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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARK LEGACY, an individual,

Plaintiff,

v.

WELLS FARGO BANK, a National
Association; and DOES 1-10,

Defendants.

Case No. 16-cv-00462-GPC-BLM

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
PROTECTIVE ORDER**

[ECF No. 15]

1 **STIPULATED PROTECTIVE ORDER**

2 **A. DEFINITIONS**

3 1. As used herein, the term “confidential information” means: (a)
4 information subject to federal or state privacy rights including private financial
5 information; (b) any type of information that has not been made generally available
6 to the public and the disclosure of which the disclosing party contends would cause
7 harm to the disclosing party’s business operations or interests, which could include,
8 but would not be limited to, contracts, customer data, costs of goods or services sold,
9 manufacturing or other costs of doing business, employee personnel information,
10 sales records, inventory sheets, internal policies and procedures, and business
11 strategies; (c) data derived from such confidential information, including any
12 summaries, compilations, quotes, or paraphrases thereof; and (d) any other oral,
13 written, or recorded material that consists of or contains trade secrets (as defined in
14 CALIFORNIA CIVIL CODE § 3426.1(d)) or other confidential research, development, or
15 commercial information and the disclosure of which would result in competitive
16 harm, and for which the designating party has taken reasonable measures to maintain
17 their confidential, non-public status.

18 2. As used herein, the terms “document”, “documents”, “tangible
19 things”, “recordings”, and “photographs” mean documents, writings, tangible things,
20 recordings, and photographs as defined in FED. R. CIV. P. 34(a) and FED. R. EVID.
21 1001, and include, but are not limited to, records, exhibits, reports, samples,
22 transcripts, video or audio recordings, disks, affidavits, briefs, summaries, notes,
23 abstracts, drawings, company records and reports, answers to interrogatories,
24 responses to requests for admissions, and motions, including copies or computer-
25 stored versions of any of the foregoing.

26
27 **B. DESIGNATION OF CONFIDENTIAL INFORMATION**

28 1. This Protective Order applies to all discovery responses,
-1-

1 documents, testimony, and other materials containing confidential information
2 disclosed in this action that are designated by a party or any third party as
3 CONFIDENTIAL, in the manner described below, whether such disclosure is by
4 order of the Court, by response to questions in a deposition, written interrogatories,
5 requests for the production of documents and other tangible things, requests for
6 admission, response to a subpoena, or any other discovery undertaken in this action.

7 2. A party that provides information may designate it as confidential
8 only when such party in good faith believes it contains confidential information. A
9 party designating information as confidential should take reasonable care to designate
10 only that information, documents, items or oral or written communications that the
11 party reasonably believes to qualify for protection. If it
12 comes to a party's or a non-party's attention that information or items that it
13 designated for protection do not qualify for protection, that party or non-party should
14 promptly notify all other parties that it is withdrawing the mistaken designation.

15 Any party may protect information it believes constitutes confidential
16 information by designating such information as CONFIDENTIAL prior to or at the
17 time of disclosure of such information. Such designation shall be accomplished by
18 placing the notation CONFIDENTIAL (or some notation essentially equivalent to the
19 phrase CONFIDENTIAL) on every page of each document or portion thereof so
20 designated. In the case of confidential information disclosed in a non-paper medium
21 (e.g., videotape, audiotape, computer disks, etc.), the notation CONFIDENTIAL shall
22 be affixed to the outside of the medium or its container so as to clearly give notice of
23 the designation. Such designation is deemed to apply to the document itself and to
24 the confidential information contained therein.

25 3. Except as set forth in this Protective Order, designated
26 confidential information shall be used solely for the purposes of this litigation and
27 shall not be used for any other purpose, including, without limitation, any business or
28 commercial purpose, or dissemination to the media. Confidential information so

1 counsel and in-house counsel) and their support personnel (*e.g.*, legal assistants and
2 copy services);

3 b. Current and former employees of the Parties involved in the
4 prosecution or defense of the litigation, and to whom disclosure of the confidential
5 information is reasonably necessary for the purposes of this litigation;

6 c. The Court and court personnel of any court having
7 jurisdiction over any proceedings involved in this litigation;

8 d. Court reporters, videographers, and their staffs to whom
9 disclosure is reasonably necessary for the purposes of this litigation;

10 e. Consultants and experts, who execute the Declaration
11 Confirming Compliance With Stipulated Protective Order Re Confidential
12 Information (“Compliance Declaration”) attached to this Protective Order;

13 f. Any current employee, director, agent or FED. R. CIV. P.
14 30(b)(6) designee of the producing party;

15 g. Any former employee of a producing party, who executes
16 the Compliance Declaration, that the disclosing party reasonably and in good faith
17 believes authored, received, or became familiar with the confidential information in
18 the ordinary course of his or her employment by the designating party;

19 h. Any author, original source, or prior recipient of the
20 confidential information;

21 i. Deposition witnesses who execute the Compliance
22 Declaration attached to this Protective Order;

23 j. Any other person or entity as to whom the Parties agree in
24 writing; and

25 k. Any other person as to whom the Court orders should have
26 access to the confidential information.

27 4. A copy of any Compliance Declaration executed by any person
28 required under this Protective Order shall be maintained by counsel for the party

1 making the disclosure of another party's designated confidential information.

2
3 **D. DEPOSITIONS**

4 1. With respect to the examination of witnesses upon oral deposition,
5 when designated confidential information is supplied to the deponent, or when the
6 deponent's testimony contains, reflects, or comments on designated confidential
7 information, the deposition reporter and/or video operator shall be informed of this
8 Protective Order by the party seeking to use or disclose the confidential information.
9 The reporter and/or video operator then shall place on the cover of any deposition
10 transcript or video that contains any designated confidential information the words
11 "CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO A COURT
12 PROTECTIVE ORDER." Counsel for the Parties then shall take appropriate steps to
13 prevent any portions of any deposition transcript or video designated
14 CONFIDENTIAL from being disclosed to any person, except as provided in this
15 Protective Order.

16 2. All testimony at a deposition shall be presumed to be designated
17 CONFIDENTIAL if this Protective Order is invoked at the deposition for 60 days
18 after the conclusion of the deposition, until the specific pages of the transcript
19 containing designated confidential information are identified and designated
20 CONFIDENTIAL as provided below. For any CONFIDENTIAL designation
21 thereafter, the designating party shall, within sixty (60) days after the completion of
22 the deposition, provide all Parties with a written list of the page(s) of the deposition
23 transcript, and any exhibits attached thereto, that the party has designated
24 CONFIDENTIAL. Only pages containing confidential information shall be so
25 designated. Any party can challenge any portion of the deposition designated as
26 CONFIDENTIAL at any time, but must first meet and confer with the designating
27 party as to the basis for the challenge before seeking Court intervention.

28 3. If designated confidential information is to be discussed or

1 disclosed in a deposition, any party claiming such confidentiality may exclude from
2 the room any person who is not entitled to receive such confidential information
3 during that portion of the deposition in which the confidential information is actually
4 discussed or disclosed.

5
6 **E. CHALLENGING A DESIGNATION**

7 1. The Parties agree that they will actively work to avoid the
8 unnecessary CONFIDENTIAL designation of information produced in discovery in
9 this action.

10 2. In the event that counsel for any party at any time believes that
11 designated confidential information should not be so designated, such counsel shall
12 meet and confer with counsel for the other party in an attempt to resolve the dispute.

13 3. If counsel for the Parties are still unable to resolve the dispute,
14 they shall contact the chambers of Magistrate Judge Barbara L. Major and notify the
15 judge's staff of the dispute. Unless otherwise instructed by the Court, counsel
16 objecting to the designation of particular information as CONFIDENTIAL may make
17 an application to this Court, to be lodged conditionally under seal, for an Order that
18 the information subject to the dispute be excluded from the protection of the
19 Protective Order. However, unless and until an order of this Court sets aside a
20 designation of information as CONFIDENTIAL, all information so designated shall
21 be treated as CONFIDENTIAL pursuant to the terms of this Protective Order.

22 4. The designating party bears the burden of establishing that the
23 documents designated are entitled to protection.

24 5. No party shall be obliged to challenge the propriety of a
25 CONFIDENTIAL designation, and a failure to do so shall not preclude a subsequent
26 attack on the propriety of such designation.

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1 **F. INADVERTENT FAILURE TO DESIGNATE**

2 1. The inadvertent failure to designate confidential information as
3 CONFIDENTIAL prior to or at the time of disclosure shall not operate as a waiver
4 of a party's right to designate such information as CONFIDENTIAL after such
5 disclosure.

6 2. In the event that confidential information is designated as
7 CONFIDENTIAL after disclosure, the receiving party shall employ reasonable efforts
8 to ensure that all previously disclosed information is subsequently treated as
9 CONFIDENTIAL, as appropriate, pursuant to the terms of this Protective Order.

10 3. Should any document or information designated as
11 CONFIDENTIAL be disclosed, through inadvertence or otherwise, to any person or
12 party not authorized to see such materials under this Protective Order, then the
13 disclosing party shall immediately procure the return of the material, and inform
14 counsel for the designating party whose confidential information has thus been
15 disclosed of all relevant information concerning the nature and circumstances of such
16 disclosure. The disclosing party shall also take all reasonable measures promptly to
17 ensure that no further or greater unauthorized disclosure of the Confidential
18 Information occurs.

19
20 **G. CUSTODY AND DISPOSITION OF CONFIDENTIAL**
21 **INFORMATION**

22 1. Confidential information designated CONFIDENTIAL shall be
23 maintained in the custody of counsel for the Parties, except for information in the
24 custody of: (a) the Court; (b) any court reporter transcribing testimony given in this
25 action, for the limited purpose of rendering his or her normal transcribing services;
26 and (c) persons to whom the confidential information may be disclosed pursuant to
27 the terms of the Protective Order, including consultants and experts, to the extent
28 necessary for their involvement in the litigation. Except for the Court, a person with

1 custody of information designated CONFIDENTIAL shall maintain it in a manner
2 that limits access to it to only those persons entitled under this Protective Order to
3 examine it.

4 2. Unless agreed otherwise in writing, at the conclusion of this
5 litigation, whether by settlement or final decision of the Court of last resort, the
6 Parties, counsel for the Parties, and all persons who executed the Compliance
7 Declaration agree that they will destroy or return to the producing party all copies of
8 any documents, other than attorney work product, containing designated confidential
9 information produced by a party. Notwithstanding the foregoing, counsel of record
10 shall be permitted to retain a file copy of all pre-trial, trial, and post-trial materials,
11 depositions and deposition exhibits, and document databases. Such file copies must
12 be maintained under the conditions of maintaining CONFIDENTIAL documents as
13 set forth above.

14
15 **H. MISCELLANEOUS PROVISIONS**

16 1. The provisions of this Protective Order apply to all proceedings in
17 this action, including all appeals, arbitrations, mediations, and proceedings upon
18 remand, unless the matter proceeds to trial. The Parties will work with the Court to
19 determine whether evidence proffered at trial should continue to be treated as
20 CONFIDENTIAL and, if so, what protection, if any, may be afforded to such
21 information at trial.

22 2. A designation of confidentiality pursuant to this Protective Order
23 shall be effective and shall be respected by the Parties and all persons in any way
24 involved in these proceedings or to whose attention confidential information shall
25 come unless and until otherwise ordered by the Court or stipulated by the Parties.
26 These obligations of confidentiality and non-disclosure shall survive the conclusion
27 of this action unless and until otherwise ordered by the Court, or until the producing
28 parties stipulate that designated confidential information may be disclosed.

1 3. By entering into this Protective Order, no party waives any
2 objections it might have to the production of documents covered by this Protective
3 Order.

4 4. No party to this action, by entering into this Protective Order, by
5 designating certain information as CONFIDENTIAL, or by acquiescing in any other
6 party's designation, shall be deemed to have admitted or agreed that any such
7 designated information is, in fact, private financial information, proprietary
8 information, a trade secret or other confidential research, development, or commercial
9 information.

10 5. The Court shall retain jurisdiction for one year after the
11 termination of this action to enforce this Protective Order and to make such deletions
12 from or amendments, modifications, and additions to the Protective Order as the Court
13 may from time to time deem appropriate. The Parties, and any producing party,
14 reserve all rights to apply to the Court at any time, before or after termination of this
15 action, for an order modifying this Protective Order or seeking further protection
16 against disclosure or use of claimed confidential information.

17 6. The Court may modify the terms and conditions of the Protective
18 Order for good cause, or in the interest of justice, or on its own order at any time in
19 these proceedings.

20
21 **I. FILING OR LODGING UNDER SEAL**

22 When a party wishes to include information designated as
23 "CONFIDENTIAL" in any papers filed with the Court, the party submitting the
24 information shall comply with the procedures explained in Section II.j of the
25 Electronic Case Filing Administrative Policies and Procedures Manual for the United
26 States District Court for the Southern District of California, Civil Local Rule 79.2 and
27 the applicable Chambers Rules of the Honorable Barbara L. Major.

1 In addition, in accordance with Judge Major's preferences, a party must
2 file a 'public' version of any document that it seeks to file under seal. In the public
3 version, the party may redact only that information that is deemed 'Confidential.' The
4 party should file the redacted document(s) simultaneously with a joint motion or ex
5 parte application requesting that the confidential portions of the document(s) be filed
6 under seal and setting forth good cause for the request.

7
8 **J. GOOD CAUSE STATEMENT**

9 Pursuant to FED. R. CIV. P. 26(c)(7), good cause exists for entry of this
10 Protective Order because the Parties to this action (1) either have sought or might seek
11 the discovery of certain information in this action that the Parties believe is sensitive
12 or confidential, (2) believe that unrestricted disclosure or dissemination of such
13 information could violate their right to financial privacy or cause them business or
14 commercial injury, (3) desire an efficient and practicable means to designate such
15 information as confidential and control its disclosure or dissemination, and (4) have
16 agreed to such means as set forth herein.

17
18 **STIPULATED PROTECTIVE ORDER**

19 In consideration of the Parties' Joint Motion, and for good cause
20 appearing, IT IS HEREBY ORDERED that the Protective Order is **GRANTED**.

21 Dated: 5/12/2016

22 
23 Hon. Barbara L. Major
24 United States Magistrate Judge

1 **DECLARATION CONFIRMING COMPLIANCE WITH STIPULATED**
2 **PROTECTIVE ORDER RE CONFIDENTIAL INFORMATION**

3 I, _____, hereby declare:

4 1. My address is _____.

5 My telephone number is (_____) _____ - _____.

6
7 2. I have read, understand and agree to be bound by the terms of the
8 Stipulated Protective Order Re Confidential Information (“Protective Order”),
9 entered in this action, *Mark Legacy v. Wells Fargo Bank, N.A.*. Case No. 16-cv-
10 00462-GPC-BLM, in the United States District Court, Southern District of
11 California.

12
13 3. I understand that this Protective Order requires me not to
14 disclose any information designated as CONFIDENTIAL, which is provided to me
15 in the course of my involvement in this litigation, to any person not authorized by
16 this Protective Order to receive such information.

17
18 4. I agree that I shall return or destroy all documents containing any
19 information designated as CONFIDENTIAL that have been provided to me,
20 together with any work product including such information designated as
21 CONFIDENTIAL, upon demand by the Court or the counsel or party who furnished
22 such information to me.
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5. I consent to the jurisdiction of the United States District Court for the Southern District of California with respect to any actions of any kind whatsoever relative to the enforcement of the Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 20__ at _____ (city), _____ (state).

Signature