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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MARCO IBARRA, an individual and)
GRAZIA IBARRA, an individual,)

Plaintiffs,)

vs.)

WELLS FARGO BANK, N.A. a)
Corporation, VAN RU CREDIT)
CORPORATION, a Corporation; and)
DOES 1 through 10 inclusive;)

Defendants.)

CASE NO. 08-1966-WQH-RBB

**STIPULATED PROTECTIVE ORDER
[DOC. NO. 27], AS MODIFIED BY THE
COURT**

The parties hereto, by their respective counsel, having upon the terms and conditions of a confidentiality and protective order, it is therefore

ORDERED that pursuant to Fed. R. Civ. P., Rule 26 (c), the following provisions shall govern the handling of such confidential information and documents in this action:

1 **1. Definitions**

2 For purposes of this Order:

3 (a) "confidential information" means information which the
4 designating party deems to constitute trade secrets, know-how, proprietary data and/or commercial
5 or financial information which the designating party has maintained in confidence. It
6 shall be the duty of the party who seeks to invoke protection under this Order to give
7 notice, in the manner set forth hereinafter, of the documents and testimony to be
8 covered hereby, and the duty of any other party or person to maintain confidentiality
9 hereunder shall commence with such notice. Material may be marked "highly
10 confidential" if it is for "attorneys eyes only" and independent experts as set forth in
11 paragraph 6(c) of this order.

12 (b) "Producing party" or "designating party" shall mean the party
13 (and its outside counsel) who is producing information to another party and who deems that
14 information confidential.

15 (c) "Inspecting party" or "non-designating party" shall mean the
16 party
17 (and its outside counsel) who receives the confidential information supplied by the
18 producing party.

19 (d) "Outside counsel" shall mean the law firms engaged by the
20 plaintiff and the defendant to represent them in this litigation.

21 (e) "Document" shall mean any "writing", "recording", or
22 "photograph," and any "original" or "duplicate" thereof, as those terms are defined in Rule 1001 of
23 the Federal Rules of Evidence.

24 (f) "Party," in the case of a party to this action which is a
25 corporation,
26 means any officer, director, shareholder or employee of such party, all of whom shall be
27 bound by the provisions of this Protective Order.

28 (g) "Produce" means the transmission of any "document" during the

1 course of and in connection with this litigation, including appeals therefore, to a "party"
2 or its "attorneys," whether voluntary or involuntary, whether pursuant to request or
3 legal process, and whether in accordance with the Federal Rules of Civil Procedure or
4 otherwise.

5 (h) "Person" means, in the plural as well as the singular,
6 any individual, corporation, firm, association, partnership, business trust, government body or any
7 other legal or business entity, unless specified herein to the contrary.

8 **2. Documents**

9 (a) Documents produced in the course of discovery herein (either
10 formally or informally) which the producing party deems to contain confidential
11 information may be designated as confidential by the producing party and the
12 documents or portions thereof deemed to be confidential which are copied and delivered
13 to counsel for the inspecting party shall be marked "CONFIDENTIAL".

14 (b) The producing party shall designate the document as confidential
15 at the time of its production and/or inspection by the inspecting party. The producing party's
16 failure to do so, however, does not waive its right to designate that document or any
17 portion thereof as confidential, if within thirty (30) days after production, notification is
18 given as to the confidential status of the document. The post-inspecting party shall
19 have no obligation, responsibility or liability for, or with respect to, any pre-designation
20 dissemination of that document or the information contained therein.

21 **3. Deposition Testimony**

22 If confidential information is contained in deposition, trial or other testimony,
23 the transcript may be designated as containing confidential information in accordance
24 with this Order by notifying the other party (1) on the record, at the time of the
25 testimony, or (2) in writing, within thirty (30) days of receipt of the transcript of the
26 specific pages and lines of the transcript which contain confidential information. At any
27 deposition session when outside counsel for a party deems that the answer to a question
28 will result in the disclosure of confidential information within the meaning of this

1 Order, outside counsel may direct that the question and answer be transcribed
2 separately from the remainder of the deposition and if filed with the Court, shall be filed
3 in a sealed envelope marked in the manner set forth in Paragraph "5" hereof. When such a
4 direction has been given, the testimony shall be disclosed only to those individuals specified in
5 Paragraph "6" hereof. Outside counsel for the party whose confidential information is involved
6 may also request that all persons other than the reporter, outside counsel, and individuals specified
7 in Paragraph "6" hereof leave the deposition room during the confidential portion of the
8 deposition. The failure of such other persons to comply with a request of this type shall constitute
9 substantial justification of outside counsel to advise the witness that he need not answer a question
10 seeking the revelation of confidential information.

11 **4. Interrogatory Answers**

12 If an interrogatory answer contains confidential information, the answer shall be
13 provided in a separate document, appended to the main body of answers and
14 incorporated by reference therein. The response to the interrogatory in the main body of
15 the answers should be "Requests confidential information, see response in confidential
16 addendum, which response is incorporated fully herein by reference".

17 5. No items will be filed under seal without a prior application to, and order from, the
18 judge presiding over the hearing or trial. Any confidential information including, transcripts of
19 depositions or portions thereof, exhibits, answers to interrogatories, and responses to requests for
20 admissions which have therefore been designated as comprising or containing confidential
21 information, or any pleading or memorandum or other document purporting to reproduce or
22 paraphrase such information, if filed with the Court, may be filed in accordance with this
23 provision. Only when the judge presiding over the hearing or trial permits filing an item or items
24 under seal may confidential material filed with the Court be filed in a sealed envelope or other
25 container marked on the outside with the caption of this action and the following statement:

26 "CONFIDENTIAL. Filed Pursuant to Protective Order by _____ Not to be
27 opened nor the contents revealed except (1) to the Court and then resealed, (2) by
28 agreement of the parties, or (3) by prior order of this Court."

Whenever the Court grants a party permission to file an item under seal, a duplicate

1 disclosing all nonconfidential information shall be filed and made part of the public record. The
2 item may be redacted to eliminate confidential material from the public document. The public
3 document shall be titled to show that it corresponds to an item filed under seal, e.g., "Redacted
4 Copy of Sealed Declaration of John Smith in Support of Motion for Summary Judgment." The
5 sealed and redacted documents shall be filed simultaneously. The party filing the documents shall
6 serve notice upon all other parties that the above procedure is being invoked.

7 At the trial of this action or at any hearing relating to this action before any judicial officer,
8 subject to the rules of evidence and order of the Court, a party may use any confidential
9 information for any purpose, provided that adequate prior notice of such use is given to counsel for
10 the opposing party to permit the opposing party the opportunity to obtain appropriate protection
11 from the Court, including a request to the Court that the courtroom be cleared of persons not
12 subject to the Order and that the Court employees be advised as to the terms of this Order.

13 6. (a) Each and every page or sheet of all transcripts of depositions, exhibits,
14 answers to interrogatories and requests for admissions, copies thereof, other documents and all
15 information obtained by an inspection of files, facilities or documents by any party pursuant to
16 pretrial discovery in this action that have been designated by the other party as comprising or
17 containing its confidential information shall be marked "CONFIDENTIAL" or "HIGHLY
18 CONFIDENTIAL" and shall be retained by the receiving party's outside counsel and shall not be
19 disclosed or used by any non-designating party or other person other than those listed
20 below.

21 (b) Confidential information shall not be disclosed to any person
22 other than (i) outside counsel for the parties to this litigation and office personnel employed or
23 engaged in the preparation for, or in aiding in the trial of this action; (ii) a party subject to the
24 provisions of subpart (c) below, unless the material is marked "Highly Confidential;" (iii)
25 independent outside persons (i.e., persons not employees of a party), not to exceed five, requested
26 by outside counsel to furnish technical or expert services or to give testimony with respect to the
27 subject matter for the trial of this action; (iv) the Court including necessary secretarial and clerical
28 personnel assisting the Court; and (v) the jury.

1 (c) Each person to whom disclosure may be made by
2 outside counsel for a non-designating party shall first be identified not less than ten (10) business
3 days before the disclosure, to outside counsel for the party designating the information as
4 confidential and shall, in a written instrument delivered beforehand to such outside counsel,
5 acknowledge that he (or she) is fully familiar with the terms of this Protective Order and agrees in
6 writing, to comply with, and be bound by, such Order until modified by further Order of this Court
7 or by agreement of the parties hereto.

8 Outside counsel for the designating party shall have the right to object, in writing within
9 five (5) days after receiving the required identification, to such disclosure to the person or persons
10 selected by outside counsel for the non-designating party and should such objection be made, no
11 disclosure shall be made to such objected to person without leave of the Court. Material marked
12 "Highly Confidential" shall not be read or reviewed except by an attorney for a party or an
13 independent expert of a party.

14 7. No person or party shall disclose to anyone not specified in Paragraph "6" any
15 information designated as confidential under this Protective Order, without prior written consent of
16 the designating party or further order of this Court. Confidential information disclosed pursuant to
17 this Protective Order shall not be used by a recipient thereof for any purpose other than for
18 purposes of preparing this action for trial.

19 8. The restrictions on dissemination of confidential information contained
20 herein shall not apply to information which, prior to disclosure hereunder, is either in the
21 possession or knowledge of an inspecting party or a person who, absent this Order,
22 is under no restriction with respect to the dissemination of such confidential information or to
23 information which is public knowledge or which, after disclosure, becomes public knowledge
24 other than through an act of omission of a party receiving the information designated as
25 confidential, provided that if a party to this Order who is to receive any confidential information
26 disagrees with respect to its designation as confidential information, in full or in part, including for
27 the reason set forth in the beginning of this paragraph, it shall so notify the producing party in
28 writing, and they will thereupon confer as to the status of the subject information proffered within

1 the context of this Order within ten (10) days of the sending of such notice, If the recipient and
2 producing parties are unable to agree to the status of the subject information, any party to this
3 Order may raise the issue of the designation of such a status to the Court upon 10 days written
4 notice. The Court may raise the issue of designation of the confidential status without any request
5 from a party. In any disagreement over the designation of confidential information, the designating
6 party bears the burden of showing that the designated information is confidential information
7 within the scope of this Order. No party to this action shall be obligated to challenge the propriety
8 of any designation, and a failure to do so shall not preclude a subsequent challenge on the
9 propriety of such designation and shall not constitute an admission that any information is in fact
10 confidential.

11 9. This Order is intended to provide a mechanism for the handling of
12 confidential information and documents, to the disclosure or production of which there is no
13 objection other than confidentiality. Each party reserves the right to object to any disclosure of
14 information or production of any documents it deems confidential on any other ground it may
15 deem appropriate, and any party may move for relief from, or general or particular modification of,
16 the mechanism for maintaining confidentiality herein set forth or the application of this Order in
17 any particular circumstance.

18 10. This Protective Order may be amended without leave of Court by the agreement of
19 outside counsel for the parties in the form of a stipulation that shall be filed in this case. If the
20 parties cannot agree to an amendment then a formal motion to amend must be filed with the Court.
21 This Protective Order is intended to regulate the handling of confidential information and
22 documents during the pretrial period of this litigation, but shall remain in force and effect until
23 modified, superseded or terminated on the record by agreement of the parties hereto or by order of
24 the Court.

25 11. Upon final termination of this litigation, each party that is subject to this Order shall
26 assemble and return to the producing party all items containing the producing party's confidential
27 information produced in accordance with this Order, including all copies of such matter which
28 may have been made, but not including copies containing notes or other attorney work product that

1 may have been placed thereon by counsel for the receiving party. All copies containing notes or
2 other attorney's work product shall be destroyed promptly after final termination by the receiving
3 party who will so inform the disclosing party. As an alternative to the return of all such
4 confidential information, the recipient may destroy such confidential information. Promptly after
5 the return or destruction of items containing the producing party's confidential information, the
6 receiving party shall by letter certify that all items containing the producing party's confidential
7 information have been returned and/or destroyed, respectively. Receipt of all material returned to
8 the producing party shall be acknowledged in writing if requested by the receiving party and the
9 receiving party has specified what has been returned by it. Notwithstanding the preceding
10 sentences of this paragraph, one complete set of pleadings may be retained by each of the parties
11 but any pleadings containing confidential information shall remain subject to all other provisions
12 of this protective order.

13 12. Nothing herein shall prevent disclosure of any confidential information (1) by the
14 producing party or (2) to any employee or officer of the producing party or (3) to any person, no
15 longer affiliated with the producing party, who either authored, in whole
16 or part, or who received the confidential information in confidence prior to the initiation of this
17 litigation.

18 13. Nothing in this Order shall be deemed a waiver of any right any party otherwise
19 might have under the Federal Rules or the doctrines of attorney-client privilege or attorney work
20 product.

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1 14. This Order shall survive the final termination of this action with respect to
2 any confidential information. The Court shall retain jurisdiction over the parties and
3 counsel for the parties as necessary to enforce this Order.

4 DATED this 31st day of August 2009.

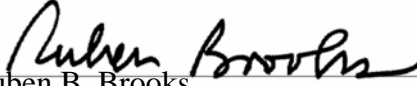
5 Respectfully submitted by:

6 /s/ Michael P. Lavigne, Esq.
7 Carlson & Messer LLP
8 5959 W. Century Blvd., Suite 1214
9 Los Angeles, CA 90045
10 and

11 /s/ Jeremy S. Golden, Esq.
12 Law Offices of Eric F. Fagan
13 2300 Boswell Rd, Suite 211
14 Chula Vista, CA 91914
15

16 **IT IS SO ORDERED.**

17 Dated: September 2, 2009

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19 Ruben B. Brooks
20 United States Magistrate Judge
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