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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROBERT JOHNSON and KRISTIN
JOHNSON, husband and wife,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, a
Delaware limited liability company,

Defendant.

NO. 2:16-cv-01031-JLR

**STIPULATION OF PARTIES RE
CONFIDENTIAL PROTECTED
MATERIALS AND [PROPOSED]
ORDER THEREON**

Noting Date: May 8, 2017

I. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, private, and/or confidential information for which special protection is warranted. Accordingly, Plaintiffs Robert Johnson and Kristin Johnson, and Defendant Nationstar Mortgage LLC (“Nationstar”), hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.

The parties acknowledge that this Stipulation is consistent with 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

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1 are entitled to confidential treatment under applicable legal principles, and it does not
2 presumptively entitle parties to file confidential information under seal.

3 **II. "CONFIDENTIAL" MATERIAL**

4 "Confidential" material shall include the following documents and tangible things
5 produced or otherwise exchanged:

6 2.1. Any person's confidential personal financial information, including bank
7 account numbers, former or current loan numbers, social security numbers, and related
8 personal identifying and/or financial information included on loan applications, bank
9 statements, mortgage statements, tax returns, property preservation records, and/or related
10 documents.

11 2.2. Nationstar's documented communications with third-parties and entries
12 contained within Nationstar's Collection History Profile and LPS Notes referencing
13 property inspection and preservation services concerning, and the Notice of Default to be
14 served on, Richard E. McKinley and Louann C. McKinley (the "McKinley's") for their
15 loan serviced by Nationstar and secured by the real property formerly owned by the
16 McKinley's at Lot 5, Sudden Valley, Division No. 38, Whatcom County, Washington (the
17 "McKinley Property").

18 2.3. All other materials as may be designated by the parties and included by way
19 of Amended Stipulations re Confidential Protected Materials, to be filed with the Court.

20 **III. SCOPE**

21 The protections conferred by this Stipulation cover not only confidential materials
22 (as defined above), but also: (1) any information copied or extracted from confidential
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1 materials; (2) all copies, excerpts, summaries, and/or compilations of confidential
2 materials; and (3) any testimony, conversations, and/or presentations by parties and/or their
3 counsels that might reveal confidential materials. However, the protections conferred by
4 this Stipulation do not cover information that is in the public domain or becomes part of
5 the public domain through trial or otherwise.

6 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

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

14 4.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
15 ordered by the Court or permitted in writing by the designating party, a receiving party
16 may disclose any confidential material only to:

17 a. the receiving party's counsel of record in this action, as well as
18 employees of counsel to whom it is reasonably necessary to disclose the information for
19 this litigation;

20 b. the officers, directors, and employees (including in-house counsel)
21 of the receiving party to whom disclosure is reasonably necessary for this litigation, unless
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1 the parties agree that a particular document or material produced is for Attorney's Eyes
2 Only and is so designated;

3 c. experts and consultants to whom disclosure is reasonably necessary
4 for this litigation and who have signed the "Acknowledgement and Agreement to be
5 Bound" (Exhibit A);

6 d. the court, court personnel, court reporters, and their staff;

7 e. copy or imaging services retained by counsel to assist in the
8 duplication of confidential material, provided that counsel for the party retaining the copy
9 or imaging service instructs the service not to disclose any confidential material to third
10 parties and to immediately return all originals and copies of any confidential material;

11 f. during their depositions, witnesses in the action to whom disclosure
12 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
13 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the
14 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
15 confidential material must be separately bound by the court reporter and may not be
16 disclosed to anyone except as permitted under this Stipulation; and

17 g. the author or recipient of a document containing the confidential
18 information or a custodian or other person who otherwise already possesses or knows the
19 information.

20 4.3. Filing Confidential Materials. Before filing confidential material or
21 discussing or referencing such material in court filings, the filing party shall confer with
22 the designating party to determine whether the designating party will remove the
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1 confidential designation, whether the document may be redacted, or whether a motion to
2 seal, and/or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets for the
3 procedures that must be followed and the standards that will be applied when a party seeks
4 permission from the court to file material under seal.

5 **V. DESIGNATING PROTECTED MATERIAL**

6 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each
7 party or non-party that designates information or items for protection under this Stipulation
8 must take care to limit any such designation to specific material that qualifies under the
9 appropriate standards. The designating party must designate for protection only those parts
10 of material, documents, items, and/or oral or written communications that qualify, so that
11 other portions of the material, documents, items, and/or communications for which
12 protection is not warranted are not included unjustifiably within the ambit of this
13 Stipulation.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that
15 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
16 unnecessarily encumber and/or delay the case development process and/or to impose
17 unnecessary expenses and burdens on other parties) expose the designating party to
18 sanctions.

19 If it comes to a designating party's attention that information or items that it
20 designated for protection do not qualify for protection, the designating party must promptly
21 notify all other parties that it is withdrawing the mistaken designation.

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1 5.2. Manner and Timing of Designations. Except as otherwise provided in this
2 Stipulation (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
3 or ordered, disclosure or discovery material that qualifies for protection under this
4 Stipulation must be clearly so designated before or when the material is disclosed or
5 produced, as follows:

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

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

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

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

6 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

21 6.3. Judicial Intervention. If the parties cannot resolve a challenge without court
22 intervention, the designating party may file and serve a motion to retain confidentiality
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1 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).
2 The burden of persuasion in any such motion shall be on the designating party. Frivolous
3 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary
4 expenses and burdens on other parties) may expose the challenging party to sanctions. All
5 parties shall continue to maintain the material in question as confidential until the court
6 rules on the challenge.

7 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
8 **IN OTHER LITIGATION**

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

- 12 a. promptly notify the designating party in writing and include a copy of the
13 subpoena or court order;
- 14 b. promptly notify in writing the party who caused the subpoena or order to
15 issue in other litigation that some or all of the material covered by the subpoena or order is
16 subject to this Stipulation. Such notification shall include a copy of this Stipulation; and
- 17 c. cooperate with respect to all reasonable procedures sought to be pursued by
18 the designating party whose confidential material may be affected.

19 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
21 confidential material to any person or in any circumstance not authorized under this
22 Stipulation, the receiving party must immediately: (a) notify in writing the designating
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1 party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized
2 copies of the protected material; (c) inform the person or persons to whom unauthorized
3 disclosures were made of all the terms of this Stipulation; and (d) request that such person
4 or persons execute the "Acknowledgement and Agreement to be Bound" that is attached
5 hereto as Exhibit A.

6 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
7 **PROTECTED MATERIAL**

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

14 **X. NON TERMINATION AND RETURN OF DOCUMENTS**

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

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of
20 all documents filed with the court, trial, deposition, and hearing transcripts,
21 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
22 consultant and expert work product, even if such materials contain confidential material.

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1 The confidentiality obligations imposed by this Stipulation shall remain in effect
2 until a designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED this 5th day of May, 2017.

5 Stipulated and Agreed to:

6 AFRCT, LLP

7 /s/ Barbara L. Bollero

8 Barbara L. Bollero, WSBA No. 28906

9 *Attorneys for Defendant Nationstar Mortgage LLC*

10 Stipulated and Agreed to:

11 /s James Sturdevant

12 James Sturdevant, WSBA No. 8016

13 *Attorney for Plaintiffs*

14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15 DATED this 15th day of May, 2017.

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17 _____
18 JUDGE JAMES L. ROBART
19 U.S. 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 terms of the Stipulated Protective Order issued by the U.S. District Court for the Western District of Washington, on _____, [date] in the case of *Robert Johnson and Kristin Johnson v. Nationstar Mortgage LLC*, Case No. 2:16-cv-01031-JLR. I agree to comply with and be bound by the terms of that Stipulated Protective Order, and I understand and acknowledge that my failure to comply could expose me to sanctions and punishment of contempt.

I solemnly promise that I will not disclose in any manner any information or item that is subject to that Stipulated Protective Order to any person or entity except in strict compliance with the provisions of that Order. I further agree to submit to the jurisdiction of the U.S. District Court for the Western District of Washington, for the purpose of enforcing the terms of that Stipulated Protective Order, even if such enforcement proceedings occur after termination of that litigation.

I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON AND THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Date: _____

City and State where sworn and signed: _____

1 Printed name: _____

2 Signature: _____

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