
 27 to fashion Protective Orders under F.R.Civ.P. 26(c).

28 The parties further acknowledge, as set forth in Section 10, below, that this

1 Stipulated Protective Order is subject to the provisions of Civil Local Rule 79-5, which sets forth  
2 the procedures that must be followed and reflects the standards that will be applied when a party  
3 seeks permission from the court to file material under seal.

4 2. DEFINITIONS

5 2.1 Party: any party to this action, including all of its officers, directors,  
6 employees, consultants, retained experts, and outside Counsel (and their support staff).

7 2.2 Disclosure or Discovery Material: all items or information, regardless of  
8 the medium or manner generated, stored, or maintained (including, among other things,  
9 testimony, transcripts, or tangible things) that are produced or generated in disclosures or in  
10 connection with discovery related to this matter.

11 2.3 "Confidential" Information or Items: information (regardless of how  
12 generated, stored or maintained) or tangible things that qualify for protection under standards  
13 developed under F.R.Civ.P. 26(c).

14 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material  
15 from a Producing Party.

16 2.5 Producing Party: a Party or non-party that produces Disclosure or  
17 Discovery Material in this action.

18 2.6 Designating Party: a Party or non-party that designates information or  
19 items that it produces in disclosures or in responses to discovery as "Confidential."

20 2.7 Protected Material: any Disclosure or Discovery Material that is  
21 designated as "Confidential."

22 2.8 Counsel (without qualifier): Outside Counsel of record and In-House  
23 Counsel (as well as their support staffs).

24 2.9 Expert: a person with specialized knowledge or experience in a matter  
25 pertinent to the litigation who has been retained by a Party or its Counsel to serve as an expert  
26 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
27 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an  
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1 employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
2 trial consultant retained in connection with this litigation.

3           2.10 Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
5 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
6 subcontractors.

7           3.     SCOPE

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

12           4.     DURATION

13           Even after the termination of this litigation, the confidentiality obligations imposed by this  
14 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
15 otherwise directs. The Court will retain jurisdiction to enforce the terms of the order for 6 months  
16 after final termination of the action.

17           5.     DESIGNATING PROTECTED MATERIAL

18           5.1    Exercise of Restraint and Care in Designating Material for Protection.

19           Each Party or non-party that designates information or items for protection under this Order must  
20 take care to limit any such designation to specific material that qualifies under the appropriate  
21 standards. A Designating Party must take care to designate for protection only those parts of  
22 material, documents, items, or oral or written communications that qualify—so that other portions  
23 of the material, documents, items, or communications for which protection is not warranted are  
24 not swept unjustifiably within the ambit of this Order.

25           Mass, indiscriminate, or routinized designations are prohibited.

26           If it comes to a Party's or a non-party's attention that information or items that it  
27 designated for protection do not qualify for protection at all, or do not qualify for the level of  
28 protection initially asserted, that Party or non-party must promptly notify all other parties that it is

1 withdrawing the mistaken designation.

2           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
3 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
4 material that qualifies for protection under this Order must be clearly so designated before the  
5 material is disclosed or produced.

6           Designation in conformity with this Order requires:

7           (a)    for information in documentary form (apart from transcripts of depositions  
8 or other pretrial or trial proceedings), that the Producing Party affix the legend  
9 “CONFIDENTIAL” on each page that contains protected material. If only a portion or portions  
10 of the material on a page qualifies for protection, the Producing Party also must clearly identify  
11 the protected portion(s) (e.g., “CONFIDENTIAL”).

12           A Party or non-party that makes original documents or materials available for  
13 inspection need not designate them for protection until after the inspecting Party has indicated  
14 which material it would like copied and produced. During the inspection and before the  
15 designation, all of the material made available for inspection shall be deemed  
16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and  
17 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
18 protection under this Order, then, before producing the specified documents, the Producing Party  
19 must affix the appropriate legend (“CONFIDENTIAL”) at the top of each page that contains  
20 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
21 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
22 appropriate markings in the margins) and must specify, for each portion (“CONFIDENTIAL”)

23           (b)    for testimony given in deposition or in other pretrial or trial proceedings,  
24 designation of the portion of the transcript (including exhibits) which contains  
25 “CONFIDENTIAL” information shall be made by a statement to such effect on the record in the  
26 course of the deposition or, upon review of such transcript, by Counsel for the Person to whose  
27 “CONFIDENTIAL” material the deponent has had access, said Counsel shall designate within  
28 thirty days after Counsel’s receipt of the transcript. Counsel shall list on a separate piece of paper

1 the numbers of the pages of the transcript containing any “CONFIDENTIAL” information,  
2 inserting the list at the end of the transcript, and mailing copies of the list to Counsel for all  
3 Parties so that it may be affixed to the face of the transcript and each copy thereof. Pending such  
4 designation by Counsel, the entire deposition transcript, including exhibits, shall be deemed  
5 “CONFIDENTIAL.” If no designation is made within thirty days after receipt of the transcript,  
6 the transcript shall be considered not to contain any “CONFIDENTIAL” material.

7 (c) for information produced in some form other than documentary, and for  
8 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
9 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”  
10 If only portions of the information or item warrant protection, the Producing Party, to the extent  
11 practicable, shall identify the protected portions, specifying whether they qualify as  
12 “CONFIDENTIAL.”

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
14 failure to designate qualified information or items as “CONFIDENTIAL” does not waive the  
15 Designating Party’s right to secure protection under this Order for such material. If material is  
16 appropriately designated as “CONFIDENTIAL” after the material was initially produced, the  
17 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
18 that the material is treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
21 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
22 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
23 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
24 promptly after the original designation is disclosed.

25 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
26 Designating Party’s confidentiality designation must do so in good faith and must begin the  
27 process by meeting and conferring with Counsel for the Designating Party. In conferring, the  
28 challenging Party must explain the basis for its belief that the confidentiality designation was not

1 proper and must give the Designating Party an opportunity to review the designated material, to  
2 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for  
3 the chosen designation. A challenging Party may proceed to the next stage of the challenge  
4 process only if it has engaged in this meet and confer process first.

5           6.3 Judicial Intervention. A Party that elects to press a challenge to a  
6 confidentiality designation after considering the justification offered by the Designating Party  
7 may file and serve a motion in compliance with Civil Local Rule 7 (and with Civil Local Rule 79-  
8 5, if applicable) that identifies the challenged material and sets forth in detail the basis for the  
9 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
10 the movant has complied with the meet and confer requirements imposed in the preceding  
11 paragraph and that sets forth with specificity the justification for the confidentiality designation  
12 that was given by the Designating Party in the meet and confer dialogue.

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

17           7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

1                   7.2    Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated CONFIDENTIAL only to:

4                   (a)    the Receiving Party's Outside Counsel of record in this action, as well as  
5 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
6 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
7 hereto as Exhibit A;

8                   (b)    Experts (as defined in this Order) of the Receiving Party to whom  
9 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
10 Bound by Protective Order" (Exhibit A);

11                   (c)    the Court and its personnel;

12                   (d)    any designated arbitrator or mediator who is assigned to hear this matter,  
13 and his or her staff;

14                   (e)    Professional Vendors (as defined in this Order) of the Receiving Party to  
15 whom disclosure is reasonably necessary for this litigation, a representative of whom has signed  
16 the "Agreement to Be Bound by Protective Order" (Exhibit A);

17                   (f)    court reporters, their staffs, and professional vendors to whom disclosure is  
18 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
19 Protective Order" (Exhibit A);

20                   (g)    during their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
22 (Exhibit A) Pages of transcribed deposition testimony or exhibits to depositions that reveal  
23 Protected Material must be separately bound by the court reporter and may not be disclosed to  
24 anyone except as permitted under this Stipulated Protective Order;

25                   (h)    persons who appear on the face of the Protected Material as an author,  
26 addressee, or recipient thereof;

27                   (i)    the author of the document or the original source of the information.  
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1           8.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2 OTHER LITIGATION

3           In the event any Receiving Party having possession, custody or control of any  
4 “CONFIDENTIAL” material receives a subpoena or other process or order to produce such  
5 information in another, unrelated legal proceeding, from a non-party to this action, such  
6 Receiving Party shall immediately notify Counsel for the Designating Party of the subpoena or  
7 other process or order, furnish Counsel for the Designating Party with a copy of said subpoena or  
8 other process or order in sufficient time for the Designating Party to have the opportunity to take  
9 the necessary steps to quash or otherwise object to the subpoena, and cooperate with respect to all  
10 reasonable procedures sought. The Designating Party shall have the burden of defending against  
11 such subpoena, process, or order. The Receiving Party shall be entitled to comply with it except  
12 to the extent the Designating Party has promptly notified the Receiving Party of its intent to take  
13 immediate legal action to quash the subpoena, or otherwise protect the “CONFIDENTIAL  
14 MATERIAL,” in which case the Receiving Party shall not produce such documents while such  
15 legal proceedings are pending or if the Designating Party is successful in obtaining an order  
16 modifying or quashing the subpoena or other process or order.

17           The purpose of imposing these duties is to alert the interested parties to the existence of  
18 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
19 protect its confidentiality interests from the subpoena or Court order. The Designating Party shall  
20 bear the burdens and the expenses of seeking protection in that court of its confidential material—  
21 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
22 Party in this action to disobey a lawful directive from another court.

23           9.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
25 Material to any person or in any circumstance not authorized under this Stipulated Protective  
26 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
27 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
28 inform the person or persons to whom unauthorized disclosures were made of all the terms of this



1 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
2 Be Bound” that is attached hereto as Exhibit A.

3 10. FILING PROTECTED MATERIAL

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

8 11. FINAL DISPOSITION.

9 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
10 after the final termination of this action, each Receiving Party must return all Protected Material  
11 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,  
12 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
13 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
14 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
15 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
16 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
17 deadline that identifies (by category, where appropriate) all the Protected Material that was  
18 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
19 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
20 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
21 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
22 work product, even if such materials contain Protected Material. Any such archival copies that  
23 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
24 Section 4 (DURATION), above.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
27 person to seek its modification by the Court in the future.  
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1                   12.2 Right to Assert Other Objections. By stipulating to the entry of this  
2 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
3 producing any information or item on any ground not addressed in this Stipulated Protective  
4 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
5 the material covered by this Protective Order.

6                   12.3 No Diminishing of Existing Rights. This Order shall not diminish any  
7 existing obligation or right with respect to Protected Material.

8                   12.4 No Probative Value. This Protective Order shall not abrogate or diminish  
9 any contractual, statutory or other legal obligation or right of any party or person with respect to  
10 any "CONFIDENTIAL INFORMATION." The fact that information is designated "Confidential  
11 Information" under this Protective Order shall not be deemed to be determinative of what a trier  
12 of fact may determine to be confidential or proprietary. This Protective Order shall be without  
13 prejudice to the right of any party to bring before the Court the question of: (a) whether any  
14 particular material is or is not confidential; (b) whether any particular information or material is  
15 or is not entitled to a greater or lesser degree of protection than provided hereunder; or (c)  
16 whether any particular information or material is or is not relevant to any issue of this case,  
17 provided that in doing so the party complies with the foregoing procedures. Absent a stipulation  
18 of all parties, the fact that information has been designated "CONFIDENTIAL" under this  
19 Protective Order shall not be admissible during the trial of this action, nor shall the jury be  
20 advised of such designation. The fact that any information is disclosed, used or produced in  
21 discovery or trial herein shall not be construed admissible, or offered in any action or proceeding  
22 before any court, agency or tribunal as evidence of or concerning whether or not such information  
23 is confidential or proprietary.

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25 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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DATED: May 4, 2012

/s/  
\_\_\_\_\_  
Annette D. Kirkham  
Fair Housing Law Project  
Attorneys for Plaintiffs

DATED: May 4, 2012

/s/  
\_\_\_\_\_  
Goli Mahdavi  
Bryan Cave LLP  
Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS ORDERED

DATED: May 9, 2012

  
\_\_\_\_\_  
Hon. Lucy H. Koh  
United States District Court 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 Northern District of California  
on \_\_\_\_\_ [date] in the case of *David A. Watts, et al., v. Washington Mutual Bank, et al.*,  
Case No. C11-02780 LHK (PSG). 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  
Northern 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: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]