

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SARAH CONNOLLY, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

UMPQUA BANK, and STERLING  
INFOSYSTEMS, INC.,

Defendants.

Case No. 2:15-cv-00517-TSZ

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following stipulated protective order. The parties acknowledge that this agreement is consistent with Local Rules W.D. Wash. LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

4 (a) documents that contain financial or personal identifying information,  
5 such as e-mail addresses, physical addresses, telephone numbers, and account numbers;

6 (b) documents that contain information regarding Umpqua’s employees,  
7 customers, or clients.

8 (c) documents concerning Umpqua’s proprietary training, marketing,  
9 guidelines, policies, procedures, software, databases, or business practices;

10 (d) documents concerning Umpqua’s efforts to ensure its compliance with  
11 federal and state laws and regulations regarding obtaining consumer reports, including credit  
12 reports, background checks, and criminal history reports;

13 (e) documents concerning Umpqua’s review and assessment of consumer  
14 reports obtained as part of its application process;

15 (f) Umpqua’s contracts with consumer reporting agencies; and

16 (g) any other documents that contain confidential business information of  
17 either party as determined and designated by such party.

18 The parties may propose modifying this list if necessary as discovery proceeds.

19 3. SCOPE

20 The protections conferred by this agreement cover not only confidential material (as  
21 defined above), but also (1) any information copied or extracted from confidential material;  
22 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
23 testimony, conversations, or presentations by parties or their counsel that might reveal  
24 confidential material. However, the protections conferred by this agreement do not cover  
25 information that is in the public domain or becomes part of the public domain through trial or  
26 otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is  
3 disclosed or produced by another party or by a non-party in connection with this case only for  
4 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
5 disclosed only to the categories of persons and under the conditions described in this  
6 agreement. Confidential material must be stored and maintained by a receiving party at a  
7 location and in a secure manner that ensures that access is limited to the persons authorized  
8 under this agreement.

9 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
10 ordered by the court or permitted in writing by the designating party, a receiving party may  
11 disclose any confidential material only to:

12 (a) the receiving party's counsel of record in this action, as well as  
13 employees of counsel to whom it is reasonably necessary to disclose the information for this  
14 litigation;

15 (b) the officers, directors, and employees (including in-house counsel) of the  
16 receiving party to whom disclosure is reasonably necessary for this litigation;

17 (c) experts and consultants to whom disclosure is reasonably necessary for  
18 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
19 (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication  
22 of confidential material, provided that counsel for the party retaining the copy or imaging  
23 service instructs the service not to disclose any confidential material to third parties and to  
24 immediately return all originals and copies of any confidential material;

25 (f) during their depositions, witnesses in the action to whom disclosure is  
26 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be

1 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
2 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential  
3 material must be separately bound by the court reporter and may not be disclosed to anyone  
4 except as permitted under this agreement;

5 (g) the author or recipient of a document containing the information or a  
6 custodian or other person who otherwise possessed or knew the information.

7 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
8 referencing such material in court filings, the filing party shall confer with the designating party  
9 to determine whether the designating party will remove the confidential designation, whether  
10 the document can be redacted, or whether a motion to seal or stipulation and proposed order is  
11 warranted. Local Rules W.D. Wash. LCR 5(g) sets forth the procedures that must be followed  
12 and the standards that will be applied when a party seeks permission from the court to file  
13 material under seal.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
16 party or non-party that designates information or items for protection under this agreement  
17 must take care to limit any such designation to specific material that qualifies under the  
18 appropriate standards. The designating party must designate for protection only those parts of  
19 material, documents, items, or oral or written communications that qualify, so that other  
20 portions of the material, documents, items, or communications for which protection is not  
21 warranted are not swept unjustifiably within the ambit of this agreement.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
23 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
24 unnecessarily encumber or delay the case development process or to impose unnecessary  
25 expenses and burdens on other parties) expose the designating party to sanctions.  
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1 If it comes to a designating party's attention that information or items that it designated  
2 for protection do not qualify for protection, the designating party must promptly notify all other  
3 parties that it is withdrawing the mistaken designation.

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

8 (a) Information in documentary form: (e.g., paper or electronic documents  
9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
10 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
11 contains confidential material. If only a portion or portions of the material on a page qualifies  
12 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
13 making appropriate markings in the margins).

14 (b) Testimony given in deposition or in other pretrial or trial proceedings:  
15 the parties must identify on the record, during the deposition, hearing, or other proceeding, all  
16 protected testimony, without prejudice to their right to so designate other testimony after  
17 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
18 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

19 (c) Other tangible items: the producing party must affix in a prominent  
20 place on the exterior of the container or containers in which the information or item is stored  
21 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
22 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items does not, standing alone, waive the designating party's  
25 right to secure protection under this agreement for such material. Upon timely correction of a  
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1 designation, the receiving party must make reasonable efforts to ensure that the material is  
2 treated in accordance with the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
9 original designation is disclosed.

10 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
11 regarding confidential designations without court involvement. Any motion regarding  
12 confidential designations or for a protective order must include a certification, in the motion or  
13 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
14 conference with other affected parties in an effort to resolve the dispute without court action.  
15 The certification must list the date, manner, and participants to the conference. A good faith  
16 effort to confer requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
18 intervention, the designating party may file and serve a motion to retain confidentiality. The  
19 burden of persuasion in any such motion shall be on the designating party. Frivolous  
20 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
21 expenses and burdens on other parties) may expose the challenging party to sanctions. All  
22 parties shall continue to maintain the material in question as confidential until the court rules on  
23 the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that  
4 compels disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL,” that party must:

6 (a) promptly notify the designating party in writing and include a copy of  
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or order is  
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued  
12 by the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
15 confidential material to any person or in any circumstance not authorized under this agreement,  
16 the receiving party must immediately (a) notify in writing the designating party of the  
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
18 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
19 made of all the terms of this agreement, and (d) request that such person or persons execute the  
20 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently  
24 produced material is subject to a claim of privilege or other protection, the obligations of the  
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
26 provision is not intended to modify whatever procedure may be established in an e-discovery  
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1 order or agreement that provides for production without prior privilege review. Parties shall  
2 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving  
5 party must return all confidential material to the producing party, including all copies, extracts  
6 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
7 destruction.

8 Notwithstanding this provision, counsel are entitled to retain one archival copy, which  
9 may be kept in electronic form, of all documents filed with the court, trial, deposition, and  
10 hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work  
11 product, and consultant and expert work product, even if such materials contain confidential  
12 material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a  
14 designating party agrees otherwise in writing or a court orders otherwise.

15  
16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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18 DATED: March 24, 2017.

Davis Wright Tremaine LLP  
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1 DATED: March 20, 2017.

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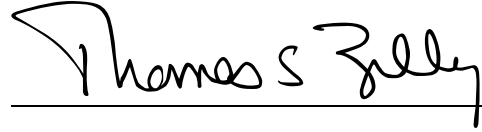
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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3 DATED: April 6, 2017.

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6 Thomas S. Zilly  
7 United States District 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 Western District of Washington on **[date]** in the case of *Connolly v. Umpqua Bank*, Case No. 2:15-cv-00517. 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 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_