

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

<p>DWAYNE RANSOM DAVIS and MELISA DAVIS, on behalf of themselves and all others similarly-situated,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">vs.</p> <p>COUNTRYWIDE HOME LOANS, INC.; BANK OF AMERICA, N.A.; BAC GP, LLC; and BAC HOME LOANS SERVICING, LP,</p> <p style="text-align:center">Defendants.</p>	<p>Case No: 1:10-cv-01303-JMS-DML</p>
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STIPULATED PROTECTIVE ORDER

The purpose of this Order is to limit the disclosure and use of trade secret or other confidential research, development, or commercial information in documents, electronic files, drawings, written discovery responses, and deposition testimony the parties have sought or will be seeking in this action.

This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it affords extends only to the limited information or items that are entitled under applicable legal principles to treatment as “CONFIDENTIAL.” Information designated by the parties as “CONFIDENTIAL” may be reclassified pursuant to subsequent agreement or Court order. All attempts by either party seeking to protect trade secrets or other confidential research, development, or commercial information must be made in good faith, and both parties and any interested member of the public shall be permitted to challenge the removal of portions of the record sought to be shielded from the public.

Before a party files under seal any material it has designated “CONFIDENTIAL,” its counsel will perform a document-specific, good faith examination of the materials to be filed under seal to ensure that they meet the legal and factual criteria for such treatment. Furthermore, promptly after the filing under seal by a party of any materials designated “CONFIDENTIAL” by another party, counsel for the designating party will perform a document-specific, good faith examination of the materials filed under seal to ensure that they meet the legal and factual criteria for continued maintenance under seal and will promptly file a request with the court that the filings be unsealed if those criteria are not met. If at any time during the pendency of an action, material being maintained by the court under seal no longer meets the legal and factual criteria for continued maintenance under seal, because of the passage of time or some other development, the designating party will promptly file a request with the court that the filings be unsealed.

IT IS, THEREFORE, ORDERED THAT:

1. The parties may designate documents, or portions thereof, and any other form of evidence or discovery contemplated under Federal Rules of Civil Procedure 26 through 37 and the S.D. Ind. L.R. that contain “trade secret or other confidential research, development, or commercial information,”¹ as CONFIDENTIAL information (as herein defined), subject to the terms and restrictions of this Order.

2. “CONFIDENTIAL” information means any information which is designated as CONFIDENTIAL by a party, whether it be a document, information contained in a document, information revealed during a deposition or in any interrogatory answer or otherwise disclosed in

¹ See Federal Rule of Civil Procedure 26(c)(1)(G).

discovery. Information shall be designated as CONFIDENTIAL only upon the good-faith belief that the information is proprietary in nature and protectable by law.

3. The following information may not be marked as CONFIDENTIAL:

a. Material that has been submitted to a government (foreign or domestic) without restriction;

b. Material that has been released pursuant to a Freedom of Information Act request; and/or

c. Material that is in the public domain.

4. The parties may use the CONFIDENTIAL information only for this litigation.

S.D. Ind. Local Rule 5.3 shall control the filing of documents that either party designates as CONFIDENTIAL. Pursuant to L.R. 5.3, and pending a determination of good cause by the Court as to which portions of the record should be sealed, the parties shall be permitted to file documents with the Court under seal.

5. Any documents filed under seal in the litigation will be maintained under seal for the duration of the litigation unless otherwise ordered by the Court.

6. CONFIDENTIAL information may be inspected or reviewed only by the following persons:

a. Counsel of record for the plaintiff and the defendants in this litigation, any lawyers specifically employed by them in connection with the litigation, any employee of such counsel assisting with this litigation, and the insurer of the defendant (if applicable);

b. The following representatives of the current parties in this Litigation;

- i. Defendants - Matthew R. Strzynski, Libby Yin Goodknight, Richard Cullen, J. William Boland, Bryan A. Fratkin, and Brian E. Pumphrey.
- ii. Plaintiffs – Gabriel Adam Hawkins, Irwin B. Levin, Vess Allen Miller, Eric S. Pavlack, Richard E. Shevitz, and Clifford T. Rubenstein.
- c. Experts retained by or on behalf of any party to provide assistance or testimony in connection with this litigation.
- d. The Court and its personnel.
- e. Persons who authored or who are shown as recipients of the information.
- f. Court reporters, professional vendors and their respective staff to whom disclosure is reasonably necessary for this litigation who have signed the Secrecy Agreement in the form attached as Exhibit 1.
- g. Prior to the disclosure of CONFIDENTIAL information to any agent, employee or expert of a Receiving Party, such individual must sign a Secrecy Agreement in the form attached hereto as Exhibit 1. A copy of the signed Secrecy Agreement for each agent or employee of the Receiving Party must be provided to counsel for the Producing Party prior to receipt by the employee or agent of the CONFIDENTIAL information; provided, however, a copy of Secrecy Agreements signed by consulting experts need not be provided to counsel for the Producing Party.

7. If the Receiving Party objects to or disagrees with the designation of information as being CONFIDENTIAL and wants to disclose or use such information contrary to this Protective Order, the Receiving Party shall give written notice to the Producing Party specifically

identifying the information, the reasons why it is not subject to this Protective Order, the intended disclosure or uses to be made of the information or documents, and the alleged proper classification. If the Producing Party does not provide a written objection within five (5) business days of receipt of the written notice sent by the Receiving Party, then such specific information is free of the restrictions of this Protective Order. If the parties disagree as to the proper classification, they shall use their best efforts to resolve their disagreement. If they are not able to resolve their disagreement, the Receiving Party may apply to the Court for a determination. No unauthorized disclosure shall be made prior to the Court's determination.

8. CONFIDENTIAL information may be disclosed to a witness, not already allowed access to such information under this Protective Order, in connection with his or her deposition.

9. This Protective Order shall not prevent a party from using any CONFIDENTIAL information subject to this Protective Order at trial, during a hearing or the like. A party intending to use CONFIDENTIAL information during such hearing shall give prior written notice, by e-mail, to all other parties of such intended use before such anticipated use. At the request of the party who designated the material subject to this Protective Order, the Court may restrict attendance at that portion of the proceeding where said material is to be discussed as the Court deems appropriate, including the sealing of the transcript.

10. Any material designated CONFIDENTIAL and submitted by any party via a pleading or offered into evidence at a hearing or trial shall maintain its CONFIDENTIAL designation until such time as the Court rules to the contrary.

11. A non-party producing documents, text or other materials may designate the same as CONFIDENTIAL under this Protective Order by following the procedures set forth above. Such information shall be treated by the parties pursuant to this Protective Order in the same

manner as if such information was produced by a party to this action and so designated hereunder. Any party to this action shall have the right to designate any documents, text or other materials so produced by a non-party, within ten (10) business days of the non-party's disclosure, as CONFIDENTIAL information under this Protective Order, and such information shall thereafter be treated by the parties pursuant to this Protective Order in the same manner as if such information was produced by a non-party and so designated hereunder.

12. In the event of any dispute as to the propriety of a designation, the party objecting to the designation may submit the issue to the Court for review.

13. The restrictions on the use of CONFIDENTIAL information established by this Protective Order are applicable only to the use of CONFIDENTIAL information received by a party from another party or from a non-party. No use by a party of its own CONFIDENTIAL information in this litigation shall be deemed a waiver of the confidentiality thereof or to release anyone bound under the Protective Order.

14. The inadvertent or unintentional disclosure by a party of CONFIDENTIAL information without the proper designation or marking the time of the disclosure, shall not constitute a waiver of a party's claim of confidentiality either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter, provided that the Receiving Party is notified and that properly marked material is supplied as provided herein. The Receiving Party shall not be responsible for the disclosure or other distribution of CONFIDENTIAL information belatedly designated or marked in accordance with this Protective Order as to such disclosure or distribution that may have occurred before the receipt of such notification of a claim of confidentiality and properly marked material, and such disclosure or distribution shall not be deemed to be a violation of this Protective Order.

However, to the extent any document which was subsequently marked as CONFIDENTIAL had been distributed to an employee or agent of the Receiving Party prior to the designation, counsel for the Receiving Party shall collect such documents and all copies thereof from the employee or agent following the designation.

15. Pursuant to Federal Rule of Evidence 502, the inadvertent or unintentional disclosure of a communication or information protected by the attorney-client privilege or work product protection will not operate as a waiver of such privilege or protection. Further, inadvertent or unintentional disclosure of privileged or protected communications or information in the instant litigation shall not operate as a waiver in any other federal or state court proceeding. This provision applies to the parties to this litigation, the parties' representatives, employees and agents, and counsel of record for the parties, including any lawyers or experts specifically employed by them in connection with the litigation and any employees of each counsel assisting with this litigation, and any insurer, if applicable.

16. This Protective Order does not apply to discovery objections to produce, answer, or respond on the grounds of attorney-client privilege or work-product privilege, and does not preclude any party from seeking further relief or protective orders from the Court. Receipt by a party of CONFIDENTIAL information designated in accordance with this Protective Order shall not:

- a. Constitute a concession that such CONFIDENTIAL information in fact is or includes confidential information, or
- b. Constitute agreement or admission with respect to the competency, relevancy or materiality of any such CONFIDENTIAL information.

17. Neither the taking of, nor the failure to take, any action to enforce the provisions of this Protective Order, nor the failure to object to any designation or any such action or omission, shall constitute a waiver of any party's right to seek and obtain protection or relief, with respect to any claim or defense in this action or any other action including, but not limited to, the claim or defense that any information is or is not CONFIDENTIAL, is or is not entitled to particular protection, or embodies or does not embody CONFIDENTIAL information.

18. This Protective Order shall not abrogate, diminish, or require contrary performance under, any contractual, statutory, or other legal obligation or right of any party, as to any third party, with respect to any CONFIDENTIAL information. The fact that information is designated CONFIDENTIAL shall not be considered as evidence in what the trier of fact considers in determining whether any information is confidential, proprietary, trade secret or the like.

19. Within sixty (60) days following the conclusion of this litigation, all CONFIDENTIAL information, except such documents or information that incorporate or are incorporated into attorney work product, pleadings, and/or submissions with or to the Court (a single archival copy of which may be retained in trial counsel's files), shall be returned to the Producing Party or destroyed, in which event trial counsel for the Receiving Party shall confirm in writing the fact of such destruction.

20. The restrictions provided for herein shall not terminate upon the conclusion of this action, but shall continue until further Order of this Court.

21. This Protective Order is without prejudice to the right of a party hereto to seek relief from the Court, upon good cause shown, from any of the provisions or restrictions provided herein.

22. This Protective Order shall bind present or subsequently added parties to this litigation.

23. All persons subject to this Protective Order shall not disclose to anyone any information designated as CONFIDENTIAL information except as permitted by this Protective Order.

24. Nothing in this Protective Order shall affect the right of any party to seek additional protection against the disclosure of any documents or materials.

25. Any person may apply for relief from the terms of this Protective Order should it appear, in their good-faith judgment, that documents or information have been improperly labeled as CONFIDENTIAL. Any party or any interested member of the public may challenge whether particular documents filed under seal should remain sealed; however, this provision shall not be construed to allow non-parties to challenge designations of discovery documents that have not been filed under seal.

26. Any person may apply to this Court at any time, upon proper notice, for the modification or vacation of this Protective Order.

Dated: _____

HONORABLE JUDGE JANE E. MAGNUS-
STINSON
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

HONORABLE JUDGE DEBRA MCVICKER
LYNCH
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DISTRIBUTION TO:

Irwin B. Levin
ilevin@cohenandmalad.com

Richard E. Shevitz
rshevitz@cohenandmalad.com

Eric S. Pavlack
epavlack@cohenandmalad.com

Vess A. Miller
vmiller@cohenandmalad.com

Gabriel A. Hawkins
ghawkins@cohenandmalad.com

Clifford T. Rubenstein
crubenstein@mrhlaw.com

Libby Y. Goodknight
lgoodknight@kdlegal.com

Matthew R. Strzynski
mstrzynski@kdlegal.com

Richard Cullen
rcullen@mcguirewoods.com

J. William Boland
wboland@mcguirewoods.com

Bryan A. Fratkin
bfratkin@mcguirewoods.com

Brian E. Pumphrey
bpumphrey@mcguirewoods.com

Bradley Kutrow
bkutrow@mcguirewoods.com