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Respondent.

Electronically Filed
May 26 2015 01:19 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appeal from the Eighth Judicial District Court
Case No. A655393

Attorneys for Appellant
Lisa Johnson

Document Index

Doc	Description	Vol.	Bates Nos.
1	Complaint, filed 01/26/12	I	AA000001-000007
2	Answer of Wells Fargo Bank to Complaint, filed 04/06/12	I	AA000008-000016
3	Plaintiff's Motion to Compel and For An Award of the Fees and Costs Incurred in Bringing This Motion, filed 08/31/12	I	AA000017-000106
4	Wells Fargo Bank's Opposition to Plaintiff's Motion to Compel and Wells Fargo Bank's Countermotion for Protective Order, filed 09/26/12	I	AA000107-000203
5	Plaintiff's Reply in Support of Motion to Compel and Opposition to Wells Fargo Bank's Countermotion for Protective Order	I	AA000204-000220
6	Wells Fargo Bank's Reply in Support of Countermotion for Protective Order, filed 10/04/12	II	AA000221-000248
7	Recorder's Transcript Re: Plaintiff's Motion to Compel and For an Award of Fees and Costs; Defendant's Opposition to Motion to Compel and Countermotion for Protective Order, hearing held on October 5, 2012, filed 10/23/12	II	AA000249-000267
8	Discovery Commissioner's Report and Recommendations, filed 11/13/12	II	AA000268-000273
9	Objection to Discovery Commissioner's October 19, 2012 Report and Recommendations, filed 11/05/12	II	AA000274-000343
10	Wells Fargo Bank N.A.'s Opposition to Plaintiff's Objection to Discovery Commissioner's October 19, 2012 Report and Recommendations, filed 11/08/12	II	AA000344-000346
11	Plaintiff's Motion for Reconsideration, filed 11/09/12	II	AA000347-000422
12	Wells Fargo Bank N.A.'s Opposition to Plaintiff's Motion for Reconsideration, filed 12/04/12	II	AA000423-000425
13	Plaintiff's Reply in Support of Her: (1) Motion for Reconsideration; and (2) Objection to the Discovery Commissioner's Report and Recommendations, filed 12/12/12	II	AA000426-000429
14	Transcript of Proceedings re: Plaintiff's Motion For Reconsider held on January 11, 2013, filed 03/27/13	II	AA000430-000453

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15	Wells Fargo Bank's Opposition to Plaintiff's Objection to Discovery Commissioner's October 19, 2012 Report and Recommendation, filed 01/28/13	II-III	AA000454-000602
16	Plaintiff's Reply in Support of Her Objection to Discovery Commissioner's October 19, 2012 Report and Recommendations, filed 01/31/13	III	AA000603-000613
17	Order Granting Plaintiff's Motion for Reconsideration, filed 02/07/13	III	AA000614-000615
18	Transcript of Proceedings re: Evidentiary Hearing held on February 8, 2013, filed 03/27/13	III	AA000616-000710
19	Order Affirming Discovery Commissioner's October 19, 2012 Report and Recommendations and Remand to Determine Privilege Log Requirement, filed 03/07/13	IV	AA000711-000712
20	Transcript of Proceedings re: Discovery Conference held on March 12, 2013, filed 09/19/14	IV	AA000713-000731
21	Letter dated March 26, 2013 from Stewart C. Fitts to Discovery Commissioner Bonnie Bulla, with attachment referenced therein.	IV	AA000732-000738
22	Letter dated April 9, 2013 from Stewart C. Fitts to Discovery Commissioner Bonnie Bulla with attachment referenced therein.	IV	AA000739-000747
23	Transcript of Proceedings re: Discovery Conference held on April 16, 2013, filed 09/19/14	IV	AA000748-000755
24	Transcript of Proceedings re: Discovery Conference held on April 19, 2013, filed 09/19/14	IV	AA000756-000763
25	Discovery Commissioner's Report and Recommendations, filed 05/21/13	IV	AA000764-000770
26	Defendant's Motion for Summary Judgment, filed 11/26/13	IV	AA000771-000874
27	Plaintiff's Opposition to Defendant's Motion for Summary Judgment, filed 12/16/13	IV-V	AA000875-001017
28	Reply to Opposition to Defendant's Motion for Summary Judgment, filed 01/07/14	V	AA001018-001030
29	Plaintiff's Pre-Trial Memorandum, filed 12/13/13	V	AA001031-001040
30	Recorder's Transcript re: Motions Hearing held on January 10, 2014	V	AA001041-001070
31	Plaintiff Lisa Johnson's Trial Brief, filed 02/03/14	V	AA001071-001081

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32	Wells Fargo Bank, N.A.'s EDCR 7.27 Civil Trial Memorandum, filed 02/04/14	V	AA001082-001095
33	Joint Pre-Trial Memorandum, filed 02/04/14	V	AA001096-001105
34	Transcript of Proceedings, Bench Trial, Day 1, held on February 5, 2014, filed 10/28/14	V-VI	AA001106-001252
35	Transcript of Proceedings, Bench Trial Day 2, held on February 6, 2014, filed 10/28/14	VI	AA001253-001458
36	Partial Transcript of Proceedings, Bench Trial Day 3, Closing Arguments held on February 7, 2014, filed 02/18/15	VII	AA001459-001518
37	Recorder's Transcript of Proceedings, Bench Trial Day 3, Judge's Verdict held on February 7, 2014, filed 02/13/14	VII	AA001519-001530
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38	Joint Trial Exhibits	VII	AA001533-001666
39	Notice of Entry of Order on The Order of Findings of Fact and Conclusions of Law, filed 06/13/14	VII	AA001667-001677
40	Notice of Appeal	VII	AA001678-001679
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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPELLANT'S APPENDIX** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Kent F. Larsen (3463)
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Attorneys for Defendants

DATED this 26th day May, 2014.


An employee of Hutchison & Steffen, LLC



CLERK OF THE COURT

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12 *Attorneys for Lisa Johnson*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 LISA JOHNSON, a Nevada resident,

16 Plaintiff,

17 vs.

18 WELLS FARGO BANK, NATIONAL
19 ASSOCIATION; DOES I through X,
20 inclusive; and ROE CORPORATIONS, I
21 through X, inclusive,

22 Defendants.

Case No. A - 1 2 - 6 5 5 3 9 3 - C
Dept. X X V I

23 **COMPLAINT**

24 Arbitration Exemption:
25 Action in Equity

26 Plaintiff Lisa Johnson ("Johnson" or "Plaintiff") complains against defendant Wells
27 Fargo Bank, National Association ("Wells Fargo" or "Defendant") as follows:

28 **1. Jurisdiction.**

- 29 1. Lisa Johnson is a resident of Clark County, Nevada.
- 30 2. Upon information and belief, Wells Fargo engages in business transactions and
31 activities in the State of Nevada and with Nevada-based companies.
- 32 3. Johnson does not know the true names and characters of Does I through X or
33 Roe Corporations I through X, whether individual, corporate, associate or otherwise, and
34 Johnson therefore sues these defendants by fictitious names. Johnson is informed and believes
35 and therefore alleges that each of the defendants designated as Does I through X and Roe
36 Corporations I through X is responsible in some manner for the events and happenings this
37 complaint describes, and Johnson will ask leave of this court to amend this complaint to insert

the true names and characters of Does I through X and Roe Corporations I through X when she learns of them and to join these defendants in this action.

2. Factual Background.

4. Prior to August 2011, Johnson and Michael Kaplan ("Kaplan"), who is Johnson's boyfriend, maintained a joint bank account with Wells Fargo.

5. At that time, Johnson also maintained a credit card account and an operating account with Wells Fargo for a limited-liability company named Guitarfile, LLC, of which Johnson is the managing member.

6. Neither Kaplan nor Johnson had any issues or problems with their accounts at Wells Fargo leading up to this time.

7. In or about August 2011, Wells Fargo made the unilateral decisions to close the accounts of Johnson and Kaplan without disclosing the reasons for the account closures.

8. Instead, Wells Fargo merely stated that, "[t]he Bank's risk assessment process and the results of this process are confidential, and the Bank's decision to close your account(s) is final."

9. Johnson and Kaplan thereafter requested an explanation from Wells Fargo as to why the bank took such drastic and perplexing actions against their financial interests.

10. Indeed, on October 6, 2011, Kaplan approached Arash Duonel ("Duonel"), who is a brokerage associate at Wells Fargo, and asked him why the accounts were closed.

11. Duonel at first stated that he could not see any reason why Wells Fargo closed the accounts.

12. However, as the conversation progressed, Duonel asserted that Johnson must have some type of criminal background, thereby suggesting that the accounts were closed due to alleged criminal activity by Johnson.

13. Duonel further asserted to Kaplan that Johnson "must have arrest warrants outstanding."

14. Duonel also advised Kaplan that he "should hire a private investigator to check up on [Johnson]."

1 15. Contrary to Duonel's assertions, Johnson has no criminal record.

2 16. Duonel made these statements to Kaplan willfully and/or without regard to the
3 impact that they would have on the relationship between Kaplan and Johnson and her status as
4 a beneficiary to Kaplan's estate.

5 17. Notwithstanding Wells Fargo's bold pronouncements against Johnson's status as
6 a law-abiding citizen, Wells Fargo refused to issue a letter of apology or to disclose any
7 information to Johnson or Kaplan regarding the basis for Duonel's defamatory statements and
8 the recent account closures.

9 18. Indeed, on October 26, 2011, Kaplan received a letter from Wells Fargo, which
10 merely stated, "Wells Fargo performs ongoing reviews of its account relationships in
11 connection with the Bank's responsibilities to oversee and manage risks in its banking
12 operations. Our risk based assessment is confidential and as a result, we are unable to disclose
13 the specific information and/or details leading to this decision. . . . We're confident that we
14 have handled this situation appropriately and consider this matter closed."

15 19. In spite of Wells Fargo's conduct, Johnson and Kaplan continued to
16 communicate with Wells Fargo in an attempt to understand the rationale behind Wells Fargo's
17 baseless actions.

18 20. During these communications, Duonel represented to Kaplan that he and
19 Johnson would be able to reopen their accounts with Wells Fargo, thereby providing hope that
20 the parties would be able to resolve their dispute amicably without judicial intervention.

21 21. However, when Kaplan went to a Wells Fargo branch to reopen his joint account
22 with Johnson, a Wells Fargo representative instructed Kaplan that neither he nor Johnson were
23 eligible to open any accounts at Wells Fargo.

24 22. Kaplan subsequently communicated with Chad Maze of the private wealth
25 department at Wells Fargo, who instructed Kaplan that he could not open an account with
26 Wells Fargo "if Lisa was associated with it. Of course you could open an account in your
27 name, or the name of your trust, but including Lisa could not be one of the options."

28 ///

1 23. Wells Fargo's actions have damaged, and will continue to damage, Johnson in
2 various ways.

3 24. For example, Wells Fargo's disclosure of false information to one or more third
4 parties regarding Johnson's alleged criminal activities has damaged Johnson.

5 25. Further, Johnson has been required to disclose her involuntary account closures
6 to her publicist, who possessed an outstanding check from Johnson at the time of the closures.
7 This embarrassing disclosure has harmed Johnson's status and reputation in the business
8 community.

9 26. Further, Wells Fargo's actions have affected Johnson's ability to obtain bank
10 accounts, lines of credit, and loans from other financial institution, as she will be required to
11 disclose her former relationship with Wells Fargo to such entities and the fact that Wells Fargo
12 closed her account.

13 27. This disclosure subjects Johnson to harmful financial scrutiny, which damages
14 her business prospects and creates financial uncertainty. This is especially true, as Johnson
15 plans to publish a book in the near future and to release a line of products in association with
16 this book.

17 **3. Legal Claims.**

18 **FIRST CLAIM**
19 **(Defamation)**

20 28. Johnson repeats and realleges all preceding paragraphs as though they were fully
21 set forth at length herein.

22 29. Wells Fargo, through its representatives, employees, and/or agents has made
23 false and defamatory statements concerning Johnson to Kaplan and/or other third parties.

24 30. Wells Fargo's publication of these statements to such individuals was
25 unprivileged and constituted defamation per se.

26 31. Wells Fargo made these statements in a negligent manner and/or with malice.

27 32. Wells Fargo's actions directly and proximately have caused and will continue to
28 cause Johnson to suffer damages in excess of \$10,000.

33. Wells Fargo's defamation was fraudulent, oppressive, and malicious and warrants the imposition of punitive damages against Wells Fargo in excess of \$10,000.

34. Wells Fargo's actions compels Johnson to employ an attorney for redress, entitling Johnson to obtain attorneys' fees and costs for pursuing this action.

SECOND CLAIM (False Light)

35. Johnson repeats and realleges all preceding paragraphs as though they were fully set forth at length herein.

36. Wells Fargo, through its representatives, employees, and/or agents, gave publicity to matters regarding Johnson that placed Johnson before the public in a false light, including blatantly false allegations that: (1) Johnson has a criminal background; (2) Johnson has arrest warrants outstanding; and (3) Kaplan should hire a private investigator to reveal Johnson's alleged criminal activity.

37. The false light under which Johnson has been placed would be highly offensive to a reasonable person.

38. Wells Fargo had knowledge of or acted in reckless disregard as to the falsity of the publicized matters and the false light in which Johnson was placed.

39. Wells Fargo's actions directly and proximately have caused and will continue to cause Johnson to suffer damages in excess of \$10,000.

40. Wells Fargo's actions of placing Johnson in a false light was fraudulent, oppressive, and malicious and warrants the imposition of punitive damages against Wells Fargo in excess of \$10,000.

41. Wells Fargo's actions compel Johnson to employ an attorney for redress, entitling Johnson to obtain attorneys' fees and costs for pursuing this action.

THIRD CLAIM (Declaratory Relief)

42. Johnson repeats and realleges all preceding paragraphs as though they were fully set forth at length herein.

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43. NRS 30.030 provides:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

44. An actual controversy exists between Johnson and Wells Fargo as to its obligation to Johnson to disclose the reasons for closing her account and the accompanying statements and/or innuendos that she is or was involved in criminal activity.

45. Johnson is entitled to know why her accounts with Wells Fargo were closed as well as the basis for its defamatory statements against her.

46. Johnson is entitled to a declaration by this Court that Wells Fargo must provide Johnson a detailed explanation as to why the bank decided to close her accounts and why it alleged that she was/is involved in criminal activities.

WHEREFORE, Johnson respectfully requests that judgment be entered against Wells Fargo as follows:

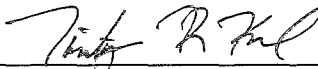
1. For an award of damages in excess of \$10,000, plus interest at the legal rate for each applicable claim;
2. For an award of punitive damages in excess of \$10,000, plus interest at the legal rate for each applicable claim; and
3. For declaratory relief pursuant to the third claim.
4. For attorney's fees, costs, and interest.

///

1 5. For such further relief as the Court deems appropriate.

2 DATED this 26 day of January, 2012.

3 HUTCHISON & STEFFEN, LLC

4
5
6 

7 Mark A. Hutchison (4639)
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CLERK OF THE COURT

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13 scf@slwlaw.com
14 Attorneys for Defendant
15 Wells Fargo Bank, N.A.

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13
14 LISA JOHNSON, a Nevada resident,) CASE NO: A-12-655393-C
15)
16 Plaintiff,) DEPT: XXVI
17)
18 v.) ANSWER OF WELLS FARGO BANK
19) TO COMPLAINT
20 WELLS FARGO BANK, NATIONAL)
21 ASSOCIATION; DOES 1 through X,)
22 inclusive; and ROE CORPORATIONS,)
23 1 through X, inclusive)
24)
25 Defendants.)
26)
27)
28)

24 Defendant Wells Fargo Bank, N.A., (herein, "Wells Fargo"), by and through its
25 counsel, Smith Larsen & Wixom, as and for its answer to Plaintiff's Complaint (the
26 "Complaint"), admits, denies, and alleges as follows:
27
28

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

TEL (702) 252-5002 • FAX (702) 252-5006

JURISDICTION

1. Answering paragraph 1, Wells Fargo is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

2. Answering paragraph 2, Wells Fargo avers that it is a national banking association which is authorized to conduct, and which does conduct, business in Clark County, Nevada.

3. Answering paragraph 3, Wells Fargo is without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

FACTUAL BACKGROUND

4. Answering paragraph 4, Wells Fargo admits that Plaintiff and Michael Kaplan were joint holders on an account at Wells Fargo prior to August of 2011, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

5. Answering paragraph 5, Wells Fargo admits that Plaintiff was a signor on an account which Guitarfile, LLC maintained at Wells Fargo, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

6. Answering paragraph 6, the allegations therein are ambiguous and, therefore, Wells Fargo is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations therein.

7. Answering paragraphs 7 and 8, Wells Fargo avers that it closed the accounts referenced in paragraphs 4 and 5 above pursuant to written correspondence that was provided to Plaintiff, Kaplan, and Guitarfile, LLC., the terms of which speak for themselves, and Wells Fargo denies each and every allegation which is contrary to the terms

1 of said correspondence.

2
3 8. Answering paragraphs 9 through 21, Wells Fargo avers that
4 representatives and/or employees of Wells Fargo have had communications with Plaintiff,
5 Kaplan and/or their legal representatives, regarding the closure of the aforementioned
6 accounts including, without limitation, written correspondence dated on or about October 26,
7 2011, the substance of which speaks for itself, denies making any defamatory or false
8 statements, denies any wrongdoing or culpable conduct on its part, and is without knowledge
9 or information sufficient to form a belief as to the truth of the remaining allegations therein.
10

11 9. Answering paragraph 22, Wells Fargo avers that Kaplan has
12 communicated to Chad Maze, including email correspondence, that Mr. Maze provided
13 email correspondence to Kaplan, the substance of which speaks for itself, and denies each
14 and every allegation which characterizes the email correspondence of Mr. Maze in a manner
15 that is contrary to its substance.
16

17 10. Answering paragraphs 23 through 27, Wells Fargo denies making any
18 defamatory or false statements, denies any wrongdoing or culpable conduct on its part, and
19 is without knowledge or information sufficient to form a belief as to the truth of the
20 remaining allegations therein. the allegations therein.
21

22 **FIRST CLAIM**
23 **(Defamation)**

24 11. Answering paragraph 28, Wells Fargo repeats and realleges its
25 answers to the foregoing paragraphs as though fully set forth herein.

26 12. Answering paragraphs 29 through 34, Wells Fargo denies making
27 any defamatory or false statements, denies any wrongdoing or culpable conduct on its part,
28

1 denies causing any damages to Plaintiff, and is without knowledge or information sufficient
2 to form a belief as to the truth of the remaining allegations therein. the allegations therein.
3

4 **SECOND CLAIM**
5 **(False Light)**

6 13. Answering paragraph 35, Wells Fargo repeats and realleges its
7 answers to the foregoing paragraphs as though fully set forth herein.

8 14. Answering paragraphs 36 through 41, Wells Fargo denies making any
9 defamatory or false statements, denies giving publicity to a matter concerning Plaintiff that
10 placed Plaintiff before the public in a false light, denies any wrongdoing or culpable conduct
11 on its part, denies causing any damages to Plaintiff, and is without knowledge or information
12 sufficient to form a belief as to the truth of the remaining allegations therein. the allegations
13 therein.
14

15 **THIRD CLAIM**
16 **(Declaratory Relief)**

17 15. Answering paragraph 42, Wells Fargo repeats and realleges its
18 answers to the foregoing paragraphs as though fully set forth herein.

19 16. Answering paragraph 43, Wells Fargo states that the substance of
20 NRS 30.030 speaks for itself and denies each and every allegation that contravenes the
21 provisions thereof.
22

23 17. Answering paragraph 44, Wells Fargo denies making any defamatory
24 or false statements, denies any wrongdoing or culpable conduct on its part, and denies that
25 Plaintiff is entitled to the declaration and/or relief alleged therein.

26 18. Wells Fargo denies all allegations of the complaint that are not
27 specifically admitted herein.
28

19. Wells Fargo has been required to retain the services of an attorney to defend against this action, and has been damaged thereby, and is entitled to recover reasonable attorney's fees and costs of suit from Plaintiff.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The Complaint is barred, in whole or in part, by the doctrines of estoppel and/or waiver.

3. The Complaint is barred, in whole or in part, by the doctrine of release.

4. The Complaint is barred, in whole or in part, by the doctrine of justification.

5. The Complaint is barred by agreement and satisfaction of its terms.

6. The Complaint is barred by the doctrines of unclean hands, *in pari delicto*, and/or laches.

7. The Complaint is barred or limited by Plaintiff's own conduct and/or negligence. The damages, if any, sustained by Plaintiff were the result of or caused by the fault, carelessness, contributory negligence, and/or comparative negligence of Plaintiff, which operates to eliminate or reduce any award herein.

8. The Complaint is barred, by the applicable statutory periods of limitation, preclusion, or otherwise by the passage of time.

9. Plaintiff has not sustained any damages including, without limitation, special or compensatory damages, and/or has failed to mitigate her alleged damages.

...

10. The damages Plaintiff is alleged to have suffered, if any, are the result of actions of third parties over whom Wells Fargo has no influence or control, which further entitles Wells Fargo to contribution and/or indemnification.

11. Wells Fargo complied with applicable state and federal statutes, constitutional rights, rules, and regulations, and the claims of Plaintiff are barred or limited, in whole or in part, by such provisions, statutes, rights, rules, and regulations.

12. Wells Fargo acted in accordance with reasonable and customary commercial and lending practices, in good faith, and with ordinary care; and its actions did not substantially contribute to the damages, if any, allegedly sustained by Plaintiff.

13. This matter may be subject to federal diversity jurisdiction. Further, this action and/or a portion of these proceedings may be subject federal subject matter jurisdiction.

14. The Complaint is barred or limited by the doctrines of ratification, confirmation, and acquiescence.

15. The Complaint is barred or limited by the doctrines of actual, apparent, and/or ostensible authority, including the authority and representations of Plaintiff which Wells Fargo reasonably and justifiably relied.

16. The Complaint is barred by novation and/or accord and satisfaction.

17. The Complaint is barred by the contract doctrines of integration and merger.

18. The Complaint fails to set forth certain allegations and/or claims with particularity as required by NRCP 9(b).

...

1 19. Plaintiff is a public figure and/or a limited-purpose public figure, and
2 the alleged statements, if any, were not made with malice. Further, the alleged statements,
3 if any, were not publicly disclosed and did not pertain to private life activities.
4

5 20. There has been no fraud, malice, or oppression, and the claims for
6 punitive damages, if any, are barred or limited by the provisions of NRS 42.005 and
7 applicable case law. There has been no conscious or wilful disregard of the rights of
8 Plaintiff. Further, such damages are subject to constitutional restrictions and limitations.
9

10 21. The claims are subject to the applicable provisions of any agreement
11 between Wells Fargo and Plaintiff.

12 22. There is no special or fiducial relationship between Plaintiff and Wells
13 Fargo.
14

15 23. Plaintiff has failed to exhaust all alternate remedies, including
16 arbitration.
17

18 24. Plaintiff is not entitled to declaratory relief under NRS 30.010 *et seq.*
19 and applicable case law.
20

21 25. Plaintiff's complaint and the claims alleged therein, are barred and/or
22 preempted, in whole or in part, by the principles of confidentiality, privilege, and federal law
23 including, without limitation, the Bank Secrecy Act (31 USC § 5311 *et seq.* and 31 CFR
24 Chapter X, formerly 31 CFR Part 103).

25 26. Plaintiff's claims are barred, in whole or in part, by principles of truth,
26 duty or interest, consent, immunity, fair comment, opinion, lack of negligence, lack of
27 malice, and privilege, whether absolute, qualified, or conditional.
28

...

1 27. The Complaint does not state a sufficient claim for relief in that the
2
3 alleged statements, if any, were expressions of opinion, and were not made with knowledge
4 of their falsity, false light, or with reckless disregard for their truth. Further, the alleged
5 statements, if any, were not publicly made and Wells Fargo did not place Plaintiff in the
6 public light.

7 28. There is no justiciable controversy, no ripe controversy and/or issue,
8
9 no legally protected interest, nor any other sufficient ground for declaratory relief.

10 29. Wells Fargo incorporates all other defenses enumerated in NRCP 8,
11 which defenses are incorporated for the purpose of not waiving any such defense.

12 WHEREFORE, Wells Fargo prays for judgment as follows:

13 1. That Plaintiff take nothing by way of her Complaint, and that the
14 Complaint be dismissed with prejudice;

15 2. That Wells Fargo be awarded reasonable attorney's fees and costs of
16 suit incurred herein; and

17 3. For such other relief as this Court deems proper in the circumstances.
18

19 DATED this 6th day of April, 2012.

20 SMITH LARSEN & WIXOM

21 

22 Kent F. Larsen, Esq.

23 Nevada Bar No. 3463

24 Stewart C. Fitts, Esq.

25 Nevada Bar No. 5635

26 SMITH LARSEN & WIXOM

27 Hills Center Business Park

28 1935 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

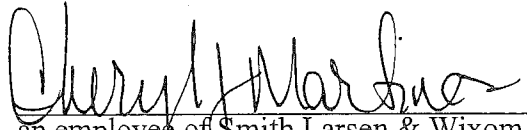
Attorneys for Defendant

Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on the 6th day of April, 2012, a true copy of the foregoing ANSWER OF WELLS FARGO BANK TO COMPLAINT was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff


an employee of Smith Larsen & Wixom



CLERK OF THE COURT

1 **MCOM**
Mark A. Hutchison (4639)
2 Timothy R. Koval (12014)
HUTCHISON & STEFFEN, LLC
3 Peccole Professional Park
10080 West Alta Drive, Suite 200
4 Las Vegas, NV 89145
Tel: (702) 385-2500
5 Fax: (702) 385-2086
Email: mhutchison@hutchlegal.com
6 Email: tkoval@hutchlegal.com

7 *Attorneys for Lisa Johnson*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 LISA JOHNSON, a Nevada resident,
12 Plaintiff,

13 vs.

14 WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES I through X,
15 inclusive; and ROE CORPORATIONS, I
through X, inclusive,

16 Defendants.

) Case No.: A-12-655393-C
) Dept.: XXVI

) **PLAINTIFF'S MOTION TO**
) **COMPEL AND FOR AN AWARD OF**
) **THE FEES AND COSTS INCURRED**
) **IN BRINGING THIS MOTION**

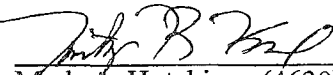
17 Plaintiff Lisa Johnson ("Johnson" or "Plaintiff") files this motion to compel defendant
18 Wells Fargo Bank, National Association ("Wells Fargo" or "Defendant") to supplement its
19 responses to Johnson's first sets of interrogatories, requests for production of documents, and
20 requests for admission. Further, Johnson requests that the Court award her the costs and fees
21 incurred in bringing this motion.

22 ///

1 This motion is made and based upon NRCP 26, 33, 34, 36, 37, EDCR 2.34, the
2 following memorandum of points and authorities, the declaration of Timothy R. Koval, the
3 pleadings and papers on file herein, and any oral argument to be heard by the Court.

4 DATED this 31st day of August, 2012.

6 HUTCHISON & STEFFEN, LLC

7 
8 Mark A. Hutchison (4639)
9 Timothy R. Koval (12014)
10 Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

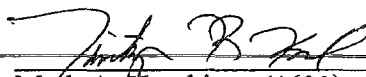
11 *Attorneys for Lisa Johnson*

12 **NOTICE OF MOTION**

13 PLEASE TAKE NOTICE that the undersigned will bring **PLAINTIFF'S MOTION**
14 **TO COMPEL AND FOR AN AWARD OF THE FEES AND COSTS INCURRED IN**
15 **BRINGING THIS MOTION**, before the Discovery Commissioner of the above-entitled Court
16 on the 5th day of October, 2012, at the hour of 9:00 o'clock a.m., or as soon
17 thereafter as counsel may be heard.

18 DATED this 31st day of August, 2012.

19 HUTCHISON & STEFFEN, LLC

20 
21 Mark A. Hutchison (4639)
22 Timothy R. Koval (12014)
23 Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

24 *Attorneys for Lisa Johnson*

1
2 **Declaration of Timothy R. Koval In Support of the Motion to Compel**

3 I, Timothy R. Koval, declare as follows:

4 1. I am an associate at the law firm of Hutchison & Steffen, and am an attorney of
5 record for Lisa Johnson in the matter titled, *Lisa Johnson v. Wells Fargo Bank, National*
6 *Association*, Case No. A-12-655393-C, in the Eighth Judicial District Court of Clark County,
7 Nevada.

8 2. I have personal knowledge of the statements made in this declaration. I am
9 competent to testify to the matters expressed herein if called to do so.

10 3. In compliance with EDCR 2.34, on August 8, 2012, I sent a letter to Stewart
11 Fitts, Esq., who is legal counsel to Wells Fargo, requesting that Wells Fargo supplement
12 various answers to Johnson's first set of interrogatories and various responses to Johnson's first
13 sets of request for production of documents and requests for admission.¹

14 4. On August 17, 2012, I personally spoke with Mr. Fitts concerning Johnson's
15 discovery concerns.

16 5. Mr. Fitts agreed that his client would supplement some of its responses to
17 Johnson's requests for admission and one of its answers to Johnson's interrogatories. Further,
18 Mr. Fitts agreed to communicate with his client at Wells Fargo, who was then on vacation, by
19 August 29, 2012 to ascertain whether, in light of the outstanding items from my meet-and-
20 confer letter, Wells Fargo would further supplement its discovery responses.²

21 6. However, the parties were unable to agree on various items during this discovery
22 conference, including without limitation Wells Fargo's obligations to admit or deny various
23 statements contained in the requests for admissions and Wells Fargo's obligation to provide
24 explanations regarding these statements.

25
26 ¹ See the meet-and-confer letter from Timothy R. Koval, Esq. to Stewart C. Fitts, Esq.
dated August 8, 2012, attached as Exhibit 1.

27
28 ² See the e-mail correspondence between Mr. Koval and Mr. Fitts dated August 17,
2012, attached as Exhibit 2.

1 7. For example, Mr. Fitts and I discussed Wells Fargo's obligation to obtain
2 discovery information from bank employee Arash Dounel ("Dounel"), whom Johnson alleges
3 made various defamatory statements against her.

4 8. Mr. Fitts stated to me that he has been unable to obtain information from
5 Dounel. Mr. Fitts stated that, although Dounel is a current employee of Wells Fargo, he is on a
6 leave of absence. I expressed to Mr. Fitts my belief that Wells Fargo has an obligation to locate
7 and communicate with its own employee for purposes of responding to Johnson's discovery
8 requests.

9 9. I stated to Mr. Fitts that Johnson would file a motion to compel discovery items
10 that the parties had been unable to resolve. However, for purposes of efficiency, I agreed not to
11 file the motion until Mr. Fitts had sufficient time to communicate with his client concerning the
12 outstanding discovery issues that Mr. Fitts requested to address with Wells Fargo.

13 10. However, I stated to Mr. Fitts that Johnson intended to file a motion to compel
14 by August 30, 2012 regardless of whether or not Mr. Fitts communicated with me regarding the
15 outstanding discovery items by that date.

16 11. On August 29, 2012, Mr. Fitts contacted me by e-mail stating that he would be
17 unable to communicate with his client until August 30, 2012, and that he would be unable to
18 provide me with any potential supplemental discovery until the first week of September 2012.³

19 12. However, I previously stated to Mr. Fitts that Johnson would not delay filing a
20 motion to compel until the first week of September 2012.

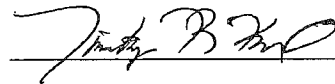
21 ///

22
23
24
25
26
27 ³ See the e-mail correspondence from Mr. Fitts and Mr. Koval dated August 29, 2012,
28 attached as Exhibit 3.

1 13. Plaintiff has attempted to resolve this matter in good faith and to provide a
2 reasonable amount of time for Mr. Fitts to communicate with Wells Fargo concerning her
3 discovery disputes, and now seeks the assistance of this Court.

4 14. I declare under the penalty of perjury for the state of Nevada that the foregoing is
5 true and correct.

6 DATE: 8/31/2012



7 Timothy R. Koval
8
9

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **1. Introduction.**

12 Johnson is filing this motion to compel Wells Fargo to provide adequate responses to
13 Johnson's first sets of discovery requests. Wells Fargo failed to respond adequately to Mr.
14 Koval's August 8, 2012 letter and this motion is the result. Wells Fargo's failure to respond to
15 Johnson's discovery in good faith requires the Court's intervention to compel. And, because
16 Wells Fargo's discovery failures are so egregious, it is also fair and just that the Court award
17 Johnson the costs and fees incurred in bringing this motion.

18 **2. Factual and procedural background.**

19 Johnson filed a lawsuit against Wells Fargo because Arash Dounel ("Dounel"), a Wells
20 Fargo representative, made defamatory statements against Johnson to Michael Kaplan
21 ("~~Kaplan~~"), ~~Johnson's boyfriend, concerning the closures of a Kaplan's and Johnson's joint~~
22 bank account at Wells Fargo as well as other bank accounts at Wells Fargo involving Johnson.⁴
23 Specifically, Dounel falsely stated to Kaplan that Johnson must have some type of criminal
24 background, thereby suggesting that her accounts were closed due to alleged criminal activity
25 by Johnson.⁵ Duonel further falsely asserted to Kaplan that Johnson "must have arrest warrants
26

27 ⁴ See the Complaint at ¶¶ 9-17, on file with this Court.

28 ⁵ See *id.* at ¶ 12.

1 outstanding.”⁶ Duonel also advised Kaplan that he “should hire a private investigator to check
2 up on [Johnson].”⁷ Johnson maintains that Dounel made these defamatory statements willfully
3 and/or without regard to the impact that they would have on the relationship between Johnson
4 and Kaplan and her status as a beneficiary to Kaplan’s estate.⁸

5 On January 26, 2012, Johnson filed a lawsuit against Wells Fargo for defamation, false
6 light, and declaratory relief.⁹ Wells Fargo answered Johnson’s complaint on April 6, 2012.¹⁰

7 Thereafter, Wells Fargo stonewalled Johnson’s efforts to obtain discoverable
8 information in the litigation. Indeed, on May 15, 2012, Wells Fargo delivered to Johnson its
9 early case conference disclosures in which it failed to produce a single document to Johnson.¹¹
10 Instead, Wells Fargo identified the same documents that Johnson provided in her initial
11 disclosures and stated for each item that, “Wells Fargo will disclose a copy of this
12 [agreement/document] upon entry of an appropriate stipulated confidentiality agreement and
13 protective order.”¹² Further, despite Johnson’s multiple efforts to follow up with Wells Fargo
14 regarding the bank’s request for a confidentiality agreement and protective order, and despite
15 Wells Fargo’s agreement to provide a draft of this document for Johnson’s review, Wells Fargo
16 has failed to provide any such document to Johnson.¹³

17
18 ⁶ See *id.* at ¶ 13.

19 ⁷ See *id.* at ¶ 14.

20 ⁸ See *id.* at ¶ 16.

21
22 ⁹ See *id.*, passim.

23 ¹⁰ See the Answer, on file with this Court.

24 ¹¹ See the Rule 16.1 Early Case Conference Disclosures of Defendant Wells Fargo Bank
25 N.A., attached as Exhibit 4.

26 ¹² See *id.* at § III.

27 ¹³ See, e.g., the e-mail correspondence from Mr. Koval to Mr. Fitts dated June 5, 2012,
28 attached as Exhibit 5; see also the e-mail correspondence from Mr. Fitts to Mr. Koval dated
June 11, 2012, attached as Exhibit 6; Exhibit 2.

1 Wells Fargo's conduct in response to Johnson's written discovery requests has fared no
2 better. On June 1, 2012, Johnson propounded first sets of interrogatories, requests for
3 production, and requests for admission on Wells Fargo. Later that month, Johnson propounded
4 amended first sets of interrogatories and requests for production of documents containing minor
5 adjustments. In response to Johnson's discovery requests, on or about June 11, 2012, Wells
6 Fargo's counsel asked Johnson's counsel to facilitate the production of a third-party
7 authorization from Kaplan "so that [he] can disclose account documents in this matter."¹⁴
8 Johnson's counsel did in fact facilitate the production of this authorization to Wells Fargo.¹⁵

9 Notwithstanding the provision of this authorization as well as multiple extensions that
10 Johnson provided to Wells Fargo to facilitate the bank's preparation of its discovery
11 responses,¹⁶ Wells Fargo's discovery responses dated August 2, 2012 were generally non-
12 responsive.¹⁷ Indeed, Wells Fargo provided no supplemental documents to Johnson and
13 claimed a litany of inapplicable objections to evade its obligation to provide substantive
14 responses to Johnson's discovery requests.

15 Consequently, on August 17, 2012, Johnson's counsel and Wells Fargo's counsel
16 conducted a discovery dispute conference, during which: (1) Wells Fargo's counsel agreed to
17 provide supplemental responses to various discovery requests from Johnson, (2) Wells Fargo's
18 counsel did not agree to supplement the bank's responses to other discovery requests, and (3)
19 Wells Fargo's counsel agreed to follow-up with his client by August 29, 2012 regarding a
20

21
22 ¹⁴ See Exhibit 4.

23 ¹⁵ See the third-party authorization form of Michael Kaplan, attached as Exhibit 7.

24 ¹⁶ See the e-mail correspondences between Mr. Fitts and Mr. Koval dated July 3, 2012 to
25 July 18, 2012, attached as Exhibit 8.

26 ¹⁷ See Defendant Wells Fargo Bank N.A.'s Answers to Plaintiff's Amended First Set of
27 Interrogatories, attached as Exhibit 9; Wells Fargo Bank, N.A.'s Responses to Plaintiff's First
28 Set of Request for Admissions, attached as Exhibit 10; Wells Fargo Bank, N.A.'s Responses to
Plaintiff's Amended First Set of Request for Production of Documents, attached as Exhibit 11.

1 portion of Johnson's discovery concerns.¹⁸

2 At that time, Johnson's counsel stated to Wells Fargo's counsel that Johnson would file
3 a motion to compel discovery items that the parties had been unable to resolve.¹⁹ However, for
4 purposes of efficiency, Johnson agreed not to file the motion until Wells Fargo's counsel had
5 more than adequate time to communicate with Wells Fargo concerning the outstanding
6 discovery issues that he requested to address with Wells Fargo.²⁰ However, Johnson's counsel
7 stated to Wells Fargo's counsel that Johnson intended to file a motion to compel by August 30,
8 2012 regardless of whether or not Wells Fargo communicated with Johnson regarding the
9 outstanding discovery items by that date.²¹

10 However, on August 29, 2012, Wells Fargo's counsel contacted Johnson's counsel by e-
11 mail stating that he would be unable to communicate with Wells Fargo until August 30, 2012,
12 and that he would be unable to provide Johnson with any potential supplemental discovery until
13 the following week.²² As Johnson's counsel previously stated to Wells Fargo's counsel that
14 Johnson would not delay filing a motion to compel, Johnson submits the present motion to
15 compel adequate discovery responses from Wells Fargo.

16 **3. Argument.**

17 **A. Wells Fargo should be compelled to supplement its responses to Johnson's requests**
18 **for admission.**

19 NRCP 36 allows a party to serve on another party written requests for admission
20 relating to any matter that is within the scope of NRCP 26(b)(1). NRCP 26(b)(1) sets forth the
21 broad scope of discovery:

22
23 ¹⁸ See Exhibit 2.

24 ¹⁹ See *id.*

25 ²⁰ See *id.*

26 ²¹ See *id.*

27 ²² See Exhibit 3.

1 Parties may obtain discovery regarding any matter, not privileged, which is
2 relevant to the subject matter involved in the pending action, whether it
3 relates to the claim or defense of the party seeking discovery or to the claim
4 or defense of any other party, including the existence, description, nature,
5 custody, condition and location of any books, documents, or other tangible
things and the identity and location of persons having knowledge of any
discoverable matter. It is not ground for objection that the information sought
will be inadmissible at the trial if the information sought appears reasonably
to lead to the discovery of admissible evidence. . . .

6 Further, NRCP 36(a) requires the following:

7 If objection is made, the reasons therefor shall be stated. The answer shall
8 specifically deny the matter or set forth in detail the reasons why the answering
9 party cannot truthfully admit or deny the matter. . . . An answering party may not
10 give lack of information or knowledge as a reason for failure to admit or deny
11 unless the party states that the party has made reasonable inquiry and that the
12 information known or readily obtainable by the party is insufficient to enable the
party to admit or deny. A party who considers that a matter of which an
admission has been requested presents a genuine issue for trial may not, on that
ground alone, object to the request; the party may, subject to the provisions of
Rule 37(c), deny the matter or set forth reasons why the party cannot admit or
deny it. . . .

13 Here, Wells Fargo's responses to Johnson's requests for admission are deficient and
14 require supplementation, especially as Wells Fargo provided only one substantive response to
15 Johnson's nine requests for admission. The remaining eight responses to requests for
16 admissions are evasive. For example, request for admission no. 2 asks:

17 **REQUEST NO. 2:** Please admit that, on October 6, 2011, Arash Duonel had
18 a conversation with Michael Kaplan while he was working at a Wells Fargo
bank in California.

19 Wells Fargo responded as follows:

20 **RESPONSE:** Subject to and without waiving the general objections, Wells Fargo
21 is without sufficient information to admit or deny this request.²³

22 The Court should compel Wells Fargo to supplement this response. Although Wells Fargo
23 claims that this response as well as other responses are subject to its general objections, it fails
24 to state how the objections are applicable. Further, although Wells Fargo stated that it will
25 supplement its response to this request (as well as others) to specify why it cannot truthfully
26 admit or deny the request, this potential supplementation would still be deficient. Indeed, Wells
27 Fargo admits that Dounel was its employee at the time of the incident that forms the subject of

28 ²³ See Exhibit 10 at Response No. 2.

1 this litigation and that he continues to be employed by Wells Fargo.²⁴ However, Wells Fargo
2 claims that it has been unable to communicate with *its own employee* regarding this and other
3 discovery requests.²⁵ Accordingly, Wells Fargo should be compelled to communicate with
4 Dounel concerning this request for admission and other discovery requests, as explained below.

5 The Court should also compel Wells Fargo to supplement its responses to requests for
6 admission nos. 3-9 as well. These requests state as follows:

7 **REQUEST NO. 3:** Please admit that, on October 6, 2011, Arash Dounel stated to
8 Michael Kaplan that Lisa Johnson “must have some type of criminal background.”

9 **REQUEST NO. 4:** Please admit that, on October 6, 2011, Arash Dounel stated to
10 Michael Kaplan that Mr. Kaplan “should hire a private investigator to check up on”
11 Lisa Johnson.

12 **REQUEST NO. 5:** Please admit that, on October 6, 2011, Arash Dounel stated to
13 Michael Kaplan that Lisa Johnson “must have arrest warrants outstanding.”

14 **REQUEST NO. 6:** Please admit that, on November 8, 2011, a Wells Fargo
15 representative named Joceda Freeman stated to Michael Kaplan that Mr. Kaplan was
16 not eligible to open an account with Wells Fargo.

17 **REQUEST NO. 7:** Please admit that, on November 8, 2011, a Wells Fargo
18 representative named Sheila stated to Joceda Freeman that Michael Kaplan was not
19 eligible to open an account with Wells Fargo.

20 **REQUEST NO. 8:** Please admit that, in October 2011, Arash Dounel apologized
21 to Michael Kaplan for comments that Mr. Dounel made to Mr. Kaplan on October
22 6, 2011.

23 **REQUEST NO. 9:** Please admit that Arash Dounel stated to Michael Kaplan that
24 Mr. Dounel would send a letter of apology to Mr. Kaplan for Mr. Dounel’s comments
25 to Mr. Kaplan regarding Lisa Johnson made on October 6, 2011.

26 Wells Fargo generally responded to each with the following language:

27 In addition to the general objections, Wells Fargo objects on grounds that this request
28 seeks information regarding the scope and content of confidential communications
with a non-party customer. Wells Fargo also objects on grounds that this request
seeks a legal conclusion, is vague and ambiguous, and “is too broad and involves
both factual issues as well as legal issues.” *See, Smith v. Emery*, 109 Nev. 737, 742,
856 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is “to obtain admission of
facts which are in no real dispute and which the adverse party can admit cleanly,
without qualifications.” *Id.* A request is improper where it seeks an admission

29 ²⁴ *See id.* at Response No. 1; Exhibit 9 at Answer No. 13.

30 ²⁵ *See* the Decl. of Timothy R. Koval at ¶ 8, *supra*.

1 regarding facts "central to the lawsuit" or "legal concessions." *Id.* The request
2 herein is improper because it pertains to factual allegations that are central to the
3 lawsuit and which are subject to qualifications, and the request also seeks legal
concessions. Subject to and without waiving these objections, Wells Fargo is
without sufficient information to admit or deny this request.²⁶

4 In addition to this language, Wells Fargo's responses to requests nos. 6-9 also state,
5 "Wells Fargo objects on grounds that this request seeks information that is irrelevant, not
6 reasonably calculated to lead to the discovery fo admissible evidence" ²⁷

7 As stated above, Wells Fargo should not be allowed to hide behind its claim that it lacks
8 sufficient information and belief to admit or deny these requests when it may obtain sufficient
9 information to respond by communicating with its own employee. Regarding Wells Fargo's
10 objections to requests no. 6-9 on the basis of relevance, NRCP 26 only requires information to
11 be reasonably calculated to lead to the discovery of admissible evidence.

12 Even then, Johnson's requests are reasonably calculated to lead to the discovery of
13 admissible evidence. This case involves defamatory and otherwise wrongful statements that
14 Wells Fargo made to a third-party concerning Lisa Johnson, including statements that she
15 allegedly has a criminal history. Johnson is now pursuing claims against Wells Fargo for,
16 among other things, defamation and false light based on these statements. Requests nos. 6-7
17 ask Wells Fargo to admit that its representatives told Kaplan, who shared an account with
18 Johnson that was subject to closure, that he was not eligible to open an account with Wells
19 Fargo following the closure of this account.

20 This information will assist Johnson to confirm that the bank did in fact refuse to allow
21 ~~Mr. Kaplan to open an account. Johnson will then be able to follow up to ascertain the reasons~~
22 for this refusal and whether it is based on the same reasons and information that form the basis
23 of the bank's defamatory against Johnson. As Wells Fargo claims that, among other things, its
24 representatives did not make any statements against Johnson with knowledge of their falsity,
25 false light, or with reckless disregard for their truth, Johnson is entitled to all information

26 ²⁶ See Exhibit 10 at Responses Nos. 3-9.

27 ²⁷ See *id.* at Responses Nos. 6-9.

1 concerning the basis of the information underlying the defamatory statements.²⁸

2 Requests nos. 8-9 ask Wells Fargo to admit that Dounel, a representative of Wells
3 Fargo, apologized to Kaplan for his comments about Johnson and stated that he would send a
4 letter of apology. These requests are reasonably calculated to lead to the discovery of
5 admissible evidence concerning Wells Fargo's fault in making defamatory statements about
6 Johnson.

7 Further, Wells Fargo's refusal to provide "information regarding the scope and content
8 of confidential communications with a non-party customer [*i.e.*, *Kaplan*]" is unfounded, as
9 Wells Fargo has been provided with a third-party authorization from Kaplan specifically
10 permitting the bank to disclose such communications in this litigation.

11 Wells Fargo's objections that Johnson's requests are vague, ambiguous, and overly
12 broad are likewise without merit. Requests 3-9 each ask Wells Fargo to admit the specific
13 contents of conversations between the bank's representatives and Kaplan on specified dates or
14 date ranges, none of which are vague, ambiguous, or overly broad. In each instance, the request
15 provides the specific or general language of the conversation that is the subject of the
16 admission. Further, each request identifies the individuals who were involved in the
17 conversation, thereby eliminating any claim that the requests are vague, ambiguous, or overly
18 broad.

19 Wells Fargo's objections that the requests seek legal conclusions and seek admissions
20 regarding facts central to the lawsuit or legal concessions are also without merit. Although
21 ~~Wells Fargo cites to *Smith v. Emery*, 109 Nev. 737, 856 P.2d 1386 (1993), allegedly in support~~
22 of these objections, the bank's reliance on this case is misplaced. In *Smith*, the court analyzed
23 whether various requests for admission were objectionable under a separate case titled *Morgan*
24 *v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990).²⁹ In *Morgan*, the court held that the appellants'

26 ²⁸ See, e.g., the Answer of Wells Fargo Bank to Complaint at Affirmative Defense No.
27 27, on file with this Court.

28 ²⁹ See *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).

1 request for admission that the respondent's negligence was the sole cause of a collision and that
2 the respondent was liable for any damages proximately caused to appellants as a result of the
3 collision was improper.³⁰ The *Morgan* court reasoned that the request was too broad, involved
4 both factual issues as well as legal issues, and improperly requested either crucial facts central
5 to the lawsuit or legal concessions.³¹ The *Smith* court then held that various requests for
6 admission in that case were unobjectionable under the *Morgan* standard, including the
7 following requests:

8 Admit that parts were missing from the furnace that cause [sic] ventilation to be
9 defective.

10 Admit that no warning was provided with respect to the use of the furnace.³²

11 However, the court held that two requests for admission were objectionable under the *Morgan*
12 standard. These requests asked:

13 Admit that Defendant or his agents should have known that the furnace system was
14 unreasonably dangerous.

15 Admit that Defendant's failure to inform Plaintiffs of the dangerous condition of the
16 furnace caused Plaintiffs to suffer substantial bodily harm.³³

17 Here, Johnson's requests for admission are similar to the permissible requests in *Smith*
18 and dissimilar to the objectionable requests in *Smith* and *Morgan*. Indeed, similar to the
19 permissible requests in *Smith*, which sought factual information concerning the subject matter
20 of the litigation, Johnson's requests seek factual information concerning statements that form
21 the basis of her claims for defamation and false light. The fact that a response may support

22 Johnson's claims is not objectionable any more than the *Smith* plaintiff's permissible requests
23 for admission would be objectionable to the defendant in that case.

24
25 ³⁰ See *id.* at 742.

26 ³¹ See *id.*

27 ³² See *id.* at 738 & 742.

28 ³³ See *id.*

1 However, unlike the impermissible requests in *Smith* and *Morgan*, which asked for legal
2 admissions concerning liability and damages, Johnson's requests do not ask Wells Fargo to
3 make legal conclusions concerning any of these facts presented therein. Accordingly, the Court
4 should compel Wells Fargo to supplement its responses to Johnson's requests for admission
5 with responsive information.

6 **B. Wells Fargo should be compelled to supplement its responses to Johnson's requests
7 for production.**

8 NRCP 34 allows a party to serve on another party requests for production relating to
9 matters that are within the scope of NRCP 26(b). Here, Wells Fargo's responses to Johnson's
10 requests for production nos. 2-10 are deficient and should be supplemented. These requests
11 state as follows:

12 **REQUEST NO. 2:** Please provide all documents concerning your risk assessment
13 processes or analysis for closing accounts such as those of Lisa Johnson and
14 Michael Kaplan.

15 **REQUEST NO. 3:** Please provide all documents concerning your decision to close
16 the following Wells Fargo accounts associated with Lisa Johnson and/or Michael
17 Kaplan: (1) Guitarfile, LLC, account no. XXXXXX7051, (2) Guitarfile, LLC,
18 account no. XXXXXXXXXXXXX2957, and (3) account of Michael Kaplan and Lisa
19 Johnson, account no. XXXXXX4164.

20 **REQUEST NO. 4:** Please provide all documents concerning the basis or bases for
21 Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson
22 "must have some type of criminal background" or words to that effect.

23 **REQUEST NO. 5:** Please provide all documents concerning the basis or bases for
24 Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Mr. Kaplan
25 "should hire a private investigator to check to check up on" Lisa Johnson or words
26 to that effect.

27 **REQUEST NO. 6:** Please provide all documents concerning the basis or bases for
28 Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson
"must have arrest warrants outstanding" or words to that effect.

REQUEST NO. 7: Please provide all documents concerning the basis or bases for
the statements by a Wells Fargo representative named Joceda Freeman and/or a
Wells Fargo representative named Sheila that Michael Kaplan was not eligible to
open an account at Wells Fargo on November 8, 2011.

REQUEST NO. 8: Please provide all documents concerning the basis or bases for
Chad Maze's statement to Michael Kaplan that if Mr. Kaplan wanted to open an
account with Wells Fargo, "the account would not be accepted if Lisa [Johnson] was
associated with it. Of course you could open an account in your name, or the name
of your trust, but including Lisa could not be one of the options." For reference
purposes, please see Lisa J. 0048.

1 **REQUEST NO. 9:** Please provide all documents concerning the “red flags” that
2 were on the Wells Fargo accounts associated with Lisa Johnson and/or Michael
3 Kaplan. For reference purposes regarding the term “red flags,” please see Lisa J.
4 0014.

5 **REQUEST NO. 10:** Please provide all documents concerning the “ongoing
6 reviews of [your] account relationships in connection with the Bank’s
7 responsibilities to oversee and manage risks in its banking operations” as relating
8 to the accounts referenced in Request No. 3. For reference purposes, please see Lisa
9 J. 006 to Lisa J. 008.

10 In response, Wells Fargo generally stated,

11 In addition to the general objections, Wells Fargo objects on grounds that this request
12 improperly seeks privileged and confidential bank supervisory information and
13 confidential proprietary and business information. Wells Fargo also objects on
14 grounds that this request seeks information that is irrelevant and not reasonably
15 calculated to lead to the discovery of admissible evidence since each party had the
16 right to close the subject accounts at any time without any requirement that an
17 explanation be provided. Subject to and without waiving these objections, please
18 refer to notices that have previously been provided regarding closure of the subject
19 accounts.³⁴

20 Regarding requests nos. 4-6, Wells Fargo also objects that these requests assume facts not in
21 evidence.³⁵ In response to request no. 7, Wells Fargo objects that the request is vague and
22 ambiguous.³⁶

23 The Court should compel Wells Fargo to supplement these responses. Even if Wells
24 Fargo claims that requests nos. 4-6 assume facts not evidence, it is still under an obligation to
25 provide responsive information to these requests. Regarding request no. 7, the request is not
26 vague or ambiguous, as the request asks for documents showing why two specified Wells Fargo
27 representatives stated to Kaplan that he was not eligible to open an account on a specific date.
28 The highly specific nature of this inquiry facilitates and requires a good faith response from
29 Wells Fargo.

30 The remaining objections are without merit as well. Although Wells Fargo claims that
31 each of these responses is subject to its general objections, it fails to state how the general

32 ³⁴ See Exhibit 11 at Responses Nos. 2-10.

33 ³⁵ See *id.* at Responses Nos. 4-6.

34 ³⁶ See *id.* at Response No. 7.

1 objections are applicable to each request.

2 Further, Wells Fargo's claims that each request "improperly seeks privileged and
3 confidential bank supervisory information and confidential proprietary and business
4 information" are unfounded. Johnson has expressed a willingness to entertain a protective
5 order concerning any potentially sensitive materials from the bank. In fact, Wells Fargo stated
6 that it would prepare a stipulation and order in this regard prior to delivering its discovery
7 responses. However, Johnson has received no such document.

8 Regarding Wells Fargo's objections that the requests seek information that is not
9 reasonably calculated to lead to the discovery of admissible evidence, these requests asks for
10 information concerning: (1) the bases for the bank's defamatory and otherwise wrongful
11 statements against Johnson, (2) the bank's processes and rationales for closing the accounts in
12 question, and (3) the reasons why the bank would not open accounts for Johnson or Kaplan,
13 who had a joint-account with Johnson. Regarding the latter two topics, responsive information
14 will assist Johnson to ascertain the information that forms the basis of the bank's defamatory
15 statements against her. Accordingly, all of these requests seek information that is reasonably
16 calculated to lead to the discovery of admissible evidence.

17 Finally, Wells Fargo's near-universal reference to prior notices that it has provided to
18 Johnson as the sole responsive documents is insufficient to comply with its discovery
19 obligations. For example, Wells Fargo's notices that it would close Johnson's accounts do not
20 discuss the bases for Dounel's statement that Johnson "must have some type of criminal
21 background." Further, these notices fail to state the bases for Wells Fargo's refusal to open
22 accounts for Johnson or Kaplan. Wells Fargo's references to these notices in nearly all its
23 responses to requests for production is non-responsive. For the foregoing reasons, Johnson
24 requests that the Court compel Wells Fargo to supplement its responses to Johnson's requests
25 for production of documents.

26 ///

27

28

1 **C. Wells Fargo should be compelled to supplement its answers to Johnson's**
2 **interrogatories.**

3 NRCP 33 allows a party to serve on another party written interrogatories relating to any
4 matter that may be inquired into under NRCP 26(b). Further, NRCP 33(b)(1) states that,
5 "[e]ach interrogatory shall be answered separately and fully in writing under oath, unless it is
6 objected to, in which event the objecting party shall state the reasons for objection and shall
7 answer to the extent the interrogatory is not objectionable." Regarding objections, NRCP
8 33(b)(4) states that, "All grounds for an objection to an interrogatory shall be stated with
9 specificity. . . ."

10 Wells Fargo's responses to each of Johnson's interrogatories is deficient. For example,
11 interrogatories nos. 1, 2, 3, 8, 9, 10, and 11 state as follows:

12 **INTERROGATORY NO. 1:** Please explain in full detail why you decided to close
13 the following Wells Fargo accounts associated with Lisa Johnson and/or Michael
14 Kaplan: (1) Guitarfile, LLC, account no. XXXXXX7051, (2) Guitarfile, LLC,
15 account no. XXXXXXXXXXXXX2957, and (3) account of Michael Kaplan and Lisa
16 Johnson, account no. XXXXXX4164.

17 **INTERROGATORY NO. 2:** Please describe your risk assessment processes or
18 analysis and the results thereto concerning your decision to close the accounts
19 referenced in Interrogatory No. 1.

20 **INTERROGATORY NO. 3:** Please identify the name, title, and address of all
21 persons who made the decisions to close the accounts referenced in Interrogatory No.
22 1.

23 **INTERROGATORY NO. 8:** Please state why a Wells Fargo representative named
24 Chad Maze sent an e-mail to Michael Kaplan stating that if Mr. Kaplan wanted to
25 open an account with Wells Fargo, "the account would not be accepted if Lisa
26 [Johnson] was associated with it. Of course you could open an account in your name,
27 or the name of your trust, but including Lisa could not be one of the options." For
28 reference purposes, please see Lisa J. 0048.

INTERROGATORY NO. 9: Please explain in full detail the steps that Wells Fargo
took to perform "ongoing reviews of its account relationships in connection with the
Bank's responsibilities to oversee and manage risks in its banking operations"
concerning the closure of the accounts referenced in Interrogatory No. 1, as
referenced in Lisa J. 006 to Lisa J. 009.

INTERROGATORY NO. 10: Please explain in full detail the "red flags" that were
on the Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan
referenced in Interrogatory No. 1. For reference purposes regarding the term "red
flag," please see Lisa J. 0014.

INTERROGATORY NO. 11: Why did you make "a business decision not to
support any relationship with Lisa [Johnson]"? For reference purposes, please see

1 Lisa J. 0039.

2 In response, Wells Fargo answered:

3 In addition to the general objections, Wells Fargo objects on grounds that this
4 interrogatory improperly seeks privileged and confidential bank supervisory
5 information and confidential proprietary and business information. Wells Fargo also
6 objects on grounds that this interrogatory seeks information that is irrelevant and not
7 reasonably calculated to lead to the discovery of admissible evidence since each party
8 had the right to close the subject accounts at any time without any requirement that
9 an explanation be provided. Subject to and without waiving these objections, please
10 refer to notices that have previously been provided regarding closure of the subject
11 accounts.³⁷

12 For the reasons specified above, Wells Fargo's objections provide no justification for
13 stonewalling Johnson in discovery. Further, Wells Fargo's meager references to notices
14 regarding the closure of accounts are evasive and non-responsive, especially when it is clear
15 that Wells Fargo has responsive information that it is not disclosing. Johnson requests that the
16 Court compel Wells Fargo to supplement its answers to these interrogatories.

17 Wells Fargo's answers to interrogatories nos. 4-7 are also deficient. These
18 interrogatories ask:

19 **INTERROGATORY NO. 4:** On October 6, 2011, why did Arash Dounel, who is
20 a banker and brokerage associate at Wells Fargo, state to Michael Kaplan that Lisa
21 Johnson "must have some type of criminal background" or words to that effect?

22 **INTERROGATORY NO. 5:** On October 6, 2011, why did Arash Dounel state to
23 Michael Kaplan that Mr. Kaplan "should hire a private investigator to check to check
24 up on" Lisa Johnson or words to that effect?

25 **INTERROGATORY NO. 6:** On October 6, 2011, why did Arash Dounel state to
26 Michael Kaplan that Lisa Johnson "must have arrest warrants outstanding" or words
27 to that effect?

28 **INTERROGATORY NO. 7:** On November 8, 2011, why did a Wells Fargo
representative named Joceda Freeman and/or a Wells Fargo representative named
Sheila state that Michael Kaplan was not eligible to open an account at Wells Fargo
or words to that effect?

29 In response, Wells Fargo stated:

30 In addition to the general objections, Wells Fargo objects on grounds that this
31 interrogatory assumes facts not in evidence and improperly seeks confidential
32 information pertaining to a non-party customer. Wells Fargo objects on grounds that
33 this interrogatory improperly seeks privileged and confidential bank supervisory
34 information and confidential proprietary and business information. Please also refer

35 ³⁷ See Exhibit 9 at Answers Nos. 1, 2, 3, 8, 9, 10, and 11.

1 to the response to Request for Admission [3, 4, 5, or 6 respectively].³⁸

2 For the reasons stated above, Wells Fargo's reference to the general objections requires
3 supplementation. Further, the bank's objections on grounds of facts not in evidence and
4 confidentiality do not justify Wells Fargo in withholding responsive information. Also, Wells
5 Fargo's references to non-responsive requests for admission are likewise non-responsive.
6 Accordingly, Johnson requests that the Court compel Wells Fargo to supplement its answers to
7 these interrogatories.

8 Johnson likewise requests that the Court compel Wells Fargo to supplement its answer
9 to interrogatory no. 12, which asks:

10 **INTERROGATORY NO. 12:** Please explain in full detail the contents of "the
11 apology that [Arash Dounel has] given [Michael Kaplan] thus far verbally" regarding
12 Wells Fargo's closure of the accounts referenced in Interrogatory No. 1. For
reference purposes, please see Lisa J. 0045.

13 In response, Wells Fargo stated:

14 In addition to the general objections, Wells Fargo objects on grounds that this
15 interrogatory assumes facts not in evidence, is duplicative, redundant, and is
16 irrelevant and not reasonably calculated to lead to the discovery of admissible
evidence. Wells Fargo also objects on grounds that this interrogatory pertains to
alleged confidential communications pertaining to a non-party customer. Please also
refer to the response to Request for Admission No. 8.³⁹

17 For the reasons specified above, this answer is deficient and requires supplementation.

18 Accordingly, Johnson requests that the Court compel Wells Fargo to supplement its answer to
19 this interrogatory.

20 **D. Wells Fargo should be required to pay Johnson's fees and costs in bringing this
21 motion.**

22 NRCP 37(a)(4) authorizes the Court to award the party who has been required to bring a
23 motion to obtain full and complete responses to discovery to recover the fees and costs incurred
24 in bringing such a motion against the non-responsive party. Wells Fargo's non-responsiveness
25 supports such relief in this case.

26 ³⁸ See *id.* at Answers Nos. 4-7. Interrogatory answer no. 7 also objects on grounds of
27 vagueness, ambiguity, and relevance.

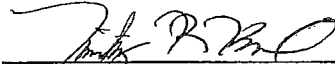
28 ³⁹ See *id.* at Answer No. 8.

1 **4. Conclusion.**

2 Based on the foregoing reasons, Johnson respectfully requests that this Court grant its
3 motion to compel Wells Fargo to provide supplemental responses to Johnson's first sets of
4 interrogatories, requests for production of documents, and requests for admission. Further,
5 Johnson requests that the Court award her the costs and fees incurred in bringing this motion.

6 DATED this 31st day of August, 2012.

7
8 HUTCHISON & STEFFEN, LLC

9 
10 Mark A. Hutchison (4639)
11 Timothy R. Koval (12014)
12 Peccole Professional Park
13 10080 West Alta Drive, Suite 200
14 Las Vegas, NV 89145

15 Attorneys for Lisa Johnson
16
17
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28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,
3 LLC and that on this ____ day of August, 2012, I caused the above and foregoing document
4 entitled **PLAINTIFF'S MOTION TO COMPEL AND FOR AN AWARD OF THE FEES**
5 **AND COSTS INCURRED IN BRINGING THIS MOTION** to be served as follows:

6 by placing same to be deposited for mailing in the United States Mail, in a sealed envelope
7 upon which first class postage was prepaid in Las Vegas, Nevada; and/or

- 8 ☐ by placing same to be deposited for mailing in the United States Mail, in a
9 sealed envelope upon which first class postage was prepaid in Las Vegas,
10 ☐ to be served via facsimile; and/or
11 ☐ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the
12 Eighth Judicial District Court's electronic filing system, with the date and time
of the electronic service substituted for the date and place of deposit in the mail;
and/or
13 ☐ to be hand-delivered;

14 To the attorneys and/or parties listed below at the address and/or facsimile number indicated
15 below:

16 Stewart Fitts, Esq.,
17 SMITH LARSON & WIXOM
18 1935 Village Center Circle
19 Las Vegas, NV 89134
20 Attorney for Defendants

21 _____
22 An employee of Hutchison & Steffen, LLC
23
24
25
26
27
28

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 1



PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

TIMOTHY R. KOVAL
TKOVAL@HUTCHLEGAL.COM

OUR FILE NO.: 1549.058

August 8, 2011

**Via First Class Mail and
Facsimile (702.252.5006)**

Stewart C. Fitts, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134

**Re: Lisa Johnson v. Wells Fargo Bank, NA
Our File No.: 1549.058**

Dear Stewart:

The letter follows Wells Fargo Bank, NA's ("Wells Fargo") responses to plaintiff Lisa Johnson's ("Johnson") first sets of interrogatories, requests for admission, and requests for production of documents dated August 2, 2012. Unfortunately, there are various deficiencies in these responses that require supplementation from your client. This letter serves as an attempt to communicate with you personally to remedy the deficiencies in your client's responses. In addition, pursuant to EDCR 2.34, Johnson proposes that both parties meet telephonically on August 14, 2012 at 4:00 p.m. to discuss these issues.

A. EDCR 2.34 requirements.

EDCR 2.34 requires litigants to answer discovery and to act in good faith. Indeed, EDCR 2.34(d) states, "If, after request, responding counsel fails to participate in good faith in the [discovery dispute] conference or to answer the discovery, the court may require such counsel to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure." In order to prevent unnecessary discovery expenses for both parties, we request that you supplement the following discovery responses completely and in good faith.

B. Wells Fargo's responses to Johnson's requests for admission.

NRCP 36 allows a party to serve on another party written requests for admission relating to any matter that is within the scope of NRCP 26(b)(1). NRCP 26(b)(1) sets forth the broad scope of discovery:

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Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably to lead to the discovery of admissible evidence. . . .

Further, NRCP 36(a) requires the following:

If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. . . . An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it. . . .

Here, your client's responses to Johnson's requests for admission are deficient and require supplementation, especially as Wells Fargo provided only one substantive response to Johnson's nine requests for admission. The remaining eight responses to requests for admissions are evasive. For example, request for admission no. 2 asks:

REQUEST NO. 2: Please admit that, on October 6, 2011, Arash Duonel had a conversation with Michael Kaplan while he was working at a Wells Fargo bank in California.

Wells Fargo responded as follows:

RESPONSE: Subject to and without waiving the general objections, Wells Fargo is without sufficient information to admit or deny this request.

This response requires supplementation. Although Wells Fargo claims that this response is subject to its general objections, it fails to state how the objections are applicable. If your client claims that the general objections apply, please describe the basis for this application in full detail. Further, NRCP 36(a) requires your client to set forth in detail the reasons why it cannot truthfully admit or deny the request. As Wells Fargo claims that it is without sufficient information to admit or deny the request, NRCP 36(a)

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also requires your client to state that it has made a reasonable inquiry and that the information known or readily obtainable by it is insufficient to enable the party to admit or deny. Contrary to these discovery requirements, your client has not explained why it is "without sufficient information" or any efforts that it has taken to inquire into the conversation between Arash Duonel and Michael Kaplan dated October 6, 2011. Accordingly, your client's response is deficient and requires supplementation.

Wells Fargo's responses to requests for admission nos. 3-9 require supplementation as well. These requests state as follows:

REQUEST NO. 3: Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that Lisa Johnson "must have some type of criminal background."

REQUEST NO. 4: Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that Mr. Kaplan "should hire a private investigator to check up on" Lisa Johnson.

REQUEST NO. 5: Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that Lisa Johnson "must have arrest warrants outstanding."

REQUEST NO. 6: Please admit that, on November 8, 2011, a Wells Fargo representative named Joceda Freeman stated to Michael Kaplan that Mr. Kaplan was not eligible to open an account with Wells Fargo.

REQUEST NO. 7: Please admit that, on November 8, 2011, a Wells Fargo representative named Sheila stated to Joceda Freeman that Michael Kaplan was not eligible to open an account with Wells Fargo.

REQUEST NO. 8: Please admit that, in October 2011, Arash Dounel apologized to Michael Kaplan for comments that Mr. Dounel made to Mr. Kaplan on October 6, 2011.

REQUEST NO. 9: Please admit that Arash Dounel stated to Michael Kaplan that Mr. Dounel would send a letter of apology to Mr. Kaplan for Mr. Dounel's comments to Mr. Kaplan regarding Lisa Johnson made on October 6, 2011.

Wells Fargo generally responded to each with the following language:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as

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well as legal issues.” *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is “to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications.” *Id.* A request is improper where it seeks an admission regarding facts “central to the lawsuit” or “legal concessions.” *Id.* The request herein is improper because it pertains to factual allegations that are central to the lawsuit and which are subject to qualifications, and the request also seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is without sufficient information to admit or deny this request.

In addition to this language, your client’s responses to requests nos. 6-9 also state, “Wells Fargo objects on grounds that this request seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence”

Johnson will respond to each of the issues raised in these responses in turn. Regarding Wells Fargo’s objections to requests no. 6-9 on the basis of relevance, NRCP 26 only requires information to be reasonably calculated to lead to the discovery of admissible evidence.

Even then, Johnson’s requests are reasonably calculated to lead to the discovery of admissible evidence. This case involves defamatory and otherwise wrongful statements that Wells Fargo made to a third-party concerning Lisa Johnson, including statements that she allegedly has a criminal history. Johnson is now pursuing claims against Wells Fargo for, among other things, defamation and false light based on these statements. Requests nos. 6-7 ask Wells Fargo to admit that its representatives told Michael Kaplan, who shared an account with Johnson that was subject to closure, that he was not eligible to open an account with Wells Fargo following the closure of this account. This information will assist Johnson to confirm that the bank did in fact refuse to allow Mr. Kaplan to open an account. Johnson will then be able to follow up to ascertain the reasons for this refusal and whether it is based on the same reasons and information that form the basis of the bank’s defamatory against Johnson. As Wells Fargo claims that, among other things, its representatives did not make any statements against Johnson with knowledge of their falsity, false light, or with reckless disregard for their truth, Johnson is entitled to all information concerning the basis of the information underlying the defamatory statements.¹

Requests nos. 8-9 ask Wells Fargo to admit that Arash Dounel, a representative of Wells Fargo, apologized to Michael Kaplan for his comments about Johnson and stated that he would send a letter of apology. These requests are reasonably calculated to lead to the discovery of admissible evidence concerning Wells Fargo’s fault in making defamatory statements about Johnson.

¹ *See, e.g.,* the Answer of Wells Fargo Bank to Complaint at Affirmative Defense No. 27.

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Regarding your client's claim that it is without sufficient information to admit or deny the requests, as explained above, such responses are inadequate under NRCP 36. Further, your client fails to explain how the general objections apply to these requests, thereby preventing Johnson from understanding the nature or basis of these objections, or how Johnson may respond to the same.

Your client's refusal to provide "information regarding the scope and content of confidential communications with a non-party customer [*i.e.*, *Michael Kaplan*]" is unfounded, as you have been provided with a third-party authorization from Mr. Kaplan specifically permitting you to disclose such communications in this litigation.

Wells Fargo's objections that Johnson's requests are vague, ambiguous, and overly broad are likewise without merit. Requests 3-9 each ask your clients to admit the specific contents of conversations between your client's representatives and Michael Kaplan on specified dates or date ranges, none of which are vague, ambiguous, or overly broad. In each instance, the request provides the specific or general language of the conversation that is the subject of the admission. Further, each request identifies the individuals who were involved in the conversation, thereby eliminating any claim that the requests are vague, ambiguous, or overly broad.

Wells Fargo's objections that the requests seek legal conclusions and seek admissions regarding facts central to the lawsuit or legal concessions are also without merit. Although your client cites to *Smith v. Emery*, 109 Nev. 737, 856 P.2d 1386 (1993), allegedly in support of these objections, your client's reliance on this case is misplaced. In *Smith*, the court analyzed whether various requests for admission were objectionable under a separate case titled *Morgan v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990).² In *Morgan*, the court held that the appellants' request for admission that the respondent's negligence was the sole cause of a collision and that the respondent was liable for any damages proximately caused to appellants as a result of the collision was improper.³ The *Morgan* court reasoned that the request was too broad, involved both factual issues as well as legal issues, and improperly requested either crucial facts central to the lawsuit or legal concessions.⁴ The *Smith* court then held that various requests for admission in that case were unobjectionable under the *Morgan* standard, including the following requests:

Admit that parts were missing from the furnace that cause [sic] ventilation to be defective.

² See *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).

³ See *id.* at 742.

⁴ See *id.*

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Admit that no warning was provided with respect to the use of the furnace.⁵

However, the court held that two requests for admission were objectionable under the *Morgan* standard. These requests asked:

Admit that Defendant or his agents should have known that the furnace system was unreasonably dangerous.

Admit that Defendant's failure to inform Plaintiffs of the dangerous condition of the furnace caused Plaintiffs to suffer substantial bodily harm.⁶

Here, Johnson's requests for admission are similar to the permissible requests in *Smith* and dissimilar to the objectionable requests in *Smith* and *Morgan*. Indeed, similar to the permissible requests in *Smith*, which sought factual information concerning the subject matter of the litigation, Johnson's requests seek factual information concerning statements that form the basis of her claims for defamation and false light. The fact that a response may support Johnson's claims is not objectionable any more than the *Smith* plaintiff's permissible requests for admission would be objectionable to the defendant in that case.

However, unlike the impermissible requests in *Smith* and *Morgan*, which asked for legal admissions concerning liability and damages, Johnson's requests do not ask Wells Fargo to make legal conclusions concerning any of these facts presented therein. Accordingly, Johnson requests that Wells Fargo supplement its responses to her requests for admission with responsive information.

C. Wells Fargo's responses to Johnson's requests for production.

NRCP 34 allows a party to serve on another party requests for production relating to matters that are within the scope of NRCP 26(b). Here, your client's responses to requests for production nos. 2-10 are deficient and require supplementation. These requests state as follows:

REQUEST NO. 2: Please provide all documents concerning your risk assessment processes or analysis for closing accounts such as those of Lisa Johnson and Michael Kaplan.

⁵ See *id.* at 738 & 742.

⁶ See *id.*

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REQUEST NO. 3: Please provide all documents concerning your decision to close the following Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account no. [REDACTED], (2) Guitarfile, LLC, account no. [REDACTED], and (3) account of Michael Kaplan and Lisa Johnson, account no. [REDACTED].

REQUEST NO. 4: Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have some type of criminal background" or words to that effect.

REQUEST NO. 5: Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Mr. Kaplan "should hire a private investigator to check to check up on" Lisa Johnson or words to that effect.

REQUEST NO. 6: Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have arrest warrants outstanding" or words to that effect.

REQUEST NO. 7: Please provide all documents concerning the basis or bases for the statements by a Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative named Sheila that Michael Kaplan was not eligible to open an account at Wells Fargo on November 8, 2011.

REQUEST NO. 8: Please provide all documents concerning the basis or bases for Chad Maze's statement to Michael Kaplan that if Mr. Kaplan wanted to open an account with Wells Fargo, "the account would not be accepted if Lisa [Johnson] was associated with it. Of course you could open an account in your name, or the name of your trust, but including Lisa could not be one of the options." For reference purposes, please see Lisa J. 0048.

REQUEST NO. 9: Please provide all documents concerning the "red flags" that were on the Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan. For reference purposes regarding the term "red flags," please see Lisa J. 0014.

REQUEST NO. 10: Please provide all documents concerning the "ongoing reviews of [your] account relationships in connection with the Bank's responsibilities to oversee and manage risks in its banking operations" as relating to the accounts referenced in Request No. 3. For reference purposes, please see Lisa J. 006 to Lisa J. 008.

///

Stewart C. Fitts, Esq.

August 8, 2012

Page 8

In response, your client generally stated,

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

Regarding requests nos. 4-6, your client also objects that these requests assume facts not in evidence. In response to request no. 7, Wells Fargo objects that the request is vague and ambiguous.

These responses require supplementation. Even if your client claims that requests nos. 4-6 assume facts not in evidence, it is still under an obligation to provide responsive information to these requests. Regarding request no. 7, the request is not vague or ambiguous, as the request asks for documents showing why two specified Wells Fargo representatives stated to Michael Kaplan that he was not eligible to open an account on a specific date. The highly specific nature of this inquiry facilitates and requires a good faith response from your client.

The remaining objections are without merit as well. Although Wells Fargo claims that each of these responses is subject to its general objections, it fails to state how the general objections are applicable to each request. If your client claims that the general objections apply to the requests, please describe the basis for this application in full detail.

Further, Wells Fargo's claims that each request "improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information" are unfounded. Johnson has expressed a willingness to entertain a protective order concerning any potentially sensitive materials from the bank. In fact, you indicated that you would prepare a stipulation and order in this regard prior to delivering your client's discovery responses. However, we have received no such document. If your client is concerned about confidentiality, please provide us with a draft protective order to address this issue.

Regarding your client's objections that the requests seek information that is not reasonably calculated to lead to the discovery of admissible evidence, these requests ask for information concerning: (1) the bases for the bank's defamatory and otherwise wrongful statements against Johnson, (2) the bank's processes and rationales for closing the accounts in question, and (3) the reasons why the bank would not open accounts for Johnson or Kaplan, who had a joint-account with Johnson. Regarding the latter two topics, responsive information will assist Johnson to ascertain the information that forms the

Stewart C. Fitts, Esq.
August 8, 2012
Page 9

basis of the bank's defamatory statements against her. Accordingly, all of these requests seek information that is reasonably calculated to lead to the discovery of admissible evidence.

Finally, your client's near-universal reference to prior notices that it has provided to Johnson as the sole responsive documents is insufficient to comply with its discovery obligations. For example, your client's notices that it would close Johnson's accounts do not discuss the bases for your client's statement that Johnson "must have some type of criminal background" or words to that effect. Further, these notices fail to state the basis for your client's refusal to open accounts for Johnson or Kaplan. Your client's references to these notices in nearly all its responses to requests for production is non-responsive. For the foregoing reasons, Johnson requests that your client supplement its responses to these requests for production.

D. Wells Fargo's answers to Johnson's interrogatories.

NRCP 33 allows a party to serve on another party written interrogatories relating to any matter that may be inquired into under NRCP 26(b). Further, NRCP 33(b)(1) states that, "[e]ach interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable." Regarding objections, NRCP 33(b)(4) states that, "All grounds for an objection to an interrogatory shall be stated with specificity. . . ."

Your client's responses to each of Johnson's interrogatories is deficient and requires supplementation. For example, interrogatories nos. 1, 2, 3, 8, 9, 10, and 11 state as follows:

INTERROGATORY NO. 1: Please explain in full detail why you decided to close the following Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account no. [REDACTED], (2) Guitarfile, LLC, account no. [REDACTED], and (3) account of Michael Kaplan and Lisa Johnson, account no. [REDACTED].

INTERROGATORY NO. 2: Please describe your risk assessment processes or analysis and the results thereto concerning your decision to close the accounts referenced in Interrogatory No. 1.

INTERROGATORY NO. 3: Please identify the name, title, and address of all persons who made the decisions to close the accounts referenced in Interrogatory No. 1.

INTERROGATORY NO. 8: Please state why a Wells Fargo representative named Chad Maze sent an e-mail to Michael Kaplan stating that if Mr. Kaplan wanted to open an account with Wells Fargo, "the account would not be accepted if Lisa [Johnson] was associated with it. Of course you could open an account in your name, or the name of your trust, but

Stewart C. Fitts, Esq.
August 8, 2012
Page 10

including Lisa could not be one of the options.” For reference purposes, please see Lisa J. 0048.

INTERROGATORY NO. 9: Please explain in full detail the steps that Wells Fargo took to perform “ongoing reviews of its account relationships in connection with the Bank’s responsibilities to oversee and manage risks in its banking operations” concerning the closure of the accounts referenced in Interrogatory No. 1, as referenced in Lisa J. 006 to Lisa J. 009.

INTERROGATORY NO. 10: Please explain in full detail the “red flags” that were on the Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan referenced in Interrogatory No. 1. For reference purposes regarding the term “red flag,” please see Lisa J. 0014.

INTERROGATORY NO. 11: Why did you make “a business decision not to support any relationship with Lisa [Johnson]”? For reference purposes, please see Lisa J. 0039.

In response, your client answered:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

For the reasons specified above, Wells Fargo’s objections provide no justification for ~~stonewalling Johnson in discovery. Further, your client’s meager references to notices regarding the~~ closure of accounts are evasive and non-responsive, especially when it is clear that your clients have responsive information that they are not disclosing. Please supplement these interrogatory answers.

Your client’s answers to interrogatories nos. 4-7 are also deficient. These interrogatories ask:

INTERROGATORY NO. 4: On October 6, 2011, why did Arash Dounel, who is a banker and brokerage associate at Wells Fargo, state to Michael Kaplan that Lisa Johnson “must have some type of criminal background” or words to that effect?

INTERROGATORY NO. 5: On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Mr. Kaplan “should hire a private investigator to check to check up on” Lisa

Stewart C. Fitts, Esq.

August 8, 2012

Page 11

Johnson or words to that effect?

INTERROGATORY NO. 6: On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Lisa Johnson "must have arrest warrants outstanding" or words to that effect?

INTERROGATORY NO. 7: On November 8, 2011, why did a Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative named Sheila state that Michael Kaplan was not eligible to open an account at Wells Fargo or words to that effect?

In response, your client stated:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission [3, 4, 5, or 6 respectively].⁷

For the reasons stated above, your client's reference to the general objections requires supplementation. Further, the bank's objections on grounds of facts not in evidence and confidentiality do not justify your client in withholding responsive information. Also, your client's references to non-responsive requests for admission are likewise non-responsive. Accordingly, Johnson requests that your client supplement its answers to these interrogatories.

Johnson likewise requests that your client supplement its answer to interrogatory no. 12, which asks:

INTERROGATORY NO. 12: Please explain in full detail the contents of "the apology that [Arash Dounel has] given [Michael Kaplan] thus far verbally" regarding Wells Fargo's closure of the accounts referenced in Interrogatory No. 1. For reference purposes, please see Lisa J. 0045.

In response, your client stated:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence, is duplicative, redundant, and is irrelevant and not reasonably

⁷ Interrogatory answer no. 7 also objects on grounds of vagueness, ambiguity, and relevance.

Stewart C. Fitts, Esq.

August 8, 2012

Page 12

calculated to lead to the discovery of admissible evidence. Wells Fargo also objects on grounds that this interrogatory pertains to alleged confidential communications pertaining to a non-party customer. Please also refer to the response to Request for Admission No. 8.

For the reasons specified above, this answer is deficient and requires supplementation.

Johnson also requests that your client supplement its answer to interrogatory no. 13, which asks:

INTERROGATORY NO. 13: Is Arash Dounel currently employed by you? If yes, please state the location(s) where Mr. Dounel is employed and his current employment capacity, including job title and duties.

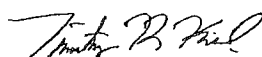
After providing a myriad of inapplicable objections, your client stated, "Mr. Dounel is currently employed by Wells Fargo in Encino, California." Although Johnson appreciates this answer, it is nonetheless not fully responsive. For example, what is Mr. Dounel's current employment capacity? What is his job title? What are his job duties? Please supplement with this information.

E. Conclusion.

I look forward to your anticipated cooperation to provide this supplementation. Please be mindful that if we are required to pursue the foregoing information through a motion to compel, we will seek attorney's fees and costs for our efforts to pursue these items. Please contact me at your earliest convenience to let me know whether you can meet on August 14, 2012 at 4:00 p.m. to discuss these discovery issues.

Sincere regards,

HUTCHISON & STEFFEN, LLC


Timothy R. Koval
For the Firm

cc: Lisa Johnson

TRANSMISSION VERIFICATION REPORT

TIME : 08/08/2012 11:09
NAME : HUTCHISON & STEFFEN
FAX : 7023852086
TEL : 7023852500
SER.# : BRO00J140145

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HUTCHISON & STEFFEN
ATTORNEYS

PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

TIMOTHY R. KOVAL
TKOVAL@HUTCHLEGAL.COM

OUR FILE NO.: 1549.058

August 8, 2011

Via First Class Mail and
Facsimile (702.252.5006)

Stewart C. Fitts, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134

Re: Lisa Johnson v. Wells Fargo Bank, NA
Our File No.: 1549.058

Dear Stewart:

The letter follows Wells Fargo Bank, NA's ("Wells Fargo") responses to plaintiff Lisa Johnson's ("Johnson") first sets of interrogatories, requests for admission, and requests for production of documents dated August 2, 2012. Unfortunately, there are various deficiencies in these responses that require supplementation from your client. This letter serves as an attempt to communicate with you personally to remedy the deficiencies in your client's responses. In addition, pursuant to EDCR 2.34, Johnson proposes that both parties meet telephonically on August 14, 2012 at 4:00 p.m. to discuss these issues.

A. EDCR 2.34 requirements.

EDCR 2.34 requires litigants to answer discovery and to act in good faith. Indeed, EDCR 2.34(d) states "If a party requests a remedial conference, the parties must participate in good faith in the conference."

AA000051

TRANSMISSION VERIFICATION REPORT

TIME : 08/08/2012 11:09
NAME : HUTCHISON & STEFFEN
FAX : 7023852086
TEL : 7023852500
SER. # : BROCOJ140145

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HUTCHISON & STEFFEN
ATTORNEYS

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10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

TIMOTHY R. KOVAL
TKOVAL@HUTCHLEGAL.COM

OUR FILE NO.: 1549,058

August 8, 2011

**Via First Class Mail and
Facsimile (702.252.5006)**

Stewart C. Fitts, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134

**Re: Lisa Johnson v. Wells Fargo Bank, NA
Our File No.: 1549.058**

Dear Stewart:

The letter follows Wells Fargo Bank, NA's ("Wells Fargo") responses to plaintiff Lisa Johnson's ("Johnson") first sets of interrogatories, requests for admission, and requests for production of documents dated August 2, 2012. Unfortunately, there are various deficiencies in these responses that require supplementation from your client. This letter serves as an attempt to communicate with you personally to remedy the deficiencies in your client's responses. In addition, pursuant to EDCR 2.34, Johnson proposes that both parties meet telephonically on August 14, 2012 at 4:00 p.m. to discuss these issues.

A. EDCR 2.34 requirements.

EDCR 2.34 requires litigants to answer discovery and to act in good faith. Indeed, EDCR 2.34(d) states "If, after request, a party fails to participate in good faith in the process, the court may, on its own motion, enter a judgment in favor of the party who has acted in good faith." AA000052

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 2

Tim Koval

From: Tim Koval
Sent: Friday, August 17, 2012 4:23 PM
To: Stewart Fitts
Subject: Lisa Johnson v. Wells Fargo

Stewart,

Thank you for meeting with me today to discuss my client's discovery concerns in the above-referenced matter. To confirm the substance of our meeting, your client has agreed to supplement his responses to the requests for admission to set forth the reasons why it cannot truthfully admit or deny the matters presented in requests for admission 2-9. Your client has also agreed to supplement its answer to interrogatory no. 13 by providing additional information concerning Arash Dounel, a Wells Fargo employee. Further, you have agreed to communicate with your contact at Wells Fargo, who is currently on vacation, by August 29, 2012. Specifically, you agreed to speak with him by this date to ascertain whether, in light of my "meet and confer" letter dated August 8, 2012, the bank will supplement its discovery responses to provide allegedly confidential information. You have also agreed to draft a protective order for my review, which I anticipate receiving in short order.

However, we were unable to agree on the remaining items that my client addressed in the "meet and confer" letter. For example, we did not resolve our dispute concerning Wells Fargo's obligation to admit or deny various statements from Wells Fargo to Michael Kaplan, or to provide explanations regarding the same. Further, we did not resolve our dispute concerning the bank's objections to my client's requests for admission. The remainder of the issues addressed in the "meet and confer" letter likewise remain unresolved.

Accordingly, my client will file a motion to compel information concerning the unresolved issues with the court. For purposes of efficiency, my client intends to finalize and file the motion upon ascertaining whether your client is willing to supplement its discovery responses to provide allegedly confidential information. However, please bear in mind that we intend to file the motion to compel by no later than August 30, 2012 regardless of whether you communicate with me by that date.

Thanks,

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 3

Tim Koval

From: Stewart Fitts [scf@slwlaw.com]
Sent: Wednesday, August 29, 2012 11:39 AM
To: Tim Koval
Cc: Debbie Hart
Subject: RE: Lisa Johnson v. Wells Fargo

Dear Tim:

My client contact is back in the office today after being out for an extended time, and I am scheduled to discuss this discovery matter with that contact tomorrow (Thursday). I will be out of the office in a proceeding all-day on Friday, but anticipate being in a position to provide you with supplemental discovery early next week. I respectfully suggest (in the interest of judicial economy) that a discovery motion, if any, not be prepared until you review the supplemental discovery.

Thank you.

Stewart C. Fitts
Smith Larsen & Wixom
1935 Village Center Circle
Las Vegas, NV 89134
(702) 252-5002
FAX (702) 252-5006

This e-mail communication contains confidential information which may be protected by the attorney-client privilege and/or work-product doctrine. Access to this e-mail by anyone other than the intended recipient is prohibited, and may be unlawful. If you received this communication in error, please notify us immediately and destroy this communication and all attachments.

From: Tim Koval [mailto:TKoval@hutchlegal.com]
Sent: Friday, August 17, 2012 4:23 PM
To: Stewart Fitts
Subject: Lisa Johnson v. Wells Fargo

Stewart,

Thank you for meeting with me today to discuss my client's discovery concerns in the above-referenced matter. To confirm the substance of our meeting, your client has agreed to supplement his responses to the requests for admission to set forth the reasons why it cannot truthfully admit or deny the matters presented in requests for admission 2-9. Your client has also agreed to supplement its answer to interrogatory no. 13 by providing additional information concerning Arash Dounel, a Wells Fargo employee. Further, you have agreed to communicate with your contact at Wells Fargo, who is currently on vacation, by August 29, 2012. Specifically, you agreed to speak with him by this date to ascertain whether, in light of my "meet and confer" letter dated August 8, 2012, the bank will supplement its discovery responses to provide allegedly confidential information. You have also agreed to draft a protective order for my review, which I anticipate receiving in short order.

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Accordingly, my client will file a motion to compel information concerning the unresolved issues with the court. For purposes of efficiency, my client intends to finalize and file the motion upon ascertaining whether your client is willing to supplement its discovery responses to provide allegedly confidential information. However, please bear in mind that we

intend to file the motion to compel by no later than August 30, 2012 regardless of whether you communicate with me by that date.

Thanks,

Tim Koval
Attorney
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
(702) 385-2500
Fax: (702) 385-2086
TKoval@hutchlegal.com
hutchlegal.com

Notice of Confidentiality: The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 4

ECCP

Kent F. Larsen, Esq.

Nevada Bar No. 3463

Stewart C. Fitts, Esq.

Nevada Bar No. 5635

SMITH LARSEN & WIXOM

Hills Center Business Park

1935 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

Email: kfl@slwlaw.com

scf@slwlaw.com

Attorneys for Defendants

Wells Fargo Bank, N.A.

DISTRICT COURT**CLARK COUNTY, NEVADA**

LISA JOHNSON, a Nevada resident,

Plaintiff,

v.

WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES 1 through X,
inclusive; and ROE CORPORATIONS,
1 through X, inclusive

Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

**RULE 16.1 EARLY CASE
CONFERENCE DISCLOSURES OF
DEFENDANT WELLS FARGO BANK
N.A.**

Defendant Wells Fargo Bank National Association (herein, "Wells Fargo"), by and through its attorneys, Smith Larsen & Wixom, herein makes the following disclosures in accordance with NRCP 16.1.

...

...

I. PERSONS WITH KNOWLEDGE

The following is a list of persons currently believed to have knowledge of relevant facts, excluding counsel for Wells Fargo:

1. Plaintiff Lisa Johnson, c/o Plaintiff's counsel. Ms. Johnson is expected to have knowledge regarding the events and circumstances at issue in this matter.

2. Michael Kaplan, 9517 Canyon Mesa Drive, Las Vegas, Nevada 89144. Mr. Kaplan is expected to have knowledge regarding the events and circumstances at issue in this matter.

3. Dirk A. Ravenholt, Esq., Ravenholt & Associates, 2013 Alta Drive, Las Vegas, Nevada 89106. Mr. Ravenholt is expected to have knowledge regarding events and circumstances at issue in this matter.

4. Chad Maze, Vice President, Wells Fargo Bank, c/o of Wells Fargo's counsel. Mr. Maze is expected to have knowledge regarding events and circumstances pertaining to this matter.

5. Arash Dounel, Wells Fargo Bank, c/o of Wells Fargo's counsel. Mr. Dounel is expected to have knowledge regarding events and circumstances pertaining to this matter.

6. Andrew M. Noll, Vice President, Trust & Fiduciary Specialist, Wells Fargo Bank, c/o Wells Fargo's counsel. Mr. Noll is expected to have knowledge regarding events and circumstances pertaining to this matter.

7. Jennifer L. Scafe, Senior Counsel, Wells Fargo Bank, c/o Wells Fargo's counsel. Mr. Noll is expected to have knowledge regarding events and circumstances pertaining to this matter.

8. Kate Wright, District Manager and Vice President, Wells Fargo Bank,

1 c/o Wells Fargo's counsel. Mr. Noll is expected to have knowledge regarding events and
2 circumstances pertaining to this matter.

3 9. Rachael Romijn, Wells Fargo Bank, c/o Wells Fargo's counsel. Mr.
4 Noll is expected to have knowledge regarding events and circumstances pertaining to this
5 matter.

6 10. Joceda Freeman, Personal Banker, Wells Fargo Bank, c/o Wells
7 Fargo's counsel. Mr. Noll is expected to have knowledge regarding events and circumstances
8 pertaining to this matter.

9 11. All persons identified by name in the documents disclosed by the
10 parties.

11 12. Custodians of Records, as may be needed.

12 13. Wells Fargo reserves the right to disclose the name(s) of expert(s) in
13 accordance with NRCP 26(b)(4).

14 14. Rebuttal witnesses, as may be needed.

15 15. Wells Fargo incorporates all persons disclosed by Plaintiff.

16 16. Wells Fargo reserves the right to supplement this list as discovery
17 continues.

18 III. DOCUMENTS

19 Wells Fargo identifies and/or discloses the following documents:

20 A. Consumer Account Agreement re: account ending in #4164. Michael
21 Kaplan, owner; Lisa Johnson, authorized signor. A copy of this document is believed to be
22 in the possession of Plaintiff. Wells Fargo will disclose a copy of this agreement upon entry
23 of an appropriate stipulated confidentiality agreement and protective order.

24 B. Business Account Agreement re: account ending in #7051; business

1 name: Guitarfile, LLC; Lisa Johnson, authorized signor. A copy of this document is believed
2 to be in the possession of Plaintiff. Wells Fargo will disclose a copy of this agreement upon
3 entry of an appropriate stipulated confidentiality agreement and protective order.

4 C. Business Card Agreement re: Visa Business Card Account ending in
5 #2957; business name: Guitarfile, LLC. A copy of this document is believed to be in the
6 possession of Plaintiff. Wells Fargo will disclose a copy of this agreement upon entry of an
7 appropriate stipulated confidentiality agreement and protective order.
8

9 D. Consumer Account Application re: account ending in #4164. Michael
10 Michael Kaplan, owner; Lisa Johnson, authorized signor. A copy of this document is
11 believed to be in the possession of Plaintiff. Wells Fargo will disclose a copy of this
12 document upon entry of an appropriate stipulated confidentiality agreement and protective
13 order.
14

15 E. Business Account Agreement re: account ending in #7051; business
16 name: Guitarfile, LLC; Lisa Johnson, authorized signor. A copy of this document is believed
17 to be in the possession of Plaintiff. Wells Fargo will disclose a copy of this document upon
18 entry of an appropriate stipulated confidentiality agreement and protective order.
19

20 F. Wells Fargo August 18, 2011 letter to Michael Kaplan and Lisa
21 Johnson re: account ending in #4164. A copy of this document is believed to be in the
22 possession of Plaintiff. Wells Fargo will disclose a copy of this document upon entry of an
23 appropriate stipulated confidentiality agreement and protective order.
24

25 G. Wells Fargo August 18, 2011 letter to Guitarfile, LLC re: account
26 ending in #7051. A copy of this document is believed to be in the possession of Plaintiff.
27 Wells Fargo will disclose a copy of this document upon entry of an appropriate stipulated
28 confidentiality agreement and protective order.

1 H. Wells Fargo August 15, 2011 letter to Guitarfile, LLC. and Lisa
2 Johnson re: account ending in #2957. A copy of this document is believed to be in the
3 possession of Plaintiff. Wells Fargo will disclose a copy of this document upon entry of an
4 appropriate stipulated confidentiality agreement and protective order.

5 I. Wells Fargo October 26, 2011 letter to Dirk A. Ravenholt, Esq. A
6 copy of this document is believed to be in the possession of Plaintiff. Wells Fargo will
7 disclose a copy of this document upon entry of an appropriate stipulated confidentiality
8 agreement and protective order.

9 J. Dirk A. Ravenholt, Esq. October 17, 2011 letter to Wells Fargo. A
10 copy of this document is believed to be in the possession of Plaintiff. Wells Fargo will
11 disclose a copy of this document upon entry of an appropriate stipulated confidentiality
12 agreement and protective order.

13 K. Michael Kaplan December 16, 2011 letter to Jennifer L. Scafe, Wells
14 Fargo. A copy of this document is believed to be in the possession of Plaintiff. Wells Fargo
15 will disclose a copy of this document upon entry of an appropriate stipulated confidentiality
16 agreement and protective order.

17 Wells Fargo incorporates all documents disclosed by the other parties to this action.

18 Wells Fargo also reserves the right to supplement this disclosure as information is gathered
19 and discovery continues.

20 ...

21 ...

22 ...

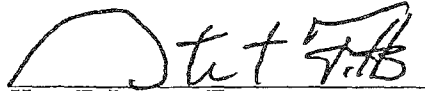
23 ...

IV. RESERVATIONS

Wells Fargo reserves all objections as to the admissibility of all documents
produced by all parties.

DATED this 15th day of May, 2012.

SMITH LARSEN & WIXOM



Kent F. Larsen, Esq.
Nevada Bar No. 3463

Stewart C. Fitts, Esq.
Nevada Bar No. 5635

SMITH LARSEN & WIXOM

Hills Center Business Park

1935 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

Attorneys for Defendants

Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on May 15, 2012 a true copy of the foregoing RULE 16.1

EARLY CASE CONFERENCE DISCLOSURES OF DEFENDANT WELLS FARGO

BANK N.A. was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFEN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff


an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1985 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

TEL (702) 252-5002 • FAX (702) 252-5006

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 5

Tim Koval

From: Tim Koval
Sent: Tuesday, June 05, 2012 6:10 PM
To: Stewart Fitts
Subject: Lisa Johnson v. Wells Fargo
Categories: Red Category

Stewart,

Upon reading your client's early case conference disclosures, I noted that your client is seeking a stipulated confidentiality agreement and protective order prior to disclosing various documents. I would like an opportunity to have a conference with you about this issue. When would you have time over the next couple of days to discuss this?

Thanks,

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HUTCHISON & STEFFEN
A PROFESSIONAL LLC

EXHIBIT 6

Tim Koval

From: Stewart Fitts [scf@slwlaw.com]
Sent: Monday, June 11, 2012 12:11 PM
To: Tim Koval
Subject: RE: Lisa Johnson v. Wells Fargo

Categories: Red Category

Tim:

Thank you for your email. Per our discussion, please send me a signed consent/authorization by Mr. Kaplan so that I can disclose account documents in this matter. I will also send you a SOA (re: confidentiality agreement and protective order) for your review.

Thank you.

Stewart C. Fitts
Smith Larsen & Wixom
1935 Village Center Circle
Las Vegas, NV 89134
(702) 252-5002
FAX (702) 252-5006

This e-mail communication contains confidential information which may be protected by the attorney-client privilege and/or work-product doctrine. Access to this e-mail by anyone other than the intended recipient is prohibited, and may be unlawful. If you received this communication in error, please notify us immediately and destroy this communication and all attachments.

From: Tim Koval [mailto:TKoval@hutchlegal.com]
Sent: Tuesday, June 05, 2012 6:10 PM
To: Stewart Fitts
Subject: Lisa Johnson v. Wells Fargo

Stewart,

Upon reading your client's early case conference disclosures, I noted that your client is seeking a stipulated confidentiality agreement and protective order prior to disclosing various documents. I would like an opportunity to have a conference with you about this issue. When would you have time over the next couple of days to discuss this?

Thanks,

Tim Koval
Attorney
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
(702) 385-2500
Fax: (702) 385-2086
TKoval@hutchlegal.com
hutchlegal.com

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

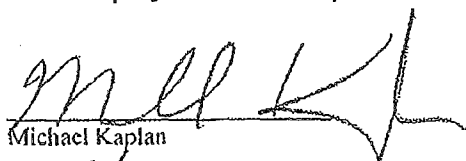
EXHIBIT 7

THIRD PARTY AUTHORIZATION FORM

Re: Wells Fargo Account No. ~~XXXXXXXXXX~~

I, Michael Kaplan, give Wells Fargo authorization to discuss the above-referenced account with, and to provide any and all documentation related therein to, Mark A. Hutchison and Timothy R. Koval, who are my attorneys at the law firm of Hutchison & Steffen, LLC. Hutchison & Steffen, LLC is located at 10080 West Alta Drive, Suite 200, Las Vegas, Nevada 89145. Mr. Hutchison and Mr. Koval may be reached at 702.385.2500.

This third party authorization expires on December 31, 2013.


Michael Kaplan

Date: 7/10/12

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EXHIBIT 8

Tim Koval

From: Tim Koval
Sent: Tuesday, July 03, 2012 2:20 PM
To: Stewart Fitts
Cc: Joseph S. Kistler
Subject: RE: Johnson

Categories: Red Category

Stewart,

Thanks for the e-mail. I have no problem with a two-week extension. In conjunction therewith, have you had a chance to review the third-party authorization form that I sent to you? Will an executed version of that document address your client's concerns regarding the disclosure of Michael Kaplan's information? Also, could you please send me the proposed confidentiality order that we discussed previously? I would like to finalize each of these documents before your discovery responses are due.

Thanks,

-----Original Message-----

From: Stewart Fitts [mailto:scf@slwlaw.com]
Sent: Tuesday, July 03, 2012 10:14 AM
To: Tim Koval
Subject: Johnson

Tim: May I have a two-week extension on Wells Fargo's discovery responses?

Please advise. Thank you.

Stewart

Sent from my iPhone

Tim Koval

From: Tim Koval
Sent: Wednesday, July 18, 2012 11:47 AM
To: Stewart Fitts
Subject: RE: Lisa Johnson

Categories: Red Category

Stewart,

You may have another two weeks to respond to this discovery. However, we will not provide any additional extensions for these responses.

Thanks,

From: Stewart Fitts [mailto:scf@slwlaw.com]
Sent: Wednesday, July 18, 2012 11:03 AM
To: Tim Koval
Subject: Lisa Johnson
Importance: High

Tim: May my I have another 2 weeks for provide the discovery responses. I apology, but under the circumstances, I need this time. I hope to get them to you before 2 weeks. I also hope to get you a stipulated protective order for your review. Please let me know. Thank you.

Stewart C. Fitts
Smith Larsen & Wixom
1935 Village Center Circle
Las Vegas, NV 89134
(702) 252-5002
FAX (702) 252-5006

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A PROFESSIONAL LLC

EXHIBIT 9

ORIGINAL

1 INTG

2 Kent F. Larsen, Esq.

3 Nevada Bar No. 3463

4 Stewart C. Fitts, Esq.

5 Nevada Bar No. 5635

6 SMITH LARSEN & WIXOM

7 Hills Center Business Park

8 1935 Village Center Circle

9 Las Vegas, Nevada 89134

10 Tel: (702) 252-5002

11 Fax: (702) 252-5006

12 Email: kfl@slwlaw.com

13 scf@slwlaw.com

14 Attorneys for Defendants

15 Wells Fargo Bank, N.A.

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 LISA JOHNSON, a Nevada resident,)

CASE NO: A-12-655393-C

19 Plaintiff,)

DEPT: XXVI

20 v.)

21 WELLS FARGO BANK, NATIONAL)

DEFENDANT WELLS FARGO BANK

22 ASSOCIATION; DOES 1 through X,)

N.A.'S ANSWERS TO PLAINTIFF'S

23 inclusive; and ROE CORPORATIONS,)

AMENDED FIRST SET OF

24 1 through X, inclusive)

INTERROGATORIES

25 Defendants.)

26 Defendant and Third-Party Plaintiff, Wells Fargo Bank, N.A. ("Wells Fargo" or

27 "Defendant"), by and through its counsel of record, Smith Larsen & Wixom, hereby serves

28 answers to Plaintiff's Amended First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
discovery requests, and the discovery requests themselves, to the extent they seek to require

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

TEL (702) 252-5002 • FAX (702) 252-5006

1 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
2 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
3 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
4 requests to the extent they seek the disclosure or production of information protected by the
5 attorney-client privilege, the work-product doctrine, any other applicable privilege or
6 doctrine. Wells Fargo further objects to the disclosure of trade secrets, or other confidential
7 research, development, or commercial information that can be discovered, if at all, only
8 through the entry of a protective order. These general objections are incorporated into each
9 response herein.
10

11 ANSWERS

12 INTERROGATORY NO. 1:

13 Please explain in full detail why you decided to close the following Wells Fargo
14 accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account
15 no. [REDACTED], (2) Guitarfile, LLC, account no. [REDACTED], and (3) account of
16 Michael Kaplan and Lisa Johnson, account no. [REDACTED].
17

18 ANSWER:

19 In addition to the general objections, Wells Fargo objects on grounds that this
20 interrogatory improperly seeks privileged and confidential bank supervisory information and
21 confidential proprietary and business information. Wells Fargo also objects on grounds that
22 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
23 to the discovery of admissible evidence since each party had the right to close the subject
24 accounts at any time without any requirement that an explanation be provided. Subject to
25 and without waiving these objections, please refer to notices that have previously been
26 provided regarding closure of the subject accounts.
27
28

INTERROGATORY NO. 2:

Please describe your risk assessment processes or analysis and the results thereto concerning your decision to close the accounts referenced in Interrogatory No. 1.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

INTERROGATORY NO. 3:

Please identify the name, title, and address of all persons who made the decisions to close the accounts referenced in Interrogatory No. 1.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this ~~interrogatory improperly seeks privileged and confidential bank supervisory information and~~ confidential proprietary and business information. Wells Fargo also objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

INTERROGATORY NO. 4:

On October 6, 2011, why did Arash Dounel, who is a banker and brokerage associate at Wells Fargo, state to Michael Kaplan that Lisa Johnson "must have some type of criminal background" or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 3.

INTERROGATORY NO. 5:

On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Mr. Kaplan "should hire a private investigator to check to check up on" Lisa Johnson or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this ~~interrogatory assumes facts not in evidence and improperly seeks confidential information~~ pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 4.

INTERROGATORY NO. 6:

On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Lisa Johnson "must have arrest warrants outstanding" or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 5.

INTERROGATORY NO. 7:

On November 8, 2011, why did a Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative named Sheila state that Michael Kaplan was not eligible to open an account at Wells Fargo or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and is vague and ambiguous. Wells Fargo also objects on grounds that whether or not Mr. Kaplan is or was eligible to open an account is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 6.

1 INTERROGATORY NO. 8:

2 Please state why a Wells Fargo representative named Chad Maze sent an e-mail to
3 Michael Kaplan stating that if Mr. Kaplan wanted to open an account with Wells Fargo, "the
4 account would not be accepted if Lisa [Johnson] was associated with it. Of course you could
5 open an account in your name, or the name of your trust, but including Lisa could not be one
6 of the options." For reference purposes, please see Lisa J. 0048.

7 ANSWER:

8 In addition to the general objections, Wells Fargo objects on grounds that this
9 interrogatory improperly seeks privileged and confidential bank supervisory information and
10 confidential proprietary and business information. Wells Fargo also objects on grounds that
11 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
12 to the discovery of admissible evidence. Subject to and without waiving these objections,
13 please refer to notices that have previously been provided regarding closure of the subject
14 accounts.

15 INTERROGATORY NO. 9:

16 Please explain in full detail the steps that Wells Fargo took to perform "ongoing
17 reviews of its account relationships in connection with the Bank's responsibilities to oversee
18 and manage risks in its banking operations" concerning the closure of the accounts
19 referenced in Interrogatory No. 1, as referenced in Lisa J. 006 to Lisa J. 009.

20 ANSWER:

21 In addition to the general objections, Wells Fargo objects on grounds that this
22 interrogatory improperly seeks privileged and confidential bank supervisory information and
23 confidential proprietary and business information. Wells Fargo also objects on grounds that
24 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
25
26
27
28

1 to the discovery of admissible evidence. Subject to and without waiving these objections,
2 please refer to notices that have previously been provided regarding closure of the subject
3 accounts.

4 **INTERROGATORY NO. 10:**

5 Please explain in full detail the "red flags" that were on the Wells Fargo accounts
6 associated with Lisa Johnson and/or Michael Kaplan referenced in Interrogatory No. 1. For
7 reference purposes regarding the term "red flag," please see Lisa J. 0014.

8 **ANSWER:**

9
10 In addition to the general objections, Wells Fargo objects on grounds that this
11 interrogatory improperly seeks privileged and confidential bank supervisory information and
12 confidential proprietary and business information. Wells Fargo also objects on grounds that
13 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
14 to the discovery of admissible evidence. Subject to and without waiving these objections,
15 please refer to notices that have previously been provided regarding closure of the subject
16 accounts.

17 **INTERROGATORY NO. 11:**

18 Why did you make "a business decision not to support any relationship with Lisa
19 [Johnson]"? For reference purposes, please see Lisa J. 0039.

20 **ANSWER:**

21
22 In addition to the general objections, Wells Fargo objects on grounds that this
23 interrogatory improperly seeks privileged and confidential bank supervisory information and
24 confidential proprietary and business information. Wells Fargo also objects on grounds that
25 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
26 to the discovery of admissible evidence. Subject to and without waiving these objections,
27
28

1 please refer to notices that have previously been provided regarding closure of the subject
2 accounts.

3 **INTERROGATORY NO. 12:**

4 Please explain in full detail the contents of "the apology that [Arash Dounel has]
5 given [Michael Kaplan] thus far verbally" regarding Wells Fargo's closure of the accounts
6 referenced in Interrogatory No. 1. For reference purposes, please see Lisa J. 0045.
7

8 **ANSWER:**

9 In addition to the general objections, Wells Fargo objects on grounds that this
10 interrogatory assumes facts not in evidence, is duplicative, redundant, and is irrelevant and
11 not reasonably calculated to lead to the discovery of admissible evidence. Wells Fargo also
12 objects on grounds that this interrogatory pertains to alleged confidential communications
13 pertaining to a non-party customer. Please also refer to the response to Request for
14 Admission No. 8.
15

16 **INTERROGATORY NO. 13:**

17 Is Arash Dounel currently employed by you? If yes, please state the location(s) where
18 Mr. Dounel is employed and his current employment capacity, including job title and duties.
19

20 **ANSWER:**

21 ~~Subject to and without waiving the general objections, Wells Fargo objects on~~
22 grounds that this interrogatory seeks information that is irrelevant and not reasonably
23 calculated to lead to the discovery of admissible evidence. Subject to and without waiving
24 these objections, Mr. Dounel is currently employed by Wells Fargo in Encino, California.
25 Wells Fargo maintains an attorney-client privilege with respect to Mr. Dounel and Plaintiff,
26 Plaintiff's counsel, and Mr. Kaplan (who appears to be represented by Plaintiff's counsel
27 in this matter), may not have communications with Mr. Dounel without the express written
28

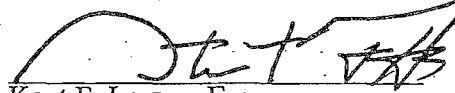
SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

consent of Wells Fargo and its legal counsel.

DATED this 2 day of August, 2012

SMITH LARSEN & WIXOM




Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.
Nevada Bar No. 5635
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 252-5002
Fax: (702) 252-5006
Attorneys for Defendants
Wells Fargo Bank, N.A.

**VERIFICATION OF DEFENDANT WELLS FARGO BANK, N.A.'S
ANSWERS TO PLAINTIFF'S AMENDED FIRST SET OF INTERROGATORIES**

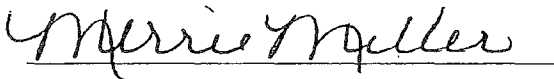
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Raelynn Stockman, being first duly sworn, deposes and states that I am a Vice President and Regional Services Manager with Wells Fargo Bank, N.A. The foregoing Answers contain the phraseology of counsel, and since the interrogatories are directed to a corporation, these Answers to Interrogatories do not constitute, nor are the same derived from, the personal knowledge of any single individual, and they include record information, knowledge obtained that cannot be attributed to specific individuals, recollections of employees and former employees, and my own personal general knowledge. I have read the foregoing Answers, and, to the best of my knowledge, I am informed and believe the same to be true.

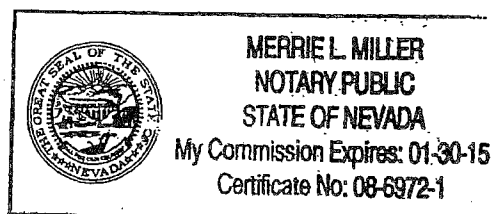

Raelynn Stockman

SUBSCRIBED AND SWORN to before me

this 2nd day of August, 2012.



Notary Public

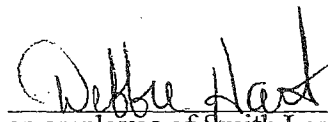


AA000085

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on August 2, 2012 a true copy of the foregoing
Defendant Wells Fargo Bank N.A.'s Answers to Plaintiff's Amended First Set of
Interrogatories was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff



an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 10

ORIGINAL

RESP

Kent F. Larsen, Esq.

Nevada Bar No. 3463

Stewart C. Fitts, Esq.

Nevada Bar No. 5635

SMITH LARSEN & WIXOM

Hills Center Business Park

1935 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

Email: kfl@slwlaw.com

scf@slwlaw.com

Attorneys for Defendants

Wells Fargo Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,)

CASE NO: A-12-655393-C

Plaintiff,)

DEPT: XXVI

v.)

WELLS FARGO BANK, NATIONAL)

WELLS FARGO BANK, N.A.'S

ASSOCIATION; DOES 1 through X,)

RESPONSES TO PLAINTIFF'S FIRST

inclusive; and ROE CORPORATIONS,)

SET OF REQUEST FOR ADMISSIONS

1 through X, inclusive)

Defendants.)

Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of record, Smith Larsen & Wixom, hereby answers and responds to Plaintiff's request for admissions as follows:

SUPPLEMENTAL NRCP 16.1 DISCLOSURES

These disclosures are supplemental to the disclosures made in conjunction with the early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the

1 right to make additional supplemental disclosures.

2 **GENERAL OBJECTIONS**

3 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
4 discovery requests, and the discovery requests themselves, to the extent they seek to require
5 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
6 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
7 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
8 requests to the extent they seek the disclosure or production of information protected by the
9 attorney-client privilege, the work-product doctrine, any other applicable privilege or
10 doctrine, the disclosure of trade secrets, or other confidential research, development, or
11 commercial information that can be discovered, if at all, only through the entry of a
12 protective order. Wells Fargo objects to preparing a privilege log for the documents or files
13 of any in-house or outside counsel, including documents or files prepared at the direction of
14 in-house or outside counsel in anticipation of litigation as this is beyond the scope of
15 ordinary practice in this Court. With respect to other privileged documents, if any, Wells
16 Fargo will comply with the requirements of this Court in terms of preparing any required
17 privilege log. These general objections are incorporated into each response herein.
18
19
20

21 **RESPONSES**

22 **REQUEST NO. 1:**

23 Please admit that, on October 6, 2011, Arash Dounel was an employee of Wells
24 Fargo.

25 **RESPONSE:**

26 Subject to and without waiving the general objections, Wells Fargo responds: admit.
27
28

REQUEST NO. 2:

Please admit that, on October 6, 2011, Arash Dounel had a conversation with Michael Kaplan while he was working at a Wells Fargo bank in California.

RESPONSE:

Subject to and without waiving the general objections, Wells Fargo is without sufficient information to admit or deny this request.

REQUEST NO. 3:

Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that Lisa Johnson "must have some type of criminal background."

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).

The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications." *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit" or "legal

concessions." *Id.* The request herein is improper because it pertains to factual allegations that are central to the lawsuit and which are subject to qualifications, and the request also seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is without sufficient information to admit or deny this request.

REQUEST NO. 4:

Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that

1 Mr. Kaplan "should hire a private investigator to check up on" Lisa Johnson.

2 **RESPONSE:**

3 In addition to the general objections, Wells Fargo objects on grounds that this request
4 seeks information regarding the scope and content of confidential communications with a
5 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
6 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
7 well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
8 The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and
9 which the adverse party can admit cleanly, without qualifications." *Id.* A request is
10 improper where it seeks an admission regarding facts "central to the lawsuit" or "legal
11 concessions." *Id.* The request herein is improper because it pertains to factual allegations
12 that are central to the lawsuit and which are subject to qualifications, and the request also
13 seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is
14 without sufficient information to admit or deny this request.

15 **REQUEST NO. 5:**

16 Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that
17 Lisa Johnson "must have arrest warrants outstanding."

18 **RESPONSE:**

19 In addition to the general objections, Wells Fargo objects on grounds that this request
20 seeks information regarding the scope and content of confidential communications with a
21 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
22 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
23 well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
24 The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and
25
26
27
28

1 which the adverse party can admit cleanly, without qualifications.” *Id.* A request is
2 improper where it seeks an admission regarding facts “central to the lawsuit” or “legal
3 concessions.” *Id.* The request herein is improper because it pertains to factual allegations
4 that are central to the lawsuit and which are subject to qualifications, and the request also
5 seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is
6 without sufficient information to admit or deny this request.

7
8 **REQUEST NO. 6:**

9 Please admit that, on November 8, 2011, a Wells Fargo representative named Joceda
10 Freeman stated to Michael Kaplan that Mr. Kaplan was not eligible to open an account with
11 Wells Fargo.

12 **RESPONSE:**

13 In addition to the general objections, Wells Fargo objects on grounds that this request
14 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of
15 admissible evidence, and seeks information regarding the scope and content of confidential
16 communications with a non-party customer. Wells Fargo also objects on grounds that this
17 request seeks a legal conclusion, is vague and ambiguous, and “is too broad and involves
18 both factual issues as well as legal issues.” *See, Smith v. Emery*, 109 Nev. 737, 742, 856
19 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is “to obtain admission of facts which are
20
21

22 in no real dispute and which the adverse party can admit cleanly, without qualifications.”
23 *Id.* A request is improper where it seeks an admission regarding facts “central to the lawsuit”
24 or “legal concessions.” *Id.* The request herein is improper because it pertains to factual
25 allegations that are central to the lawsuit and which are subject to qualifications, and the
26 request also seeks legal concessions. Subject to and without waiving these objections, Wells
27 Fargo is without sufficient information to admit or deny this request.
28

REQUEST NO. 7:

Please admit that, on November 8, 2011, a Wells Fargo representative named Sheila stated to Joceda Freeman that Michael Kaplan was not eligible to open an account with Wells Fargo.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications." *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit" or "legal concessions." *Id.* The request herein is improper because it pertains to factual allegations that are central to the lawsuit and which are subject to qualifications, and the request also seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is without sufficient information to admit or deny this request.

REQUEST NO. 8:

Please admit that, in October 2011, Arash Dounel apologized to Michael Kaplan for comments that Mr. Dounel made to Mr. Kaplan on October 6, 2011.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information that is irrelevant, not reasonably calculated to lead to the discovery of

admissible evidence, and seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications." *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit" or "legal concessions." *Id.* The request herein is improper because it pertains to factual allegations that are central to the lawsuit and which are subject to qualifications, and the request also seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is without sufficient information to admit or deny this request.

REQUEST NO. 9:

Please admit that Arash Dounel stated to Michael Kaplan that Mr. Dounel would send a letter of apology to Mr. Kaplan for Mr. Dounel's comments to Mr. Kaplan regarding Lisa Johnson made on October 6, 2011.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information that is irrelevant, not reasonably calculated to lead to the discovery of

admissible evidence, and seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications."

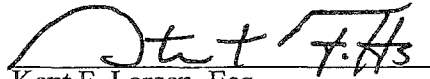
SMITH LARSEN & WIXOM

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1 *Id.* A request is improper where it seeks an admission regarding facts “central to the lawsuit”
2 or “legal concessions.” *Id.* The request herein is improper because it pertains to factual
3 allegations that are central to the lawsuit and which are subject to qualifications, and the
4 request also seeks legal concessions. Subject to and without waiving these objections, Wells
5 Fargo is without sufficient information to admit or deny this request.
6

7 DATED this 2 day of August, 2012

8 SMITH LARSEN & WIXOM

9 

10 Kent F. Larsen, Esq.

Nevada Bar No. 3463

11 Stewart C. Fitts, Esq.

Nevada Bar No. 5635

12 SMITH LARSEN & WIXOM

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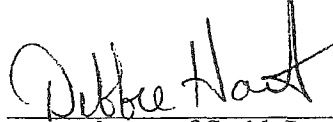
Attorneys for Defendants

16 Wells Fargo Bank, N.A.
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CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on August 2, 2012, a true copy of the foregoing
WELLS FARGO BANK, N.A.'S RESPONSES TO PLAINTIFF'S FIRST SET OF
REQUEST FOR ADMISSIONS was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff



an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 11

RESP

Kent F. Larsen, Esq.

Nevada Bar No. 3463

Stewart C. Fitts, Esq.

Nevada Bar No. 5635

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scf@slwlaw.com

Attorneys for Defendants

Wells Fargo Bank, N.A.

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,

Plaintiff,

v.

WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES 1 through X,
inclusive; and ROE CORPORATIONS,
1 through X, inclusive

Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

WELLS FARGO BANK, N.A.'S
RESPONSES TO PLAINTIFF'S
AMENDED FIRST SET OF REQUEST
FOR PRODUCTION OF DOCUMENTS

Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of record, Smith Larsen & Wixom, hereby answers and responds to Plaintiff's request for production of documents as follows:

SUPPLEMENTAL NRCP 16.1 DISCLOSURES

These disclosures are supplemental to the disclosures made in conjunction with the early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the

1 right to make additional supplemental disclosures.

2 **GENERAL OBJECTIONS**

3 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
4 discovery requests, and the discovery requests themselves, to the extent they seek to require
5 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
6 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
7 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
8 requests to the extent they seek the disclosure or production of information protected by the
9 attorney-client privilege, the work-product doctrine, any other applicable privilege or
10 doctrine, the disclosure of trade secrets, or other confidential research, development, or
11 commercial information that can be discovered, if at all, only through the entry of a
12 protective order. Wells Fargo objects to preparing a privilege log for the documents or files
13 of any in-house or outside counsel, including documents or files prepared at the direction of
14 in-house or outside counsel in anticipation of litigation as this is beyond the scope of
15 ordinary practice in this Court. With respect to other privileged documents, if any, Wells
16 Fargo will comply with the requirements of this Court in terms of preparing any required
17 privilege log. These general objections are incorporated into each response herein.
18
19
20

21 **RESPONSES**

22 **REQUEST NO. 1:**

23 Please provide the letter referenced by Arash Dounel in an e-mail to Michael Kaplan
24 dated December 1, 2011, in which Mr. Dounel wrote, "I regret to inform you that I have sent
25 the letter to my management and our legal department cannot allow me to send an official
26 letter of apology." For references purposes, please see Lisa J. 0045.
27
28

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and information that protected by the attorney-client privilege and the attorney work-product doctrine. Wells Fargo also objects on grounds that this request seeks privileged and confidential bank supervisory material and confidential business and proprietary information. Further, Wells Fargo objects on grounds that this request seeks information that is duplicative, redundant, assumes facts not in evidence, and is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, and after conducting a reasonable review of available information, Wells Fargo states that it has not been able to locate any document within the scope of this request. Wells Fargo reserves the right to supplement this response as discovery continues.

REQUEST NO. 2:

Please provide all documents concerning your risk assessment processes or analysis for closing accounts such as those of Lisa Johnson and Michael Kaplan.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request ~~improperly seeks privileged and confidential bank supervisory information and confidential~~ proprietary and business information. Wells Fargo also objects on grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

REQUEST NO. 3:

Please provide all documents concerning your decision to close the following Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account no. [REDACTED], (2) Guitarfile, LLC, account no. [REDACTED], and (3) account of Michael Kaplan and Lisa Johnson, account no. [REDACTED].

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

REQUEST NO. 4:

Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have some type of criminal background" or words to that effect.

RESPONSE:

In addition to the general objections, Wells Fargo also objects on grounds that this request assumes facts not in evidence. Wells Fargo also objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 3.

REQUEST NO. 5:

Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Mr. Kaplan "should hire a private investigator to check to check up on" Lisa Johnson or words to that effect.

RESPONSE:

In addition to the general objections, Wells Fargo also objects on grounds that this request assumes facts not in evidence. Wells Fargo also objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 4.

REQUEST NO. 6:

Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have arrest warrants outstanding" or words to that effect.

RESPONSE:

In addition to the general objections, Wells Fargo also objects on grounds that this request assumes facts not in evidence. Wells Fargo also objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 5.

REQUEST NO. 7:

Please provide all documents concerning the basis or bases for the statements by a Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative named Sheila that Michael Kaplan was not eligible to open an account at Wells Fargo on

1 November 8, 2011.

2 **RESPONSE:**

3 In addition to the general objections, Wells Fargo objects on grounds that this request
4 assumes facts not in evidence and is vague and ambiguous. Wells Fargo also objects on
5 grounds that this request improperly seeks privileged and confidential bank supervisory
6 information and confidential proprietary and business information. Wells Fargo also objects
7 on grounds that whether or not Mr. Kaplan is or was eligible to open an account is irrelevant
8 and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and
9 without waiving these objections, please refer to the response to Request for Admission No.
10
11 6.

12 **REQUEST NO. 8:**

13 Please provide all documents concerning the basis or bases for Chad Maze's
14 statement to Michael Kaplan that if Mr. Kaplan wanted to open an account with Wells Fargo,
15 "the account would not be accepted if Lisa [Johnson] was associated with it. Of course you
16 could open an account in your name, or the name of your trust, but including Lisa could not
17 be one of the options." For reference purposes, please see Lisa J. 0048.

18 **RESPONSE:**

19
20
21 ~~In addition to the general objections, Wells Fargo also objects on grounds that this~~
22 request improperly seeks privileged and confidential bank supervisory information and
23 confidential proprietary and business information. Wells Fargo also objects on grounds that
24 this request seeks information that is irrelevant and not reasonably calculated to lead to the
25 discovery of admissible evidence since each party had the right to close the subject accounts
26 at any time without any requirement that an explanation be provided. Subject to and without
27 waiving these objections, please refer to notices that have previously been provided regarding
28

1 closure of the subject accounts.

2 **REQUEST NO. 9:**

3 Please provide all documents concerning the "red flags" that were on the Wells Fargo
4 accounts associated with Lisa Johnson and/or Michael Kaplan. For reference purposes
5 regarding the term "red flags," please see Lisa J. 0014.
6

7 **RESPONSE:**

8 In addition to the general objections, Wells Fargo objects on grounds that this request
9 seeks improperly seeks privileged and confidential bank supervisory information and
10 confidential proprietary and business information. Wells Fargo also objects on grounds that
11 this request seeks information that is irrelevant and not reasonably calculated to lead to the
12 discovery of admissible evidence since each party had the right to close the subject accounts
13 at any time without any requirement that an explanation be provided. Subject to and without
14 waiving these objections, please refer to notices that have previously been provided regarding
15 closure of the subject accounts.
16

17 **REQUEST NO. 10:**

18 Please provide all documents concerning the "ongoing reviews of [your] account"
19 relationships in connection with the Bank's responsibilities to oversee and manage risks in
20 its banking operations" as relating to the accounts referenced in Request No. 1 For reference
21 purposes, please see Lisa J. 006 to Lisa J. 008.

22 **RESPONSE:**

23 In addition to the general objections, Wells Fargo objects on grounds that this request
24 seeks improperly seeks privileged and confidential bank supervisory information and
25 confidential proprietary and business information. Wells Fargo also objects on grounds that
26 this request seeks information that is irrelevant and not reasonably calculated to lead to the
27
28

SMITH LARSEN & WIXOM

ATTORNEYS

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LAS VEGAS, NEVADA 89134

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discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

DATED this 2 day of August, 2012

SMITH LARSEN & WIXOM



Kent F. Larsen, Esq.

Nevada Bar No. 3463

Stewart C. Fitts, Esq.

Nevada Bar No. 5635

SMITH LARSEN & WIXOM

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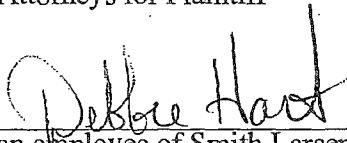
Attorneys for Defendants

Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on the 2 day of August, 2012, a true copy of the foregoing WELLS FARGO BANK, N.A.'S RESPONSES TO PLAINTIFF'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff


an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

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Attorneys for Defendant
Wells Fargo Bank, N.A.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,)	CASE NO: A-12-655393-C
	)	DEPT: XXVI
Plaintiff,)	
	)	WELLS FARGO BANK'S
v.	)	OPPOSITION TO PLAINTIFF'S
	)	MOTION TO COMPEL
WELLS FARGO BANK, NATIONAL	)	AND
ASSOCIATION; DOES 1 through X,	)	WELLS FARGO BANK'S
inclusive; and ROE CORPORATIONS,	)	COUNTERMOTION FOR
1 through X, inclusive	)	PROTECTIVE ORDER
)	
Defendants.	)	Date: October 5, 2012
	)	Time: 9:00 a.m.

Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of record, Smith Larsen & Wixom, hereby files its opposition to Plaintiff's motion to compel and its counter motion for a protective order prohibiting discovery regarding why Wells Fargo exercised its legal right to no longer maintain a banking relationship with Plaintiff. This motion is based on the

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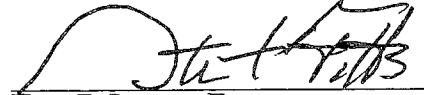
SMITH LARSEN & WIXOM

A T T O R N E Y S
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

1 following Memorandum of Points and Authorities, Affidavits, Exhibits, and any argument the Court
2 may entertain at the hearing on this matter.

3 DATED this 26th day of September, 2012.

4 SMITH LARSEN & WIXOM

5 

6 Kent F. Larsen, Esq.
7 Nevada Bar No. 3463
8 Stewart C. Fitts, Esq.
9 Nevada Bar No. 5635
10 Hills Center Business Park
11 1935 Village Center Circle
12 Las Vegas, Nevada 89134
13 Attorneys for Defendant
14 Wells Fargo Bank, N.A.
15
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18
19
20

AFFIDAVIT IN SUPPORT OF
COUNTERMOTION FOR PROTECTIVE ORDER

STATE OF NEVADA }
COUNTY OF CLARK } ss

Stewart C. Fitts, being first duly sworn, deposes and says:

1. I am an attorney with the law firm of Smith Larsen & Wixom, counsel of record for Defendant Wells Fargo Bank, N.A. (herein, "Wells Fargo") in this matter and am licensed to practice before the courts of the State of Nevada.

2. I make this affidavit based upon personal knowledge of the facts contained herein, save and except those items set forth on information and belief.

3. On or about August 2, 2012, Wells Fargo served answers and/or responses to Plaintiff's Interrogatories, Plaintiff's Requests for Production of Documents, and Plaintiff's Requests for Admissions.

4. Wells Fargo was not able to admit or deny several Requests for Admissions since they allegedly pertained to comments made by a Wells Fargo employee who is on a certified medical leave of absence.

5. Wells Fargo was not in a position to disclose certain information requested in Plaintiff's Interrogatories and Requests for Production of Documents because they pertained to numerous privileges as set forth in Wells Fargo's Opposition and Countermotion, which is attached hereto.

6. On or about August 17, 2012, the undersigned spoke with Plaintiff's counsel, Tim Koval, and explained the aforementioned information. The undersigned indicated that he would explore whether additional information could be provided without compromising HIPPA regulations, federal regulations, or other privilege laws. The undersigned stated that he would communicate with Mr. Koval on or about August 29, 2012 after a client contact for the undersigned would be back in the office.

7. Mr. Koval subsequently sent an email to the undersigned stating that his client would file a motion to compel on August 30, 2012.

8. The undersigned was unable to speak to his client contact until after August 29, 2012 and requested that Plaintiff not file its motion until after communication could be effectuated.

1 9. Despite the aforementioned, Plaintiff filed the motion on or about August 31, 2012.

2 10. Thereafter, the undersigned was able to contact his client contact regarding the
3 various issues set forth in Plaintiff's Motion and Countermotion. The undersigned also
4 communicated with federal agencies regarding compliance with federal regulations with respect to
5 the numerous issues set forth in Wells Fargo's countermotion. These communications continued
6 through September 18, 2012 when Wells Fargo served its supplemental discovery responses.

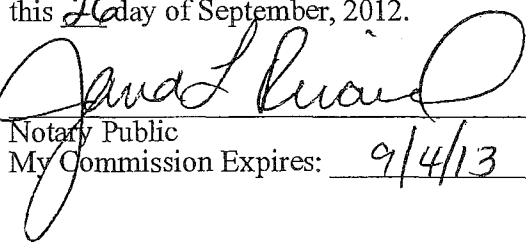
7 12. On or about September 17, 2012, the undersigned spoke with Mr. Koval regarding
8 a deposition which Plaintiff's counsel noticed for the person most knowledgeable at Wells Fargo
9 regarding why Wells Fargo decided to end its banking relationship with Plaintiff.

10 13. The undersigned explained that the deposition was improper because the District
11 Court had not yet ruled on Plaintiff's declaratory relief claim which requested the disclosure of the
12 same information that was identified in the deposition notice. The undersigned requested that a
13 ruling be obtained on the declaratory relief claim before Plaintiff attempted to obtain the same
14 information via a deposition.

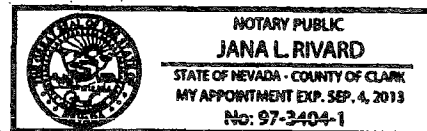
15 14. The undersigned stated that Wells Fargo would be compelled to file a motion for a
16 protective order if Plaintiff continued to demand discovery of the requested information before the
17 District Court entered a ruling regarding whether or not Plaintiff had a legal right to this information.
18 Plaintiff's counsel refused to follow this procedural course. Accordingly, Wells Fargo has been
19 compelled to file its countermotion for a protective order.

20 
Stewart C. Fitts

21 SUBSCRIBED and SWORN to before me
22 this 26 day of September, 2012.

23 
24 Notary Public

25 My Commission Expires: 9/4/13



MEMORANDUM OF POINTS AND AUTHORITIES

A. COUNTERMOTION FOR PROTECTIVE ORDER

This action pertains to Plaintiff's improper attempt to obtain confidential and privileged information regarding why Wells Fargo exercised its legal prerogative to no longer maintain a banking relationship with Plaintiff. (See, Plaintiff's Complaint, pp. 5-6.) Specifically, Plaintiff's third claim for relief seeks a declaration from the District Court Judge that would improperly require Wells Fargo to disclose this information. (*Id.*) Plaintiff's claim has no legal merit because, among other reasons, the relationship between a bank and its customers is "at will" and may be terminated at the discretion of either party. *Kiley v. First National Bank of Maryland*, 102 Md. App. 317, 329-330, 648 A.2d 1145 (Md. App, 1994), citing, *Groos National Bank v. Comptroller of Currency*, 573 F.2d 889, 897 (5th Circuit 1978).

Nevertheless, and without first obtaining the required declaration from the District Court Judge, Plaintiff has served a deposition notice and discovery requests which improperly seek the subject information from Wells Fargo. (See, Plaintiff's Notice of Taking NRCP 30(b)(6) Witness Deposition, attached as Exhibit A; Wells Fargo's Answers to Plaintiff's Interrogatories Nos. 1-12, attached as Exhibit B; Wells Fargo's Supplemental Answers to Plaintiff's Interrogatories, attached as Exhibit C; Wells Fargo's Responses to Plaintiff's Requests for Production of Documents Nos. 1-10, attached as Exhibit D; Wells Fargo's Supplemental Responses to Requests for Production of Documents, Nos. 1-10, attached as Exhibit E.)

Wells Fargo's countermotion to prohibit this discovery must be granted because:

1. Plaintiff's attempt to obtain the subject information under the guise of a discovery motion is an improper attempt to undermine the exclusive power of the District Court Judge to rule on Plaintiff's declaratory relief claim.
2. Plaintiff has no legal right to information regarding why Wells Fargo exercised its legal right to no longer maintain a banking relationship with Plaintiff.
3. The information falls within the strict confidentiality provisions of section 5318(g) of the Bank Secrecy Act (31 U.S.C. 5318(g)) and related federal regulations.
4. The discovery seeks confidential proprietary information regarding an ongoing investigation.

- 1 5. The broad scope of the requested discovery encompasses the confidential banking
2 information of non-party bank customers.

3 **1. Plaintiff's Discovery Tactic Is An Improper Attempt To Circumvent**
4 **The Exclusive Powers Of The District Court Judge**

5 Wells Fargo's countermotion must be granted because Plaintiff's discovery tactic is an
6 improper attempt to circumvent the District Court Judge's exclusive authority to determine whether
7 or not Plaintiff is entitled to know why Wells Fargo ended the banking relationship. *See*, EDCR
8 7.10(a).

9 Under EDCR 7.10(a), the District Court Judge has the exclusive authority to rule on
10 substantive claims that have been assigned to her Department. Here, Plaintiff's third claim for relief
11 seeks a declaratory judgment from the District Court Judge regarding whether or not Plaintiff is
12 entitled to know why Wells Fargo exercised its legal right to no longer maintain a banking
13 relationship with Plaintiff. (Plaintiff's Complaint, pp. 5-6.) Yet, in a manner that contradicts her
14 own complaint, Plaintiff now seeks to obtain this very information without first obtaining a ruling
15 on this substantive claim. (*Id.*)

16 Plaintiff obviously realizes that she may not obtain this information without a declaratory
17 judgment. Nevertheless, Plaintiff now attempts to circumvent the exclusive powers of the District
18 Court Judge. This improper tactic must be rejected. *Id.* Accordingly, Wells Fargo's countermotion
19 must be granted. *Id.*

20 **2. Plaintiff Has No Legal Right To Information Why Wells Fargo Exercised**
21 **Its Right To No Longer Maintain A Banking Relationship With Plaintiff**

22 Wells Fargo's countermotion must be granted because its banking relationship with Plaintiff
23 Wells Fargo was "at will" and could be terminated at the discretion of either party. *Kiley v. First*
24 *National Bank of Maryland*, 102 Md. App. at 329-330, 648 A.2d 1145, 1150-51; *Groos National*
25 *Bank v. Comptroller of Currency*, 573 F.2d at 897; *Elliott v. Capital City State Bank*, 128 Iowa 275,
26 103 N.W. 777, 778 (1905); *Chicago Marine & Fire Ins. Co. v. Stanford*, 28 Ill. 168, 173 (1862);
27 5(A) *Michie on Banks & Banking*, Ch. 9, § 9 at 55 (1994). Specifically:

28 [T]he relationship between a bank and its customer ordinarily exists
 "at will" and may be terminated by either party at any time.

1 *Kiley v. First National Bank of Maryland*, 102 Md. App. at 329-330, 648 A.2d 1150-51. (Emphasis
added.)

2 [Plaintiff] cannot claim a constitutionally protected right to do business with
3 a particular bank. It is well established at common law that a bank may
4 decline or terminate a deposit relationship.

5 *Groos National Bank v. Comptroller of Currency*, 573 F.2d at 897 (Emphasis added.)

6 [A bank] may receive a general deposit today, and tomorrow, for
7 reasons of its own, it may return the amount deposited, and refuse
8 ... to transact business further with such depositor.

9 *Elliott v. Capital City State Bank*, 103 N.W. at 778 (Emphasis added.)

10 If the banker finds the depositor a troublesome customer, so that the
11 account is not a desirable one, he may tender the full amount of the
12 deposit, and refuse to receive more, and thus close the account.

13 *Chicago Marine & Fire Ins. Co. v. Stanford*, 28 Ill. at 173 (Emphasis added.)

14 [T]he relationship of a banker and depositor may be terminated by
15 the act of either or both parties.

16 Thus, Wells Fargo had the right to terminate the "at will" banking relationship "at any time."

17 *Id.* Wells Fargo had the legal right to "decline" to do business with Plaintiff "for reasons of its
18 own." *Id.* Accordingly, Plaintiff has no legal right to know the reasons why Wells Fargo exercised
19 this well-established right. *Id.*

20 It is anticipated that Plaintiff may attempt to incorrectly argue that she is entitled to know the
21 reasons why Wells Fargo terminated the banking relationship under the guise that it is relevant to
22 her defamation claim. (Plaintiff's Complaint, pp. 4-5.) In this regard, Plaintiff alleges that her
23 boyfriend went into a Wells Fargo branch and asked an employee why the subject accounts were
24 closed. (*Id.*, p.2.) Plaintiff alleges that the Wells Fargo employee responded that he "could not see

25 any reason" why the accounts were closed. (*Id.*) Plaintiff then alleges that, after her boyfriend (who
26 is an attorney) pressed the employee for a further response, the employee allegedly made comments
27 "suggesting" that the accounts were closed due to criminal activity. (*Id.*) Plaintiff's anticipated
28 discovery tactic is misplaced and incorrect.

First, as Plaintiff's complaint tacitly acknowledges, Wells Fargo's employee did not know
the reason(s) why Wells Fargo decided to end the banking relationship with Plaintiff. (*Id.*) This is
because those reason(s) are kept confidential among certain personnel of Wells Fargo. Thus, the

1 alleged comments (if any) of a Wells Fargo's employee were not based on the reason(s) why Wells
2 Fargo decided to end the banking relationship because the employee did not know this/these
3 reason(s). (*Id.*) Accordingly, the confidential reason(s) why Wells Fargo decided to end the banking
4 relationship are not discoverable. *Id.*; NRCP 26(c).

5 Second, it is well-established that it is a defendant's prerogative to determine what
6 information, if any, that it wishes to "put in issue" regarding its defense to a defamation claim. *See,*
7 *e.g., Pierson v. Robert Griffin Investigations, Inc.*, 92 Nev. 605, 607, 555 P.2d 843, 844 (1976); 50
8 Am.Jur.2d, Libel and Slander § 249. The "defense of truth" is reserved for a defendant in a
9 defamation action. *Id.* In this regard, it is not a plaintiff's prerogative to force a defendant to utilize
10 certain information in support of that defendant's defense. *Id.* Rather, this is the prerogative of the
11 defendant. *Id.* Thus, any attempt by Plaintiff and/or her boyfriend to concoct a defamation claim
12 as part of an improper attempt to obtain confidential banking information is without legal merit. *Id.*
13 Accordingly, Wells Fargo's countermotion should be granted. *Id.*

14 3. The Bank Secrecy Act Bars Plaintiff's Improper Discovery Tactic

15 Wells Fargo's countermotion must also be granted under certain confidentiality provisions
16 of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*).

17 As a result of the tragic events of September 11, 2001, and the subsequent financial crisis of
18 2008-2009, there has been heightened scrutiny of financial markets by the federal government and
19 federally-regulated financial institutions. In the United States, law enforcement and regulatory
20 agencies have confidential tools at their disposal to identify and protect the public against financial
21 crimes and international terrorism, including obtaining information from banks concerning unusual
22 and/or suspicious activities. *See, e.g.,* 31 U.S.C. 5311; *Federal Register*, Vol. 75, No. 232, pp.
23 75593-94, dated December 3, 2010.

24 These confidential investigative tools are protected under the Bank Secrecy Act (31 U.S.C.
25 5311 *et seq.*)¹ and related regulations promulgated by the Office of the Comptroller of the Currency
26

27 1
28 The Bank Secrecy Act was enacted in 1970 and has been amended several times, most notably by
the Annunzio-Wylie Anti-Money Laundering Act of 1992 and the U.S. Patriot Act of 2001. Consequently,

1 (“OCC”) and the Financial Crimes Enforcement Network (“FinCEN”).² *See*, 31 U.S.C. 5318(g);
2 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e).

3 Under the Bank Secrecy Act, banks (like Wells Fargo) are required to report “any suspicious
4 transaction relevant to a possible violation of law or regulation.” 31 U.S.C. 5318(g)(1). This report
5 is commonly referred to as a Suspicious Activity Report or “SAR.” *Id.* In particular, a bank must
6 file such a report to the OCC and FinCEN when the bank:

7 knows, suspects, or has reason to suspect ... [a] transaction has no
8 business or apparent lawful purpose or is not the sort in which the
9 particular customer would normally be expected to engage, and the
10 bank knows of no reasonable explanation for the transaction after
examining available facts, including the background and purpose of
the transaction.

11 31 C.F.R. 1020.320(a)(2)(iii).

12 These reports have been deemed highly useful in criminal investigations since they are made
13 available to federal, state, and local law enforcement. *See*, 31 U.S.C. 310(b)(2)(B); 31 U.S.C. 5311;
14 31 C.F.R. 1010.301. Given that they are statements of suspicion, however, and not evaluated or
15 verified by a third party before being filed, the reports are primarily useful as generators of leads to
16 be investigated, not as evidence of actual events. *See, Id.* As such, banks are provided immunity
17 from lawsuits in connection with complying with these provisions of the Bank Secrecy Act. *See*, 31
18 U.S.C. 5318(g)(3).

19 Because of their highly confidential nature, the Bank Secrecy Act prohibits a bank from
20 disclosing whether or not a report has been filed. Specifically, a bank:

21 [M]ay not notify any person involved in the transaction that the
22 transaction has been reported.

23 31 U.S.C. 5318(g)(2)(A)(I). (Emphasis added.)
24

25 _____
26 the provisions of 31 U.S.C. 5311 *et seq.* are sometimes alternatively referenced under the different names
of these three Congressional Acts.

27 2

28 The OCC and FinCEN are agencies within the United States Department of Treasury. *See*, 12
C.F.R. 21.11; 31 C.F.R. 1020.320.

Obviously, part of the purpose of the Bank Secrecy Act is to prevent persons who may be involved in suspicious activity from being apprised of any report or related investigation. *Id.*

Accordingly, the Department of Treasury has set forth the following **prohibition**:

No bank ... shall disclose a SAR or any information that would reveal the existence of a SAR. **Any bank ... that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and U.S.C. 5318(g)(2)(A)(I), and shall notify FinCEN of any such request and the response thereto.**

31 C.F.R. 1020.320(e)(1)(I); *see also*, 12 C.F.R. 21.11(k)(1)(I). (Emphasis added.)

This prohibition encompasses all drafts, internal memorandum, and other processes prepared and/or implemented by a bank in connection with fulfilling the requirements of the Bank Secrecy Act. *In re Mezvinsky*, 2000 WL 33950697 (Bkrtcy. E.D.Pa. 2000) (discovery of suspicious activity reports and related documents **prohibited** by federal regulations promulgated under the Bank Secrecy Act). This is because such drafts, internal memorandum, and the procedures and processes prepared and/or implemented by a bank “may reveal the contents” of a suspicious activity report and/or disclose whether such a report “has been prepared or filed.” *Union Bank of California, N.A. v. Superior Court*, 130 Cal. App. 4th 378, 391, 398, (Cal. App. 2005).

Thus, **internal documents** that are “prepared as part of a financial institution’s process for complying with federal reporting requirements ... **fall within the scope of the SAR privilege** because they may reveal the contents of a SAR and disclose whether a SAR has been prepared or

filed.” *Id.* 130 Cal. App. 4th at 391. (Emphasis added.) Discovery of this information is prohibited **regardless** of whether or not a suspicious activity report was actually filed. *Id.*, 130 Cal. App. 4th at 397-98. Specifically:

The **SAR privilege protects** not just the SAR but also **the process** of preparing the SAR, a process that may from time to time not result in a filed SAR. If financial institutions knew that draft SAR’s or other similar preliminary documents were subject to discovery because no SAR was ultimately filed, they would be less willing to engage in the **process of investigating** and filing SAR’s.

Id. 130 Cal. App. 4th at 398. (Emphasis added.)

1 This privilege is intended to preserve the purposes of the Bank Secrecy Act (and the
2 amendments thereto as articulated in the Annunzio-Wylie Anti-Money Laundering Act). Indeed,
3 disclosure of this information would “undermine” the very purpose of the Bank Secrecy Act.
4 Specifically, disclosure of a bank’s internal documents and investigative methods “through civil
5 discovery” would:

6 harm the law enforcement interests of the [Annunzio-Wylie Anti-
7 Money Laundering] Act. Release of a SAR could compromise an
8 ongoing law enforcement investigation, tip off a criminal wishing to
9 evade detection, or reveal the methods by which banks are able to
10 detect suspicious activity.... These concerns are implicated not just by
11 the release of a SAR, but also by disclosure of preliminary reports....
12 Compelling the production of such [information] ... would
13 discourage financial institutions from filing SAR’s and could
14 undermine the cooperative effort between federal authorities and
15 financial institutions to combat money laundering, identify theft,
16 embezzlement, and fraud.

17 *Id.* 130 Cal. App. 4th at 392-93. (Emphasis added.)

18 Here, Plaintiff’s discovery requests seek the disclosure of the information that Wells Fargo
19 generated as part of its process of complying with the reporting requirements of the Bank Secrecy
20 Act. (Affidavit of Raelynn Stockman, attached hereto as Exhibit H.) Thus, in accordance with the
21 Bank Secrecy Act, a protective order must be entered: (1) prohibiting discovery of a suspicious
22 activity report, if any exists; (2) prohibiting discovery of the contents of a suspicious activity report,
23 if any exists; (3) prohibiting discovery regarding the issue of whether or not a suspicious activity
24 report was prepared and/or filed; and (4) prohibiting discovery regarding any or all drafts, internal
25 documents, and/or policies and procedures that Wells Fargo generated and/or implemented in

26 connection with the aforementioned provisions of the Bank Secrecy Act and the related Code of
27 Federal Regulations. *Id.*

28 Wells Fargo acknowledges that an *in camera* review of its documents may be required by the
District Court. Wells Fargo respectfully submits that if such a review is required, it should only be

1 conducted in the event that Plaintiff were to prevail on her claim for Declaratory Relief. *See*, EDCR
2 7.10(a).³

3 **4. The Requested Discovery Seeks Confidential and Proprietary**
4 **Information Regarding an Ongoing Investigation**

5 Wells Fargo also submits that its investigative materials and written risk analysis and
6 investigative procedures should be afforded protection because they constitute and/or would reveal
7 Wells Fargo's secret and confidential techniques, plans, tools and methods pertaining the
8 investigation of suspicious activities. *See*, NRCP 26(c)(7). Disclosure of this information would
9 frustrate and compromise Wells Fargo's attempt to protect its customers against fraudulent activity.
10 *Id.*

11 Under Nevada law, a corporation's confidential plans, techniques, and methods are entitled
12 to protection from disclosure. *See*, *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972). This is
13 especially true where those confidential plans, methods, and techniques are necessary to protect the
14 economic value of the corporation's enterprise. *See*, *Finkel v. Cashman Professional, Inc.* 270 P.3d
15 1259, 1263-64 (Nev. 2012.) This also applies to situations where the disclosure of this information
16 would frustrate and jeopardize the very purpose of the investigation. *Cf. Times Mirror Co., United*
17 *States*, 873 F.2d 1210, 1214 (9th Cir. 1989) (disclosure of investigative materials frustrate and
18 jeopardize the underlying purpose of the investigation.)

19 Again, Wells Fargo acknowledges that an *in camera* review of its documents may be required
20 in order to confirm that the subject information is entitled to protection under NRCP 26(c)(7).

21 ~~Wells Fargo respectfully submits that if such a review is required, it should only be conducted in the~~
22 ~~event that Plaintiff were to prevail on her claim for Declaratory Relief. *See*, EDCR 7.10(a).~~

23
24
25 ³

26 Due to the highly sensitive nature of the Bank Secrecy Act and strict prohibitions relating thereto,
27 Wells Fargo respectfully submits that a privilege log identifying the author, recipient, dates, and a summary
28 of the subject matter of documents in its possession may lead to the disclosure of prohibited information
under the Bank Secrecy Act. Accordingly, Wells Fargo respectfully seeks the Court's indulgence in this
regard, and will make the documents available for an *in camera* review in the event that the District Court
Judge were to enter a declaratory judgment stating that Plaintiff is entitled to know why Wells Fargo
exercised its right to discontinue its banking relationship with Plaintiff.

5. The Requested Documents Encompass Confidential Non-Party Customer Information

Aside from the aforementioned, Wells Fargo's countermotion must be granted to the extent that the requested information contains the identities of other bank customers and/or their account information. *See, e.g., Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652, 542 P.2d 977 (1975); 10 Am. Jur. 2d, *Banks and Financial Institutions*, § 642 (2007).

In *Valley Bank of Nevada v. Superior Court*, a state supreme court issued a writ of mandamus prohibiting a district court from requiring the disclosure of non-party bank customer information on grounds that the customer's information was private under the state constitution. 15 Cal. 3d at 555, 542 P.2d at 979 ("the bank customer's right of privacy ... is constitutionally founded."). Further, it is well-established that a bank has an implied contractual duty to keep customer information confidential. *See, e.g., 10 Am. Jur. 2d, Banks and Financial Institutions*, § 642 (2007); *Peterson v. Idaho First National Bank*, 83 Idaho 578, 588, 367 P.2d 284, 290 (1961); *Suburban Trust Company v. Waller*, 44 Md. App. 335, 408 A.2d 758 (1979). Specifically:

Bank depositors have the **right of secrecy** and a bank is under an implied obligation to keep secret its records of accounts, deposits, and withdrawals.

5 A. Michie, *Banks and Banking*, § 1 (1973) (Emphasis added.).

Federal law also requires a bank to protect the privacy of the personal financial information of their customers except where the customer consents or where a court orders the disclosure. *See, Gramm-Leach-Bliley Act*, § 501 *et seq.*, 15 U.S.C. § 6801 *et seq.*. This privacy protection applies even if the customer's information is otherwise available. *Id.*; *Individual Reference Services Group, Inc. v. F.T.C.*, 145 F.Supp.2d 6 (D.D.C. 2001). In enacting this federal law, Congress stated:

It is the policy of the Congress that each financial institution has an affirmative duty to respect the **privacy of its customers** and to protect the security and confidentiality of those customer's nonpublic personal information.

15 U.S.C. § 6801. (Emphasis added.)

1 Thus, in the event that the subject information were to be disclosed after the District Court
2 Judge rules on the Declaratory Relief claim, a protective order should be issued prohibiting discovery
3 of the confidential banking information of non-party customers. *Id.*

4 B. OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL

5 Aside from the issues addressed in Wells Fargo's counter-motion, the only remaining issues
6 pertaining to Plaintiff's motion are: (1) Wells Fargo's Responses to Plaintiff's Request for
7 Admissions Nos. 2-9; and (2) Wells Fargo's Answer to Plaintiff's Interrogatory No. 13. As set forth
8 below, Wells Fargo's responses, objections, and answer were proper and appropriate.

9 1. Wells Fargo's Appropriate Responses To Request For Admissions Nos 2-9

10 Wells Fargo properly objected, and responded, to Plaintiff's Request for Admissions Nos.
11 2-9. (Wells Fargo's Responses to Requests for Admissions, attached as Exhibit F; Wells Fargo's
12 Supplemental Responses to Requests for Admissions, attached hereto as Exhibit G.)

13 First, Wells Fargo properly responded that it was unable to admit or deny Requests Nos. 2-5
14 and 8-9 because each of them pertained to whether or not Wells Fargo's employee made alleged
15 comments to Plaintiff's boyfriend. (*Id.*) As confirmed to Plaintiff, this employee has been on
16 certified medical leave and is expected to remain so until early or mid-October, 2012. Accordingly,
17 Wells Fargo reserved the right to supplement its Responses after the employee returns from the leave
18 of absence. (*Id.*)

19 Second, Wells Fargo properly objected to Requests Nos. 2-9 on grounds that they violated
20 the purpose of NRCP 36. (*Id.*) The purpose of NRCP 36 is "to obtain admission of facts which are
21 in no real dispute and which the adverse party can admit cleanly, without qualifications." (*Id.*, citing,
22 *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).) Further, a request is improper
23 where it seeks an admission regarding facts that are "central to the lawsuit" or "legal conclusions."
24 (*Id.*)

25 Wells Fargo properly objected pursuant to the grounds set forth under *Smith v. Emery*.
26 Specifically, Wells Fargo objected on grounds that each of the Requests improperly sought to obtain
27
28

1 admissions regarding factual matters that are in “real dispute” and which pertain to facts that are
2 “central to the dispute and/or which sought to obtain a “legal conclusion.” (*Id.*)

3 Plaintiff’s opposition incorrectly seeks to interpret *Smith v. Emery* as permitting requests that
4 pertain to factual issues that are central to the lawsuit and which are in real dispute. (*See*, Plaintiff’s
5 Opposition, p. 13.) Plaintiff is wrong.

6 In *Smith v. Emery*, the court clearly held that certain requests were proper since they did not
7 pertain to any real disputed issue of fact. *Id.* For example, the *Smith v. Emery* court permitted the
8 following requests which merely asked the Defendant to confirm undisputed facts such as whether
9 the Defendant was the owner who installed the furnace that was at issue:

10 No. 1: Admit that the *Defendant was the owner/developer....*

11 No. 2: Admit that Defendant or his agents *installed the furnace....* which is the subject of this
12 action.

13

14 No. 5: Admit that *parts were missing* from the furnace...

15 No. 6: Admit that *no warning was provided*

16 *Id.*, 109 Nev. 738, 742, 856 P.2d at 1387, 1389.

17 Thus, these requests that were permissible because they did not pertain to any facts that were
18 in “real dispute.” *Id.*

19 In contrast, the *Smith v. Emery* court held that the following requests were improper and
20 objectionable because they pertained to factual issues that were in “real dispute”:

21 No. 3: Admit that *Defendant ... should have known* that the furnace systems was
22 *unreasonably dangerous.*

23 No. 4: Admit that *Defendant’s failure to inform ... caused ... harm..*

24 *Id.*

25 Similarly, in this case, Wells Fargo properly objected to Requests that are “central to the
26 lawsuit” and that are in “real dispute.” Specifically, Wells Fargo objected to each of the Requests
27 which sought admissions regarding the alleged comments that are in dispute and that are central to
28 Plaintiff’s defamation claims. (Wells Fargo’s Responses to Requests for Admissions, attached as

1 Exhibits F and G.) Accordingly, Wells Fargo's objections were proper and in accordance with the
2 purposes of NRCP 36. *Id.*

3 Third, Wells Fargo properly objected to Request for Admissions Nos. 6-7 because these
4 Requests improperly pertained to whether or not Plaintiff's boyfriend could open new bank accounts
5 at Wells Fargo. (*Id.*) Wells Fargo therefore made the additional objection that these Requests were
6 outside the scope of discovery because they did not relate to any claim or defense in this case. *Id.*

7 2. Wells Fargo's Proper Answer To Interrogatory No. 13.

8 Finally, Wells Fargo properly answered Interrogatory No. 13, which asked Wells Fargo to
9 provide certain information regarding the status of the employee who allegedly communicated with
10 Plaintiff's boyfriend. (Wells Fargo's Answers to Interrogatories, attached as Exhibit B.) Wells Fargo
11 initially answered based on information that was generally available. (*Id.*) Wells Fargo then
12 supplemented its answer based on updated information. (Exhibit C.) Wells Fargo is unaware of any
13 dispute regarding this supplemental answer.
14

15 C. REQUEST FOR ATTORNEYS FEES EXPENSES

16 Based on the foregoing, Wells Fargo respectfully submits that Plaintiff's motion should be
17 denied, and that Wells Fargo's countermotion for protective order must be granted. Accordingly,
18 Wells Fargo respectfully seeks an award of reasonable attorneys' fees and expenses because its
19 countermotion was substantially justified under NRCP 37(a)(4)(B).
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D. CONCLUSION

Based on the foregoing, Wells Fargo respectfully submits that Plaintiff's motion should be denied in its entirety and that Wells Fargo's countermotion should be granted.

DATED this 26th day of September, 2012.

SMITH LARSEN & WIXOM



Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.
Nevada Bar No. 5635
Hills Center Business Park
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant
Wells Fargo Bank, N.A.

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing Wells Fargo Bank's Opposition to Plaintiff's Motion to Compel and Wells Fargo Bank's Countermotion for Protective Order is hereby acknowledged this ____ day of September, 2012.

Mark A. Hutchison, Esq.
Joseph S. Kistler, Esq.
Timothy R. Koval, Esq.

Peccole Professional Park
10080 West Alta Dr., Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff

INDEX TO EXHIBITS

1		
2		
3	Exhibit A -	Plaintiff Notice of Taking N.R.C.P. 30(b)(6) Witness Deposition 0001 to 0004
4	Exhibit B -	Wells Fargo's Answers to Plaintiff's Amended First Set of Interrogatories 0005 to 0016
5	Exhibit C -	Wells Fargo's Supplemental Answers to Plaintiff's Amended First Set of Interrogatories 0017 to 0032
6		
7	Exhibit D -	Wells Fargo's Responses to Plaintiff's Amended First Set of Request for Production of Documents 0033 to 0042
8	Exhibit E -	Wells Fargo's Supplement Responses to Plaintiff's Amended First Set of Request for Production of Documents 0043 to 0055
9		
10	Exhibit F -	Wells Fargo's Responses to Plaintiff's First Set of Request for Admissions 0056 to 0065
11	Exhibit G -	Wells Fargo's Supplement Responses to Plaintiff's First Set of Request for Admissions 0066 to 0076
12		
13	Exhibit H -	Affidavit of Raelynn Stockman 0077 to 0079
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EXHIBIT A

EXHIBIT A

1 NOTC
Mark A. Hutchison (4639)
2 Joseph S. Kistler (3458)
Timothy R. Koval (12014)
3 HUTCHISON & STEFFEN, LLC
Peccole Professional Park
4 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
5 Tel: (702) 385-2500
Fax: (702) 385-2086
6 Email: mhutchison@hutchlegal.com
Email: tkoval@hutchlegal.com
7

8 *Attorneys for Lisa Johnson*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 LISA JOHNSON, a Nevada resident,
12 Plaintiff,

13 vs.

14 WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES I through X,
15 inclusive; and ROE CORPORATIONS, I
through X, inclusive,

16 Defendants.
17

) Case No. A-12-655393-C
) Dept. XXVI

) PLAINTIFF NOTICE OF TAKING
) N.R.C. P. 30 (b)(6) WITNESS
) DEPOSITION

18 TO: ALL INTERESTED PARTIES AND ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that on 25th day of September, 2012 at 3:00 p.m., that
20 the Plaintiff by and through her counsel of record of the law firm of Hutchison and

21 Steffen, upon oral examination, before a notary public or other officer authorized by law
22 to administer oaths, will take THE DEPOSITION OF PERSON MOST
23 KNOWLEDGEABLE FOR WELLS FARGO BANK NATIONAL ASSOCIATION
24 PURSUANT TO N.R.C. P. 30 (b)(6) regarding: Wells Fargo's knowledge and information
25 as to the following Wells Fargo accounts, including the reason(s) Wells Fargo closed the
26 following accounts:

27 (1) Guitarfile, LLC, account no. 2273587051

28 (2) Guitarfile, LLC, account no. 4856200225012957

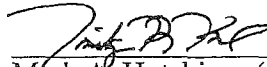
(3) account of Michael Kaplan and Lisa Johnson, account no. 3980024164.

1 The deposition shall be recorded by either sound, sound-and-visual, or stenographic means.

2 The deposition shall continue from day to day until completed. You are invited to
 3 attend and cross examine.

4 DATED this 31st day of August, 2012.

HUTCHISON & STEFFEN, LLC



Mark A. Hutchison (4639)
 Joseph S. Kistler (3458)
 Timothy R. Koval (12014)
 Peccole Professional Park
 10080 West Alta Drive, Suite 200
 Las Vegas, NV 89145
 Attorneys for Plaintiff Lisa Johnson

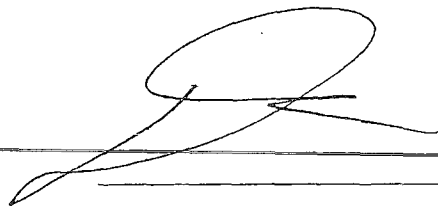
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 31st day of August, 2012, I caused the above and foregoing document entitled **NOTICE OF TAKING THE DEPOSITION OF ARASH DOUNEL** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- ☐ to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Stewart Fitts, Esq.,
SMITH LARSON & WIXOM
1935 Village Center Circle
Las Vegas, NV 89134
)
Attorney for Defendants



An employee of Hutchison & Steffen, LLC

EXHIBIT B

EXHIBIT B

Disc
812

SMITH LARSEN & WIXOM

ATTORNEYS
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Email: kfl@slwlaw.com
scf@slwlaw.com
Attorneys for Defendants
Wells Fargo Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,	)	CASE NO: A-12-655393-C
)	
Plaintiff,	)	DEPT: XXVI
)	
v.)	
)	
WELLS FARGO BANK, NATIONAL	)	DEFENDANT WELLS FARGO BANK
ASSOCIATION; DOES 1 through X,	)	N.A.'S ANSWERS TO PLAINTIFF'S
inclusive; and ROE CORPORATIONS,	)	AMENDED FIRST SET OF
1 through X, inclusive	)	INTERROGATORIES
)	
Defendants.)	

Defendant and Third-Party Plaintiff, Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant"), by and through its counsel of record, Smith Larsen & Wixom, hereby serves answers to Plaintiff's Amended First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Wells Fargo objects to the definitions and instructions accompanying Plaintiff's discovery requests, and the discovery requests themselves, to the extent they seek to require

1 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
2 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.

3 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
4 requests to the extent they seek the disclosure or production of information protected by the
5 attorney-client privilege, the work-product doctrine, any other applicable privilege or
6 doctrine. Wells Fargo further objects to the disclosure of trade secrets, or other confidential
7 research, development, or commercial information that can be discovered, if at all, only
8 through the entry of a protective order. These general objections are incorporated into each
9 response herein.
10

11 ANSWERS

12 **INTERROGATORY NO. 1:**

13 Please explain in full detail why you decided to close the following Wells Fargo
14 accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account
15 no. 2273587051, (2) Guitarfile, LLC, account no. 4856200225012957, and (3) account of
16 Michael Kaplan and Lisa Johnson, account no. 3980024164.
17

18 **ANSWER:**

19 In addition to the general objections, Wells Fargo objects on grounds that this
20 interrogatory improperly seeks privileged and confidential bank supervisory information and
21 confidential proprietary and business information. Wells Fargo also objects on grounds that
22 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
23 to the discovery of admissible evidence since each party had the right to close the subject
24 accounts at any time without any requirement that an explanation be provided. Subject to
25 and without waiving these objections, please refer to notices that have previously been
26 provided regarding closure of the subject accounts.
27
28

INTERROGATORY NO. 2:

Please describe your risk assessment processes or analysis and the results thereto concerning your decision to close the accounts referenced in Interrogatory No. 1.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

INTERROGATORY NO. 3:

Please identify the name, title, and address of all persons who made the decisions to close the accounts referenced in Interrogatory No. 1.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

INTERROGATORY NO. 4:

On October 6, 2011, why did Arash Dounel, who is a banker and brokerage associate at Wells Fargo, state to Michael Kaplan that Lisa Johnson "must have some type of criminal background" or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 3.

INTERROGATORY NO. 5:

On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Mr. Kaplan "should hire a private investigator to check to check up on" Lisa Johnson or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 4.

INTERROGATORY NO. 6:

On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Lisa Johnson "must have arrest warrants outstanding" or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 5.

INTERROGATORY NO. 7:

On November 8, 2011, why did a Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative named Sheila state that Michael Kaplan was not eligible to open an account at Wells Fargo or words to that effect?

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and is vague and ambiguous. Wells Fargo also

objects on grounds that whether or not Mr. Kaplan is or was eligible to open an account is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and improperly seeks confidential information pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 6.

INTERROGATORY NO. 8:

Please state why a Wells Fargo representative named Chad Maze sent an e-mail to Michael Kaplan stating that if Mr. Kaplan wanted to open an account with Wells Fargo, "the account would not be accepted if Lisa [Johnson] was associated with it. Of course you could open an account in your name, or the name of your trust, but including Lisa could not be one of the options." For reference purposes, please see Lisa J. 0048.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

INTERROGATORY NO. 9:

Please explain in full detail the steps that Wells Fargo took to perform "ongoing reviews of its account relationships in connection with the Bank's responsibilities to oversee

and manage risks in its banking operations" concerning the closure of the accounts referenced in Interrogatory No. 1, as referenced in Lisa J. 006 to Lisa J. 009.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead

1 to the discovery of admissible evidence. Subject to and without waiving these objections,
2 please refer to notices that have previously been provided regarding closure of the subject
3 accounts.

4 **INTERROGATORY NO. 10:**

5 Please explain in full detail the "red flags" that were on the Wells Fargo accounts
6 associated with Lisa Johnson and/or Michael Kaplan referenced in Interrogatory No. 1. For
7 reference purposes regarding the term "red flag," please see Lisa J. 0014.

8 **ANSWER:**

9 In addition to the general objections, Wells Fargo objects on grounds that this
10 interrogatory improperly seeks privileged and confidential bank supervisory information and
11 confidential proprietary and business information. Wells Fargo also objects on grounds that
12 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
13 to the discovery of admissible evidence. Subject to and without waiving these objections,
14 please refer to notices that have previously been provided regarding closure of the subject
15 accounts.
16
17

18 **INTERROGATORY NO. 11:**

19 Why did you make "a business decision not to support any relationship with Lisa
20 [Johnson]"? For reference purposes, please see Lisa J. 0039.

21 **ANSWER:**

22 In addition to the general objections, Wells Fargo objects on grounds that this
23 interrogatory improperly seeks privileged and confidential bank supervisory information and
24 confidential proprietary and business information. Wells Fargo also objects on grounds that
25 this interrogatory seeks information that is irrelevant and not reasonably calculated to lead
26 to the discovery of admissible evidence. Subject to and without waiving these objections,
27
28

1 please refer to notices that have previously been provided regarding closure of the subject
2 accounts.

3 **INTERROGATORY NO. 12:**

4 Please explain in full detail the contents of "the apology that [Arash Dounel has]
5 given [Michael Kaplan] thus far verbally" regarding Wells Fargo's closure of the accounts
6 referenced in Interrogatory No. 1. For reference purposes, please see Lisa J. 0045.
7

8 **ANSWER:**

9 In addition to the general objections, Wells Fargo objects on grounds that this
10 interrogatory assumes facts not in evidence, is duplicative, redundant, and is irrelevant and
11 not reasonably calculated to lead to the discovery of admissible evidence. Wells Fargo also
12 objects on grounds that this interrogatory pertains to alleged confidential communications
13 pertaining to a non-party customer. Please also refer to the response to Request for
14 Admission No. 8.
15

16 **INTERROGATORY NO. 13:**

17 Is Arash Dounel currently employed by you? If yes, please state the location(s) where
18 Mr. Dounel is employed and his current employment capacity, including job title and duties.
19

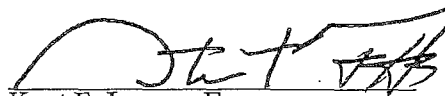
20 **ANSWER:**

21 Subject to and without waiving the general objections, Wells Fargo objects on
22 grounds that this interrogatory seeks information that is irrelevant and not reasonably
23 calculated to lead to the discovery of admissible evidence. Subject to and without waiving
24 these objections, Mr. Dounel is currently employed by Wells Fargo in Encino, California.
25 Wells Fargo maintains an attorney-client privilege with respect to Mr. Dounel and Plaintiff,
26 Plaintiff's counsel, and Mr. Kaplan (who appears to be represented by Plaintiff's counsel
27 in this matter), may not have communications with Mr. Dounel without the express written
28

1 consent of Wells Fargo and its legal counsel.

2 DATED this 2 day of August, 2012

3 SMITH LARSEN & WIXOM

4 

5 Kent F. Larsen, Esq.

6 Nevada Bar No. 3463

7 Stewart C. Fitts, Esq.

8 Nevada Bar No. 5635

9 SMITH LARSEN & WIXOM

10 Hills Center Business Park

11 1935 Village Center Circle

12 Las Vegas, Nevada 89134

13 Tel: (702) 252-5002

14 Fax: (702) 252-5006

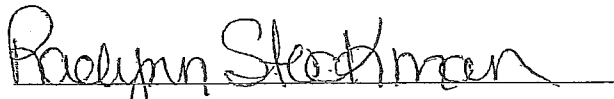
15 Attorneys for Defendants

16 Wells Fargo Bank, N.A.

**VERIFICATION OF DEFENDANT WELLS FARGO BANK, N.A.'S
ANSWERS TO PLAINTIFF'S AMENDED FIRST SET OF INTERROGATORIES**

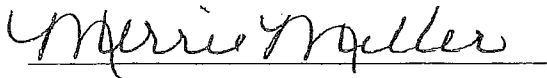
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Raelynn Stockman, being first duly sworn, deposes and states that I am a Vice President and Regional Services Manager with Wells Fargo Bank, N.A. The foregoing Answers contain the phraseology of counsel, and since the interrogatories are directed to a corporation, these Answers to Interrogatories do not constitute, nor are the same derived from, the personal knowledge of any single individual, and they include record information, knowledge obtained that cannot be attributed to specific individuals, recollections of employees and former employees, and my own personal general knowledge. I have read the foregoing Answers, and, to the best of my knowledge, I am informed and believe the same to be true.

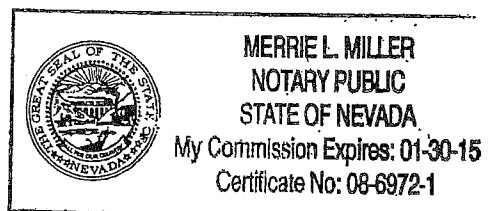

Raelynn Stockman

SUBSCRIBED AND SWORN to before me

this 2nd day of August, 2012.



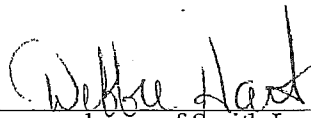
Notary Public



CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on August 2, 2012 a true copy of the foregoing Defendant Wells Fargo Bank N.A.'s Answers to Plaintiff's Amended First Set of Interrogatories was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff


an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1936 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

TEL (702) 252-5002 • FAX (702) 252-5006

EXHIBIT C

EXHIBIT C

Dise
9/18

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

1 INTG
2 Kent F. Larsen, Esq.
3 Nevada Bar No. 3463
4 Stewart C. Fitts, Esq.
5 Nevada Bar No. 5635
6 SMITH LARSEN & WIXOM
7 Hills Center Business Park
8 1935 Village Center Circle
9 Las Vegas, Nevada 89134
10 Tel: (702) 252-5002
11 Fax: (702) 252-5006
12 Email: kfl@slwlaw.com
13 scf@slwlaw.com
14 Attorneys for Defendants
15 Wells Fargo Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,	)	CASE NO: A-12-655393-C
)	
Plaintiff,	)	DEPT: XXVI
)	
v.)	
)	
WELLS FARGO BANK, NATIONAL	)	DEFENDANT WELLS FARGO BANK
ASSOCIATION; DOES 1 through X,	)	N.A.'S SUPPLEMENTAL ANSWERS TO
inclusive; and ROE CORPORATIONS,	)	PLAINTIFF'S AMENDED FIRST SET
1 through X, inclusive	)	OF INTERROGATORIES
)	
Defendants.)	

21 Defendant and Third-Party Plaintiff, Wells Fargo Bank, N.A. ("Wells Fargo" or
22 "Defendant"), by and through its counsel of record, Smith Larsen & Wixom, hereby serves
23 Supplemental answers to Plaintiff's Amended First Set of Interrogatories as follows:
24

GENERAL OBJECTIONS

25
26 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
27 discovery requests, and the discovery requests themselves, to the extent they seek to require
28

1 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
2 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
3 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
4 requests to the extent they seek the disclosure or production of information protected by the
5 attorney-client privilege, the work-product doctrine, any other applicable privilege or
6 doctrine. Wells Fargo further objects to the disclosure of trade secrets, or other confidential
7 research, development, or commercial information that can be discovered, if at all, only
8 through the entry of a protective order. These general objections are incorporated into each
9 response herein.
10

11 ANSWERS

12 INTERROGATORY NO. 1:

13 Please explain in full detail why you decided to close the following Wells Fargo
14 accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account
15 no. xxxxxx7051, (2) Guitarfile, LLC, account no. xxxxxxxxxxxx2957, and (3) account of
16 Michael Kaplan and Lisa Johnson, account no. xxxxxx4164.
17

18 ANSWER:

19 In addition to the general objections, Wells Fargo objects on grounds that this
20
21 interrogatory improperly seeks privileged and confidential bank supervisory information and
22 confidential proprietary and business information. To the extent that this request seeks
23 information within the scope of the Bank Secrecy Act, such information, if any, is protected
24 by an unqualified discovery and evidentiary privilege that cannot be waived. *See, e.g.,* 31
25 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).
26

27 Wells Fargo also objects on grounds that this interrogatory seeks information that is
28 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since

1 each party had the right to close the subject accounts at any time without any requirement
2 that an explanation be provided.

3 Wells Fargo also objects on grounds that this interrogatory is improper and/or
4 premature because Plaintiff has not obtained declaratory relief from the District Court stating
5 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
6 relationship and no longer conduct business with Plaintiff.
7

8 Subject to and without waiving these objections, please refer to notices that have
9 previously been provided regarding closure of the subject accounts.

10 **INTERROGATORY NO. 2:**

11 Please describe your risk assessment processes or analysis and the results thereto
12 concerning your decision to close the accounts referenced in Interrogatory No. 1.

13 **ANSWER:**

14 In addition to the general objections, Wells Fargo objects on grounds that this
15 interrogatory improperly seeks privileged and confidential bank supervisory information and
16 confidential proprietary and business information. To the extent that this request seeks
17 information within the scope of the Bank Secrecy Act, such information, if any, is protected
18 by an unqualified discovery and evidentiary privilege that cannot be waived. *See, e.g.*, 31
19
20

21 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

22 Wells Fargo also objects on grounds that this interrogatory seeks information that is
23 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since
24 each party had the right to close the subject accounts at any time without any requirement
25 that an explanation be provided.
26

27 Wells Fargo also objects on grounds that this interrogatory is improper and/or
28 premature because Plaintiff has not obtained declaratory relief from the District Court stating

1 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
2 relationship and no longer conduct business with Plaintiff.

3 Subject to and without waiving these objections, please refer to notices that have
4 previously been provided regarding closure of the subject accounts.

5 **INTERROGATORY NO. 3:**

6
7 Please identify the name, title, and address of all persons who made the decisions to
8 close the accounts referenced in Interrogatory No. 1.

9 **ANSWER:**

10 In addition to the general objections, Wells Fargo objects on grounds that this
11 interrogatory improperly seeks privileged and confidential bank supervisory information and
12 confidential proprietary and business information. To the extent that this request seeks
13 information within the scope of the Bank Secrecy Act, such information, if any, is protected
14 by an unqualified discovery and evidentiary privilege that cannot be waived. *See, e.g.,* 31
15 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).
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17 Wells Fargo also objects on grounds that this interrogatory seeks information that is
18 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since
19 each party had the right to close the subject accounts at any time without any requirement
20 that an explanation be provided.
21

22 Wells Fargo also objects on grounds that this interrogatory is improper and/or
23 premature because Plaintiff has not obtained declaratory relief from the District Court stating
24 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
25 relationship and no longer conduct business with Plaintiff.
26

27 Subject to and without waiving these objections, please refer to notices that have
28 previously been provided regarding closure of the subject accounts.

1 INTERROGATORY NO. 4:

2 On October 6, 2011, why did Arash Dounel, who is a banker and brokerage associate
3 at Wells Fargo, state to Michael Kaplan that Lisa Johnson "must have some type of criminal
4 background" or words to that effect?

5 ANSWER:

6
7 In addition to the general objections, Wells Fargo objects on grounds that this
8 interrogatory assumes facts not in evidence and improperly seeks confidential information
9 pertaining to a non-party customer.

10 Wells Fargo also objects on grounds that this interrogatory improperly seeks
11 privileged and confidential bank supervisory information and confidential proprietary and
12 business information. To the extent that this request seeks information within the scope of
13 the Bank Secrecy Act, such information, if any, is protected by an unqualified discovery and
14 evidentiary privilege that cannot be waived. *See, e.g.,* 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k);
15 31 C.F.R. 1020.320(c).
16

17 Wells Fargo also objects on grounds that this interrogatory is improper and/or
18 premature because Plaintiff has not obtained declaratory relief from the District Court stating
19 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
20

21 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if
22 any, were made to her in connection with the closure of the accounts.

23 Subject to and without waiving these objections, please also refer to the response to
24 Request for Admission No. 3.

25 INTERROGATORY NO. 5:

26
27 On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Mr. Kaplan
28 "should hire a private investigator to check to check up on" Lisa Johnson or words to that

1 effect?

2 **ANSWER:**

3 In addition to the general objections, Wells Fargo objects on grounds that this
4 interrogatory assumes facts not in evidence and improperly seeks confidential information
5 pertaining to a non-party customer.
6

7 Wells Fargo objects on grounds that this interrogatory improperly seeks privileged
8 and confidential bank supervisory information and confidential proprietary and business
9 information. To the extent that this request seeks information within the scope of the Bank
10 Secrecy Act, such information, if any, is protected by an unqualified discovery and
11 evidentiary privilege that cannot be waived. *See, e.g.*, 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k);
12 31 C.F.R. 1020.320(c).
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14 Wells Fargo also objects on grounds that this interrogatory is improper and/or
15 premature because Plaintiff has not obtained declaratory relief from the District Court stating
16 that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate
17 the banking relationship and no longer conduct business with Plaintiff and/or why alleged
18 statements, if any, were made to her in connection with the closure of the accounts.
19

20 Subject to and without waiving these objections, please also refer to the response to
21 Request for Admission No. 4.

22 **INTERROGATORY NO. 6:**

23 On October 6, 2011, why did Arash Dounel state to Michael Kaplan that Lisa
24 Johnson "must have arrest warrants outstanding" or words to that effect?
25

26 **ANSWER:**

27 In addition to the general objections, Wells Fargo objects on grounds that this
28 interrogatory assumes facts not in evidence and improperly seeks confidential information

1 pertaining to a non-party customer.

2 Wells Fargo objects on grounds that this interrogatory improperly seeks privileged
3 and confidential bank supervisory information and confidential proprietary and business
4 information. To the extent that this request seeks information within the scope of the Bank
5 Secrecy Act, such information, if any, is protected by an unqualified discovery and
6 evidentiary privilege that cannot be waived. *See, e.e.*, 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k);
7 31 C.F.R. 1020.320(c).
8

9 Wells Fargo also objects on grounds that this interrogatory is improper and/or
10 premature because Plaintiff has not obtained declaratory relief from the District Court stating
11 that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate
12 the banking relationship and no longer conduct business with Plaintiff and/or why alleged
13 statements, if any, were made to her in connection with the closure of the accounts.
14

15 Subject to and without waiving these objections, please also refer to the response to
16 Request for Admission No. 5.

17 **INTERROGATORY NO. 7:**

18 On November 8, 2011, why did a Wells Fargo representative named Joceda Freeman
19 and/or a Wells Fargo representative named Sheila state that Michael Kaplan was not eligible
20 to open an account at Wells Fargo or words to that effect?
21

22 **ANSWER:**

23 In addition to the general objections, Wells Fargo objects on grounds that this
24 interrogatory assumes facts not in evidence and is vague and ambiguous. Wells Fargo also
25 objects on grounds that whether or not Mr. Kaplan is or was eligible to open an account is
26 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
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7 31 C.F.R. 1020.320(c)
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11 that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate
12 the banking relationship and no longer conduct business with Plaintiff and/or why alleged
13 statements, if any, were made to her in connection with the closure of the accounts.
14

15 Subject to and without waiving these objections, please also refer to the response to
16 Request for Admission No. 6.

17 **INTERROGATORY NO. 8:**

18 Please state why a Wells Fargo representative named Chad Maze sent an e-mail to
19 Michael Kaplan stating that if Mr. Kaplan wanted to open an account with Wells Fargo, "the
20

21 account would not be accepted if Lisa [Johnson] was associated with it. Of course you could
22 open an account in your name, or the name of your trust, but including Lisa could not be one
23 of the options." For reference purposes, please see Lisa J. 0048.

24 **ANSWER:**

25 In addition to the general objections, Wells Fargo objects on grounds that this
26 interrogatory improperly seeks privileged and confidential bank supervisory information and
27 confidential proprietary and business information. To the extent that this request seeks
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3 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

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8 premature because Plaintiff has not obtained declaratory relief from the District Court stating
9 that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate
10 the banking relationship and no longer conduct business with Plaintiff and/or why alleged
11 statements, if any, were made to her in connection with the closure of the accounts.

12 Subject to and without waiving these objections, please refer to notices that have
13 previously been provided regarding closure of the subject accounts.
14

15 **INTERROGATORY NO. 9:**

16 Please explain in full detail the steps that Wells Fargo took to perform "ongoing
17 reviews of its account relationships in connection with the Bank's responsibilities to oversee
18 and manage risks in its banking operations" concerning the closure of the accounts
19 referenced in Interrogatory No. 1, as referenced in Lisa J. 006 to Lisa J. 009.
20

21 **ANSWER:**

22 In addition to the general objections, Wells Fargo objects on grounds that this
23 interrogatory improperly seeks privileged and confidential bank supervisory information and
24 confidential proprietary and business information. To the extent that this request seeks
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7 statements, if any, were made to her in connection with the closure of the accounts.
8

9 Subject to and without waiving these objections, please refer to notices that have
10 previously been provided regarding closure of the subject accounts.

11 **INTERROGATORY NO. 10:**

12 Please explain in full detail the "red flags" that were on the Wells Fargo accounts
13 associated with Lisa Johnson and/or Michael Kaplan referenced in Interrogatory No. 1. For
14 reference purposes regarding the term "red flag," please see Lisa J. 0014.
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16 **ANSWER:**

17 In addition to the general objections, Wells Fargo objects on grounds that this
18 interrogatory improperly seeks privileged and confidential bank supervisory information and
19 confidential proprietary and business information. To the extent that this request seeks
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3 any, were made to her in connection with the closure of the accounts.

4 Subject to and without waiving these objections, please refer to notices that have
5 previously been provided regarding closure of the subject accounts.

6
7 **INTERROGATORY NO. 11:**

8 Why did you make "a business decision not to support any relationship with Lisa
9 [Johnson]"? For reference purposes, please see Lisa J. 0039.

10 **ANSWER:**

11 In addition to the general objections, Wells Fargo objects on grounds that this
12 interrogatory improperly seeks privileged and confidential bank supervisory information and
13 confidential proprietary and business information. To the extent that this request seeks
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22 premature because Plaintiff has not obtained declaratory relief from the District Court stating
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24 the banking relationship and no longer conduct business with Plaintiff.

25 Subject to and without waiving these objections, please refer to notices that have
26 previously been provided regarding closure of the subject accounts.
27
28

INTERROGATORY NO. 12:

Please explain in full detail the contents of "the apology that [Arash Dounel has] given [Michael Kaplan] thus far verbally" regarding Wells Fargo's closure of the accounts referenced in Interrogatory No. 1. For reference purposes, please see Lisa J. 0045.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence, is duplicative, redundant, and is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Wells Fargo also objects on grounds that this interrogatory pertains to alleged confidential communications pertaining to a non-party customer.

Wells Fargo also objects on grounds that this interrogatory is improper and/or premature because Plaintiff has not obtained declaratory relief from the District Court stating that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate the banking relationship and no longer conduct business with Plaintiff and/or why alleged statements, if any, were made to her in connection with the closure of the accounts.

Subject to and without waiving these objections, please also refer to the response to Request for Admission No. 8.

INTERROGATORY NO. 13:

Is Arash Dounel currently employed by you? If yes, please state the location(s) where Mr. Dounel is employed and his current employment capacity, including job title and duties.

ANSWER:

In addition to the general objections, Wells Fargo objects on grounds that this interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Mr.

1 Dounel is currently on a medical leave of absence. Prior to being on medical leave, Mr.
2 Dounel job title was that of Personal Banker with general duties that included, without
3 limitation, communicating with customers regarding banking needs, providing references
4 regarding bank services, and handling account applications. For administrative purposes,
5 Mr. Dounel is currently listed as a team member of the store located at 23361 Pacific Coast
6 Highway, Malibu, California.
7

8 Wells Fargo maintains an attorney-client privilege with respect to Mr. Dounel and
9 Plaintiff, Plaintiff's counsel, and Mr. Kaplan (who appears to be represented by Plaintiff's
10 counsel in this matter), may not have communications with Mr. Dounel without the express
11 written consent of Wells Fargo and its legal counsel.

12 DATED this 18 day of September, 2012

13 SMITH LARSEN & WIXOM

14
15 

16 Kent F. Larsen, Esq.
17 Nevada Bar No. 3463

18 Stewart C. Fitts, Esq.
19 Nevada Bar No. 5635

20 SMITH LARSEN & WIXOM

21 Hills Center Business Park

22 1935 Village Center Circle

23 Las Vegas, Nevada 89134

24 Tel: (702) 252-5002

25 Fax: (702) 252-5006

26 Attorneys for Defendants

27 Wells Fargo Bank, N.A.
28

VERIFICATION OF DEFENDANT WELLS FARGO BANK, N.A.'S
SUPPLEMENTAL ANSWERS TO PLAINTIFF'S AMENDED
FIRST SET OF INTERROGATORIES

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

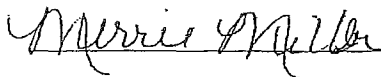
Raelynn Stockman, being first duly sworn, deposes and states that I am a Vice President and Regional Services Manager with Wells Fargo Bank, N.A. The foregoing Answers contain the phraseology of counsel, and since the interrogatories are directed to a corporation, these Answers to Interrogatories do not constitute, nor are the same derived from, the personal knowledge of any single individual, and they include record information, knowledge obtained that cannot be attributed to specific individuals, recollections of employees and former employees, and my own personal general knowledge. I have read the foregoing Answers, and, to the best of my knowledge, I am informed and believe the same to be true.



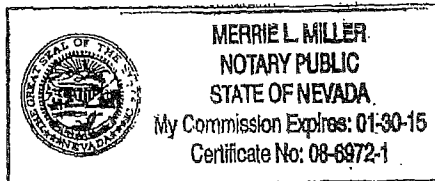
Raelynn Stockman

SUBSCRIBED AND SWORN to before me

this 18th day of September, 2012.



Notary Public



CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on September 18, 2012 a true copy of the foregoing
Defendant Wells Fargo Bank N.A.'s Supplemental Answers to Plaintiff's Amended
First Set of Interrogatories was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Joseph S. Kistler, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff

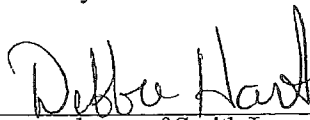

an employee of Smith Larsen & Wixom

EXHIBIT D

EXHIBIT D

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012

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
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RESP
Kent F. Larsen, Esq.
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scf@slwlaw.com
Attorneys for Defendants
Wells Fargo Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,	)	CASE NO: A-12-655393-C
)	
Plaintiff,	)	DEPT: XXVI
)	
v.)	
)	
WELLS FARGO BANK, NATIONAL	)	WELLS FARGO BANK, N.A.'S
ASSOCIATION; DOES 1 through X,	)	RESPONSES TO PLAINTIFF'S
inclusive; and ROE CORPORATIONS,	)	AMENDED FIRST SET OF REQUEST
1 through X, inclusive	)	FOR PRODUCTION OF DOCUMENTS
)	
Defendants.)	
)	

Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of record, Smith Larsen & Wixom, hereby answers and responds to Plaintiff's request for production of documents as follows:

SUPPLEMENTAL NRCP 16.1 DISCLOSURES

These disclosures are supplemental to the disclosures made in conjunction with the early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the

1 right to make additional supplemental disclosures.

2 GENERAL OBJECTIONS

3 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
4 discovery requests, and the discovery requests themselves, to the extent they seek to require
5 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
6 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
7 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
8 requests to the extent they seek the disclosure or production of information protected by the
9 attorney-client privilege, the work-product doctrine, any other applicable privilege or
10 doctrine, the disclosure of trade secrets, or other confidential research, development, or
11 commercial information that can be discovered, if at all, only through the entry of a
12 protective order. Wells Fargo objects to preparing a privilege log for the documents or files
13 of any in-house or outside counsel, including documents or files prepared at the direction of
14 in-house or outside counsel in anticipation of litigation as this is beyond the scope of
15 ordinary practice in this Court. With respect to other privileged documents, if any, Wells
16 Fargo will comply with the requirements of this Court in terms of preparing any required
17 privilege log. These general objections are incorporated into each response herein.
18
19
20

21 RESPONSES

22 **REQUEST NO. 1:**

23 Please provide the letter referenced by Arash Dounel in an e-mail to Michael Kaplan
24 dated December 1, 2011, in which Mr. Dounel wrote, "I regret to inform you that I have sent
25 the letter to my management and our legal department cannot allow me to send an official
26 letter of apology." For references purposes, please see Lisa J. 0045.
27
28

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and information that protected by the attorney-client privilege and the attorney work-product doctrine. Wells Fargo also objects on grounds that this request seeks privileged and confidential bank supervisory material and confidential business and proprietary information. Further, Wells Fargo objects on grounds that this request seeks information that is duplicative, redundant, assumes facts not in evidence, and is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, and after conducting a reasonable review of available information, Wells Fargo states that it has not been able to locate any document within the scope of this request. Wells Fargo reserves the right to supplement this response as discovery continues.

REQUEST NO. 2:

Please provide all documents concerning your risk assessment processes or analysis for closing accounts such as those of Lisa Johnson and Michael Kaplan.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

REQUEST NO. 3:

Please provide all documents concerning your decision to close the following Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account no. 2273587051, (2) Guitarfile, LLC, account no. 4856200225012957, and (3) account of Michael Kaplan and Lisa Johnson, account no. 3980024164.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Wells Fargo also objects on grounds that this request seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since each party had the right to close the subject accounts at any time without any requirement that an explanation be provided. Subject to and without waiving these objections, please refer to notices that have previously been provided regarding closure of the subject accounts.

REQUEST NO. 4:

Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have some type of criminal background" or words to that effect.

RESPONSE:

In addition to the general objections, Wells Fargo also objects on grounds that this request assumes facts not in evidence. Wells Fargo also objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 3.

REQUEST NO. 5:

Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Mr. Kaplan "should hire a private investigator to check to check up on" Lisa Johnson or words to that effect.

RESPONSE:

In addition to the general objections, Wells Fargo also objects on grounds that this request assumes facts not in evidence. Wells Fargo also objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 4.

REQUEST NO. 6:

Please provide all documents concerning the basis or bases for Arash Dounel's statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have arrest warrants outstanding" or words to that effect.

RESPONSE:

In addition to the general objections, Wells Fargo also objects on grounds that this request assumes facts not in evidence. Wells Fargo also objects on grounds that this request

improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. Please also refer to the response to Request for Admission No. 5.

REQUEST NO. 7:

Please provide all documents concerning the basis or bases for the statements by a Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative named Sheila that Michael Kaplan was not eligible to open an account at Wells Fargo on

1 November 8, 2011.

2 **RESPONSE:**

3 In addition to the general objections, Wells Fargo objects on grounds that this request
4 assumes facts not in evidence and is vague and ambiguous. Wells Fargo also objects on
5 grounds that this request improperly seeks privileged and confidential bank supervisory
6 information and confidential proprietary and business information. Wells Fargo also objects
7 on grounds that whether or not Mr. Kaplan is or was eligible to open an account is irrelevant
8 and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and
9 without waiving these objections, please refer to the response to Request for Admission No.
10 6.
11

12 **REQUEST NO. 8:**

13 Please provide all documents concerning the basis or bases for Chad Maze's
14 statement to Michael Kaplan that if Mr. Kaplan wanted to open an account with Wells Fargo,
15 "the account would not be accepted if Lisa [Johnson] was associated with it. Of course you
16 could open an account in your name, or the name of your trust, but including Lisa could not
17 be one of the options." For reference purposes, please see Lisa J. 0048.
18

19 **RESPONSE:**

20
21 In addition to the general objections, Wells Fargo also objects on grounds that this
22 request improperly seeks privileged and confidential bank supervisory information and
23 confidential proprietary and business information. Wells Fargo also objects on grounds that
24 this request seeks information that is irrelevant and not reasonably calculated to lead to the
25 discovery of admissible evidence since each party had the right to close the subject accounts
26 at any time without any requirement that an explanation be provided. Subject to and without
27 waiving these objections, please refer to notices that have previously been provided regarding
28

1 closure of the subject accounts.

2 **REQUEST NO. 9:**

3 Please provide all documents concerning the "red flags" that were on the Wells Fargo
4 accounts associated with Lisa Johnson and/or Michael Kaplan. For reference purposes
5 regarding the term "red flags," please see Lisa J. 0014.
6

7 **RESPONSE:**

8 In addition to the general objections, Wells Fargo objects on grounds that this request
9 seeks improperly seeks privileged and confidential bank supervisory information and
10 confidential proprietary and business information. Wells Fargo also objects on grounds that
11 this request seeks information that is irrelevant and not reasonably calculated to lead to the
12 discovery of admissible evidence since each party had the right to close the subject accounts
13 at any time without any requirement that an explanation be provided. Subject to and without
14 waiving these objections, please refer to notices that have previously been provided regarding
15 closure of the subject accounts.
16

17 **REQUEST NO. 10:**

18 Please provide all documents concerning the "ongoing reviews of [your] account"
19 relationships in connection with the Bank's responsibilities to oversee and manage risks in
20 its banking operations" as relating to the accounts referenced in Request No. 1 For reference
21 purposes, please see Lisa J. 006 to Lisa J. 008.
22

23 **RESPONSE:**

24 In addition to the general objections, Wells Fargo objects on grounds that this request
25 seeks improperly seeks privileged and confidential bank supervisory information and
26 confidential proprietary and business information. Wells Fargo also objects on grounds that
27 this request seeks information that is irrelevant and not reasonably calculated to lead to the
28

1 discovery of admissible evidence since each party had the right to close the subject accounts
2 at any time without any requirement that an explanation be provided. Subject to and without
3 waiving these objections, please refer to notices that have previously been provided regarding
4 closure of the subject accounts.

5 DATED this 2 day of August, 2012

6 SMITH LARSEN & WIXOM

7 

8 Kent F. Larsen, Esq.

9 Nevada Bar No. 3463

10 Stewart C. Fitts, Esq.

11 Nevada Bar No. 5635

12 SMITH LARSEN & WIXOM

13 Hills Center Business Park

14 1935 Village Center Circle

15 Las Vegas, Nevada 89134

16 Tel: (702) 252-5002

17 Fax: (702) 252-5006

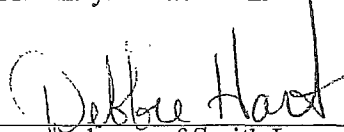
18 Attorneys for Defendants

19 Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on the 2 day of August, 2012, a true copy of the foregoing WELLS FARGO BANK, N.A.'S RESPONSES TO PLAINTIFF'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff


an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

EXHIBIT E

EXHIBIT E

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9/18

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

1 **RESP**
2 Kent F. Larsen, Esq.
3 Nevada Bar No. 3463
4 Stewart C. Fitts, Esq.
5 Nevada Bar No. 5635
6 SMITH LARSEN & WIXOM
7 Hills Center Business Park
8 1935 Village Center Circle
9 Las Vegas, Nevada 89134
10 Tel: (702) 252-5002
11 Fax: (702) 252-5006
12 Email: kfl@slwlaw.com
13 scf@slwlaw.com
14 Attorneys for Defendants
15 Wells Fargo Bank, N.A.

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

13 LISA JOHNSON, a Nevada resident,	)	CASE NO: A-12-655393-C
)	
14 Plaintiff,	)	DEPT: XXVI
)	
15 v.)	
)	
16 WELLS FARGO BANK, NATIONAL	)	WELLS FARGO BANK, N.A.'S
17 ASSOCIATION; DOES 1 through X,	)	SUPPLEMENTAL RESPONSES TO
18 inclusive; and ROE CORPORATIONS,	)	PLAINTIFF'S AMENDED FIRST SET
19 1 through X, inclusive	)	OF REQUEST FOR PRODUCTION OF
	)	DOCUMENTS
20 Defendants.)	

21
22 Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of
23 record, Smith Larsen & Wixom, hereby answers and responds to Plaintiff's request for
24 production of documents as follows:
25

26 **SUPPLEMENTAL NRCP 16.1 DISCLOSURES**

27 These disclosures are supplemental to the disclosures made in conjunction with the
28

1 early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the
2 right to make additional supplemental disclosures.

3 GENERAL OBJECTIONS

4 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
5 discovery requests, and the discovery requests themselves, to the extent they seek to require
6 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
7 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
8 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
9 requests to the extent they seek the disclosure or production of information protected by the
10 attorney-client privilege, the work-product doctrine, any other applicable privilege or
11 doctrine, the disclosure of trade secrets, or other confidential research, development, or
12 commercial information that can be discovered, if at all, only through the entry of a
13 protective order. Wells Fargo objects to preparing a privilege log for the documents or files
14 of any in-house or outside counsel, including documents or files prepared at the direction of
15 in-house or outside counsel in anticipation of litigation as this is beyond the scope of
16 ordinary practice in this Court. With respect to other privileged documents, if any, Wells
17 Fargo will comply with the requirements of this Court in terms of preparing any required
18 privilege log. These general objections are incorporated into each response herein.
19
20
21

22 RESPONSES

23 REQUEST NO. 1:

24 Please provide the letter referenced by Arash Dounel in an e-mail to Michael Kaplan
25 dated December 1, 2011, in which Mr. Dounel wrote, "I regret to inform you that I have sent
26 the letter to my management and our legal department cannot allow me to send an official
27 letter of apology." For references purposes, please see Lisa J. 0045.
28

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and information that protected by the attorney-client privilege and the attorney work-product doctrine. Wells Fargo also objects on grounds that this request seeks privileged and confidential bank supervisory material and confidential business and proprietary information. Further, Wells Fargo objects on grounds that this request seeks information that is duplicative, redundant, assumes facts not in evidence, and is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, and after conducting a reasonable review of available information, Wells Fargo states that it has not been able to locate any document within the scope of this request. Wells Fargo reserves the right to supplement this response as discovery continues.

REQUEST NO. 2:

Please provide all documents concerning your risk assessment processes or analysis for closing accounts such as those of Lisa Johnson and Michael Kaplan.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. To the extent that this request seeks information within the scope of the Bank Secrecy Act, such information, if any, is protected by an unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

Wells Fargo also objects on grounds that this request seeks information that is

1 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since
2 each party had the right to close the subject accounts at any time without any requirement
3 that an explanation be provided.

4 Wells Fargo also objects on grounds that this request is improper and/or premature
5 because Plaintiff has not obtained declaratory relief from the District Court stating that she
6 is entitled to know why Wells Fargo exercised its legal right to terminate the banking
7 relationship and no longer conduct business with Plaintiff.

8 Subject to and without waiving these objections, please refer to notices that have
9 previously been provided regarding closure of the subject accounts.

10 **REQUEST NO. 3:**

11 Please provide all documents concerning your decision to close the following Wells
12 Fargo accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC,
13 account no. XXXXXX7051, (2) Guitarfile, LLC, account no. XXXXXXXXXXXXX2957, and
14 (3) account of Michael Kaplan and Lisa Johnson, account no. XXXXXX4164.

15 **RESPONSE:**

16 In addition to the general objections, Wells Fargo objects on grounds that this request
17 improperly seeks privileged and confidential bank supervisory information and confidential
18 proprietary and business information. To the extent that this request seeks information
19 within the scope of the Bank Secrecy Act, such information, if any, is protected by an
20 unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12
21 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

22 Wells Fargo also objects on grounds that this request seeks information that is
23 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since
24 each party had the right to close the subject accounts at any time without any requirement
25

1 that an explanation be provided.

2 Wells Fargo also objects on grounds that this request is improper and/or premature
3 because Plaintiff has not obtained declaratory relief from the District Court stating that she
4 is entitled to know why Wells Fargo exercised its legal right to terminate the banking
5 relationship and no longer conduct business with Plaintiff.
6

7 Subject to and without waiving these objections, please refer to notices that have
8 previously been provided regarding closure of the subject accounts.

9 **REQUEST NO. 4:**

10 Please provide all documents concerning the basis or bases for Arash Dounel's
11 statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have some type of
12 criminal background" or words to that effect.

13 **RESPONSE:**

14 In addition to the general objections, Wells Fargo also objects on grounds that this
15 request assumes facts not in evidence. Wells Fargo also objects on grounds that this request
16 improperly seeks privileged and confidential bank supervisory information and confidential
17 proprietary and business information. To the extent that this request seeks information within
18 the scope of the Bank Secrecy Act, such information, if any, is protected by an unqualified
19
20

21 discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12 C.F.R.
22 21.11(k); 31 C.F.R. 1020.320(c).

23 Wells Fargo also objects on grounds that this interrogatory is improper and/or
24 premature because Plaintiff has not obtained declaratory relief from the District Court stating
25 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
26 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if
27 any, were made to her in connection with the closure of the accounts.
28

1 Subject to and without waiving these objections, please also refer to the response to
2 Request for Admission No. 3.

3 **REQUEST NO. 5:**

4 Please provide all documents concerning the basis or bases for Arash Dounel's
5 statement to Michael Kaplan on October 6, 2011 that Mr. Kaplan "should hire a private
6 investigator to check to check up on" Lisa Johnson or words to that effect.

7 **RESPONSE:**

8 In addition to the general objections, Wells Fargo also objects on grounds that this
9 request assumes facts not in evidence. Wells Fargo also objects on grounds that this request
10 improperly seeks privileged and confidential bank supervisory information and confidential
11 proprietary and business information. To the extent that this request seeks information
12 within the scope of the Bank Secrecy Act, such information, if any, is protected by an
13 unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12
14 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

15 Wells Fargo also objects on grounds that this interrogatory is improper and/or
16 premature because Plaintiff has not obtained declaratory relief from the District Court stating
17 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
18 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if
19 any, were made to her in connection with the closure of the accounts.

20 Subject to and without waiving these objections, please refer to the response to
21 Request for Admission No. 4.

22 **REQUEST NO. 6:**

23 Please provide all documents concerning the basis or bases for Arash Dounel's
24 statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have arrest
25 statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have arrest

26
27
28

warrants outstanding" or words to that effect.

RESPONSE:

In addition to the general objections, Wells Fargo also objects on grounds that this request assumes facts not in evidence. Wells Fargo also objects on grounds that this request improperly seeks privileged and confidential bank supervisory information and confidential proprietary and business information. To the extent that this request seeks information within the scope of the Bank Secrecy Act, such information, if any, is protected by an unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

Wells Fargo also objects on grounds that this interrogatory is improper and/or premature because Plaintiff has not obtained declaratory relief from the District Court stating that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking relationship and no longer conduct business with Plaintiff and/or why alleged statements, if any, were made to her in connection with the closure of the accounts.

Subject to and without waiving these objections, please also refer to the response to Request for Admission No. 5.

REQUEST NO. 7:

Please provide all documents concerning the basis or bases for the statements by a Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative named Sheila that Michael Kaplan was not eligible to open an account at Wells Fargo on November 8, 2011.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request assumes facts not in evidence and is vague and ambiguous. Wells Fargo also objects on

1 grounds that this request improperly seeks privileged and confidential bank supervisory
2 information and confidential proprietary and business information. To the extent that this
3 request seeks information within the scope of the Bank Secrecy Act, such information, if any,
4 is protected by an unqualified discovery and evidentiary privilege that cannot be waived. 31
5 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

6
7 Wells Fargo also objects on grounds that whether or not Mr. Kaplan is or was eligible
8 to open an account is irrelevant and not reasonably calculated to lead to the discovery of
9 admissible evidence. Mr. Kaplan is not a party to this action and his eligibility to open an
10 account is not at issue.

11
12 Wells Fargo also objects on grounds that this interrogatory is improper and/or
13 premature because Plaintiff has not obtained declaratory relief from the District Court stating
14 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
15 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if
16 any, were made to her in connection with the closure of the accounts.

17
18 Subject to and without waiving these objections, please refer to the response to
19 Request for Admission No. 6.

20 **REQUEST NO. 8:**

21 ~~Please provide all documents concerning the basis or bases for Chad Maze's~~
22 ~~statement to Michael Kaplan that if Mr. Kaplan wanted to open an account with Wells Fargo,~~
23 ~~"the account would not be accepted if Lisa [Johnson] was associated with it. Of course you~~
24 ~~could open an account in your name, or the name of your trust, but including Lisa could not~~
25 ~~be one of the options." For reference purposes, please see Lisa J. 0048.~~

26
27 **RESPONSE:**

28 In addition to the general objections, Wells Fargo also objects on grounds that this

1 request improperly seeks privileged and confidential bank supervisory information and
2 confidential proprietary and business information. To the extent that this request seeks
3 information within the scope of the Bank Secrecy Act, such information, if any, is protected
4 by an unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C.
5 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

7 Wells Fargo also objects on grounds that this request seeks information that is
8 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since
9 each party had the right to close the subject accounts at any time without any requirement
10 that an explanation be provided.

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12 premature because Plaintiff has not obtained declaratory relief from the District Court stating
13 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
14 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if
15 any, were made to her in connection with the closure of the accounts.

17 Subject to and without waiving these objections, please refer to notices that have
18 previously been provided regarding closure of the subject accounts.

19
20 **REQUEST NO. 9:**

21 Please provide all documents concerning the "red flags" that were on the Wells Fargo
22 accounts associated with Lisa Johnson and/or Michael Kaplan. For reference purposes
23 regarding the term "red flags," please see Lisa J. 0014.

24 **RESPONSE:**

25
26 In addition to the general objections, Wells Fargo objects on grounds that this request
27 seeks improperly seeks privileged and confidential bank supervisory information and
28 confidential proprietary and business information. To the extent that this request seeks

1 information within the scope of the Bank Secrecy Act, such information, if any, is protected
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3 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

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12 any, were made to her in connection with the closure of the accounts.

13 Subject to and without waiving these objections, please refer to notices that have
14 previously been provided regarding closure of the subject accounts.

15 **REQUEST NO. 10:**

16 Please provide all documents concerning the "ongoing reviews of [your] account"
17 relationships in connection with the Bank's responsibilities to oversee and manage risks in
18 its banking operations" as relating to the accounts referenced in Request No. 1 For reference
19 purposes, please see Lisa J. 006 to Lisa J. 008.

20 **RESPONSE:**

21 In addition to the general objections, Wells Fargo objects on grounds that this request
22 seeks improperly seeks privileged and confidential bank supervisory information and
23 confidential proprietary and business information. To the extent that this request seeks
24 information within the scope of the Bank Secrecy Act, such information, if any, is protected
25
26
27
28

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
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1 by an unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C.
2 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

3 Wells Fargo also objects on grounds that this request seeks information that is
4 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since
5 each party had the right to close the subject accounts at any time without any requirement
6 that an explanation be provided.
7

8 Wells Fargo also objects on grounds that this interrogatory is improper and/or
9 premature because Plaintiff has not obtained declaratory relief from the District Court stating
10 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking
11 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if
12 any, were made to her in connection with the closure of the accounts.
13

14 Subject to and without waiving these objections, please refer to notices that have
15 previously been provided regarding closure of the subject accounts.
16

17 DATED this 18th day of September, 2012

18 SMITH LARSEN & WIXOM

19 

20 Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.

21 Nevada Bar No. 5635
SMITH LARSEN & WIXOM
22 Hills Center Business Park
23 1935 Village Center Circle
24 Las Vegas, Nevada 89134
25 Tel: (702) 252-5002
26 Fax: (702) 252-5006
27 Attorneys for Defendants
28 Wells Fargo Bank, N.A.

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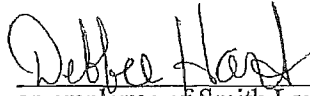
LAS VEGAS, NEVADA 89134

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CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on the 18 day of September, 2012, a true copy of the foregoing **WELLS FARGO BANK, N.A.'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS** was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Joseph S. Kistler, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff



an employee of Smith Larsen & Wixom

EXHIBIT F

EXHIBIT F

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

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RESP

Kent F. Larsen, Esq.

Nevada Bar No. 3463

Stewart C. Fitts, Esq.

Nevada Bar No. 5635

SMITH LARSEN & WIXOM

Hills Center Business Park

1935 Village Center Circle

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Tel: (702) 252-5002

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Email: kfl@slwlaw.com

scf@slwlaw.com

Attorneys for Defendants

Wells Fargo Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,

Plaintiff,

v.

WELLS FARGO BANK, NATIONAL

ASSOCIATION; DOES 1 through X,

inclusive; and ROE CORPORATIONS,

1 through X, inclusive

Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

**WELLS FARGO BANK, N.A.'S
RESPONSES TO PLAINTIFF'S FIRST
SET OF REQUEST FOR ADMISSIONS**

Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of record, Smith Larsen & Wixom, hereby answers and responds to Plaintiff's request for admissions as follows:

SUPPLEMENTAL NRCP 16.1 DISCLOSURES

These disclosures are supplemental to the disclosures made in conjunction with the early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the

1 right to make additional supplemental disclosures.

2 **GENERAL OBJECTIONS**

3 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
4 discovery requests, and the discovery requests themselves, to the extent they seek to require
5 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
6 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
7
8 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
9 requests to the extent they seek the disclosure or production of information protected by the
10 attorney-client privilege, the work-product doctrine, any other applicable privilege or
11 doctrine, the disclosure of trade secrets, or other confidential research, development, or
12 commercial information that can be discovered, if at all, only through the entry of a
13 protective order. Wells Fargo objects to preparing a privilege log for the documents or files
14 of any in-house or outside counsel, including documents or files prepared at the direction of
15 in-house or outside counsel in anticipation of litigation as this is beyond the scope of
16 ordinary practice in this Court. With respect to other privileged documents, if any, Wells
17 Fargo will comply with the requirements of this Court in terms of preparing any required
18 privilege log. These general objections are incorporated into each response herein.
19
20

21 **RESPONSES**

22 **REQUEST NO. 1:**

23 Please admit that, on October 6, 2011, Arash Dounel was an employee of Wells
24 Fargo.
25

26 **RESPONSE:**

27 Subject to and without waiving the general objections, Wells Fargo responds: admit.
28

REQUEST NO. 2:

Please admit that, on October 6, 2011, Arash Dounel had a conversation with Michael Kaplan while he was working at a Wells Fargo bank in California.

RESPONSE:

Subject to and without waiving the general objections, Wells Fargo is without sufficient information to admit or deny this request.

REQUEST NO. 3:

Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that Lisa Johnson "must have some type of criminal background."

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications." *Id.* A request is

improper where it seeks an admission regarding facts "central to the lawsuit" or "legal concessions." *Id.* The request herein is improper because it pertains to factual allegations that are central to the lawsuit and which are subject to qualifications, and the request also seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is without sufficient information to admit or deny this request.

REQUEST NO. 4:

Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that

1 Mr. Kaplan "should hire a private investigator to check up on" Lisa Johnson.

2 **RESPONSE:**

3 In addition to the general objections, Wells Fargo objects on grounds that this request
4 seeks information regarding the scope and content of confidential communications with a
5 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
6 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
7 well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
8 The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and
9 which the adverse party can admit cleanly, without qualifications." *Id.* A request is
10 improper where it seeks an admission regarding facts "central to the lawsuit" or "legal
11 concessions." *Id.* The request herein is improper because it pertains to factual allegations
12 that are central to the lawsuit and which are subject to qualifications, and the request also
13 seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is
14 without sufficient information to admit or deny this request.

15 **REQUEST NO. 5:**

16 Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that
17 Lisa Johnson "must have arrest warrants outstanding."
18
19
20

21 **RESPONSE:**

22 In addition to the general objections, Wells Fargo objects on grounds that this request
23 seeks information regarding the scope and content of confidential communications with a
24 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
25 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
26 well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
27 The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and
28

1 which the adverse party can admit cleanly, without qualifications.” *Id.* A request is
2 improper where it seeks an admission regarding facts “central to the lawsuit” or “legal
3 concessions.” *Id.* The request herein is improper because it pertains to factual allegations
4 that are central to the lawsuit and which are subject to qualifications, and the request also
5 seeks legal concessions. Subject to and without waiving these objections, Wells Fargo is
6 without sufficient information to admit or deny this request.

7
8 **REQUEST NO. 6:**

9 Please admit that, on November 8, 2011, a Wells Fargo representative named Joceda
10 Freeman stated to Michael Kaplan that Mr. Kaplan was not eligible to open an account with
11 Wells Fargo.

12 **RESPONSE:**

13 In addition to the general objections, Wells Fargo objects on grounds that this request
14 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of
15 admissible evidence, and seeks information regarding the scope and content of confidential
16 communications with a non-party customer. Wells Fargo also objects on grounds that this
17 request seeks a legal conclusion, is vague and ambiguous, and “is too broad and involves
18 both factual issues as well as legal issues.” *See, Smith v. Emery*, 109 Nev. 737, 742, 856
19
20

21 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is “to obtain admission of facts which are
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23 *Id.* A request is improper where it seeks an admission regarding facts “central to the lawsuit”
24 or “legal concessions.” *Id.* The request herein is improper because it pertains to factual
25 allegations that are central to the lawsuit and which are subject to qualifications, and the
26 request also seeks legal concessions. Subject to and without waiving these objections, Wells
27 Fargo is without sufficient information to admit or deny this request.
28

REQUEST NO. 7:

Please admit that, on November 8, 2011, a Wells Fargo representative named Sheila stated to Joceda Freeman that Michael Kaplan was not eligible to open an account with Wells Fargo.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications." *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit" or "legal concessions." *Id.* The request herein is improper because it pertains to factual allegations that are central to the lawsuit and which are subject to qualifications, and the request also seeks legal concessions. Subject to and without waiving these objections, Wells

Fargo is without sufficient information to admit or deny this request.

REQUEST NO. 8:

Please admit that, in October 2011, Arash Dounel apologized to Michael Kaplan for comments that Mr. Dounel made to Mr. Kaplan on October 6, 2011.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information that is irrelevant, not reasonably calculated to lead to the discovery of

1 admissible evidence, and seeks information regarding the scope and content of confidential
2 communications with a non-party customer. Wells Fargo also objects on grounds that this
3 request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves
4 both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856
5 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are
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7
8 *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit"
9 or "legal concessions." *Id.* The request herein is improper because it pertains to factual
10 allegations that are central to the lawsuit and which are subject to qualifications, and the
11 request also seeks legal concessions. Subject to and without waiving these objections, Wells
12 Fargo is without sufficient information to admit or deny this request.

13 REQUEST NO. 9:

14
15 Please admit that Arash Dounel stated to Michael Kaplan that Mr. Dounel would send
16 a letter of apology to Mr. Kaplan for Mr. Dounel's comments to Mr. Kaplan regarding Lisa
17 Johnson made on October 6, 2011.

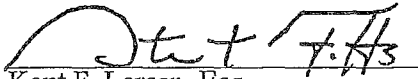
18 RESPONSE:

19
20 In addition to the general objections, Wells Fargo objects on grounds that this request
21 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of
22 admissible evidence, and seeks information regarding the scope and content of confidential
23 communications with a non-party customer. Wells Fargo also objects on grounds that this
24 request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves
25 both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856
26 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are
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28

1 *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit"
2 or "legal concessions." *Id.* The request herein is improper because it pertains to factual
3 allegations that are central to the lawsuit and which are subject to qualifications, and the
4 request also seeks legal concessions. Subject to and without waiving these objections, Wells
5 Fargo is without sufficient information to admit or deny this request.
6

7 DATED this 2 day of August, 2012

8 SMITH LARSEN & WIXOM

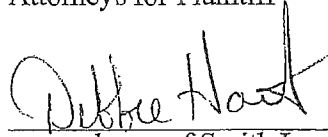
9 

10 Kent F. Larsen, Esq.
11 Nevada Bar No. 3463
12 Stewart C. Fitts, Esq.
13 Nevada Bar No. 5635
14 SMITH LARSEN & WIXOM
15 Hills Center Business Park
16 1935 Village Center Circle
17 Las Vegas, Nevada 89134
18 Tel: (702) 252-5002
19 Fax: (702) 252-5006
20 Attorneys for Defendants
21 Wells Fargo Bank, N.A.
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on August 2, 2012, a true copy of the foregoing
WELLS FARGO BANK, N.A.'S RESPONSES TO PLAINTIFF'S FIRST SET OF
REQUEST FOR ADMISSIONS was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff



an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

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EXHIBIT G

EXHIBIT G

Dis
9/18

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2 Kent F. Larsen, Esq.
3 Nevada Bar No. 3463
4 Stewart C. Fitts, Esq.
5 Nevada Bar No. 5635
6 **SMITH LARSEN & WIXOM**
7 Hills Center Business Park
8 1935 Village Center Circle
9 Las Vegas, Nevada 89134
10 Tel: (702) 252-5002
11 Fax: (702) 252-5006
12 Email: kfl@slwlaw.com
13 scf@slwlaw.com
14 Attorneys for Defendants
15 Wells Fargo Bank, N.A.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12
13 LISA JOHNSON, a Nevada resident,) CASE NO: A-12-655393-C
14)
15 Plaintiff,) DEPT: XXVI
16)
17 v.)
18)
19 WELLS FARGO BANK, NATIONAL) WELLS FARGO BANK, N.A.'S
20 ASSOCIATION; DOES 1 through X,) SUPPLEMENTAL RESPONSES TO
21 inclusive; and ROE CORPORATIONS,) PLAINTIFF'S FIRST SET OF
22 1 through X, inclusive) REQUEST FOR ADMISSIONS
23)
24 Defendants.)
25)
26)
27)
28)

22 Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of
23 record, Smith Larsen & Wixom, hereby answers and responds to Plaintiff's request for
24 admissions as follows:
25

26 **SUPPLEMENTAL NRCP 16.1 DISCLOSURES**

27 These disclosures are supplemental to the disclosures made in conjunction with the
28

1 early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the
2 right to make additional supplemental disclosures.

3 GENERAL OBJECTIONS

4 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's
5 discovery requests, and the discovery requests themselves, to the extent they seek to require
6 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,
7 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.
8 Wells Fargo is not bound by the instructions. Wells Fargo further objects to Plaintiff's
9 requests to the extent they seek the disclosure or production of information protected by the
10 attorney-client privilege, the work-product doctrine, any other applicable privilege or
11 doctrine, the disclosure of trade secrets, or other confidential research, development, or
12 commercial information that can be discovered, if at all, only through the entry of a
13 protective order. Wells Fargo objects to preparing a privilege log for the documents or files
14 of any in-house or outside counsel, including documents or files prepared at the direction of
15 in-house or outside counsel in anticipation of litigation as this is beyond the scope of
16 ordinary practice in this Court. With respect to other privileged documents, if any, Wells
17 Fargo will comply with the requirements of this Court in terms of preparing any required
18 privilege log. These general objections are incorporated into each response herein.
19
20

21 RESPONSES

22 **REQUEST NO. 1:**

23 Please admit that, on October 6, 2011, Arash Dounel was an employee of Wells
24 Fargo.
25

26 **RESPONSE:**

27 Subject to and without waiving the general objections, Wells Fargo responds: admit.
28

REQUEST NO. 2:

Please admit that, on October 6, 2011, Arash Dounel had a conversation with Michael Kaplan while he was working at a Wells Fargo bank in California.

RESPONSE:

Subject to and without waiving the general objections, after making a reasonable inquiry and review of available information, Wells Fargo is without sufficient information to admit or deny this request as Mr. Dounel has been, and continues to be, on a medical leave of absence. Wells Fargo reserves the right to supplement this response after Mr. Dounel returns from his medical leave of absence.

REQUEST NO. 3:

Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that Lisa Johnson "must have some type of criminal background."

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks information regarding the scope and content of confidential communications with a non-party customer. Wells Fargo also objects on grounds that this request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).

The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications." *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit" or "legal concessions." *Id.* The request herein is improper because it pertains to factual allegations that are central to the lawsuit and which are subject to qualifications, and the request also seeks legal concessions. Subject to and without waiving these objections, after making a

1 reasonable inquiry and review of available information, Wells Fargo is without sufficient
2 information to admit or deny this request as Mr. Dounel has been, and continues to be, on
3 a medical leave of absence. Wells Fargo reserves the right to supplement this response after
4 Mr. Dounel returns from his medical leave of absence.

5 **REQUEST NO. 4:**

6 Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that
7 Mr. Kaplan "should hire a private investigator to check up on" Lisa Johnson.

8 **RESPONSE:**

9 In addition to the general objections, Wells Fargo objects on grounds that this request
10 seeks information regarding the scope and content of confidential communications with a
11 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
12 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
13 well as legal issues." See, *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
14 The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and
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17 concessions." *Id.* The request herein is improper because it pertains to factual allegations
18 that are central to the lawsuit and which are subject to qualifications, and the request also
19 seeks legal concessions. Subject to and without waiving these objections, after making a
20 reasonable inquiry and review of available information, Wells Fargo is without sufficient

21 information to admit or deny this request as Mr. Dounel has been, and continues to be, on
22 a medical leave of absence.

23 **REQUEST NO. 5:**

24 Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that
25
26
27
28

1 Lisa Johnson "must have arrest warrants outstanding."

2 **RESPONSE:**

3 In addition to the general objections, Wells Fargo objects on grounds that this request
4 seeks information regarding the scope and content of confidential communications with a
5 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
6 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
7 well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
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12 that are central to the lawsuit and which are subject to qualifications, and the request also
13 seeks legal concessions. Subject to and without waiving these objections, after making a
14 reasonable inquiry and review of available information, Wells Fargo is without sufficient
15 information to admit or deny this request as Mr. Dounel has been, and continues to be, on
16 a medical leave of absence. Wells Fargo reserves the right to supplement this response after
17 Mr. Dounel returns from his medical leave of absence.
18
19
20

21 **REQUEST NO. 6:**

22 Please admit that, on November 8, 2011, a Wells Fargo representative named Joceda
23 Freeman stated to Michael Kaplan that Mr. Kaplan was not eligible to open an account with
24 Wells Fargo.
25

26 **RESPONSE:**

27 In addition to the general objections, Wells Fargo objects on grounds that this request
28 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of

1 admissible evidence, and seeks information regarding the scope and content of confidential
2 communications with a non-party customer. Wells Fargo also objects on grounds that this
3 request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves
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11 making a reasonable inquiry and review of available information, Wells Fargo is without
12 sufficient information to admit or deny this request. Wells Fargo reserves the right to
13 supplement this response after Mr. Dounel returns from his medical leave of absence.
14

15
16 **REQUEST NO. 7:**

17 Please admit that, on November 8, 2011, a Wells Fargo representative named Sheila
18 stated to Joceda Freeman that Michael Kaplan was not eligible to open an account with
19 Wells Fargo.
20

21 **RESPONSE:**

22 In addition to the general objections, Wells Fargo objects on grounds that this request
23 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of
24 admissible evidence, and seeks information regarding the scope and content of confidential
25 communications with a non-party customer. Wells Fargo also objects on grounds that this
26 request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both
27 factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d
28

1 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are in
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5 allegations that are central to the lawsuit and which are subject to qualifications, and the
6 request also seeks legal concessions. Subject to and without waiving these objections, after
7 making a reasonable inquiry and review of available information, Wells Fargo is without
8 sufficient information to admit or deny this request. Wells Fargo reserves the right to
9 supplement this response after Mr. Dounel returns from his medical leave of absence.
10

11 **REQUEST NO. 8:**

12 Please admit that, in October 2011, Arash Dounel apologized to Michael Kaplan for
13 comments that Mr. Dounel made to Mr. Kaplan on October 6, 2011.
14

15 **RESPONSE:**

16 In addition to the general objections, Wells Fargo objects on grounds that this request
17 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of
18 admissible evidence, and seeks information regarding the scope and content of confidential
19 communications with a non-party customer. Wells Fargo also objects on grounds that this
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26 allegations that are central to the lawsuit and which are subject to qualifications, and the
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3 sufficient information to admit or deny this request as Mr. Dounel has been, and continues
4 to be, on a medical leave of absence. Wells Fargo reserves the right to supplement this
5 response after Mr. Dounel returns from his medical leave of absence.
6

7 **REQUEST NO. 9:**

8 Please admit that Arash Dounel stated to Michael Kaplan that Mr. Dounel would send
9 a letter of apology to Mr. Kaplan for Mr. Dounel's comments to Mr. Kaplan regarding Lisa
10 Johnson made on October 6, 2011.

11 **RESPONSE:**

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17 both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856
18 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are
19 in no real dispute and which the adverse party can admit cleanly, without qualifications."
20
21

22 *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit"
23 or "legal concessions." *Id.* The request herein is improper because it pertains to factual
24 allegations that are central to the lawsuit and which are subject to qualifications, and the
25 request also seeks legal concessions. Subject to and without waiving these objections, after
26 making a reasonable inquiry and review of available information, Wells Fargo is without
27 sufficient information to admit or deny this request as Mr. Dounel has been, and continues
28

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1 to be, on a medical leave of absence. Wells Fargo reserves the right to supplement this
2 response after Mr. Dounel returns from his medical leave of absence.

3 DATED this 18 day of September, 2012

4 SMITH LARSEN & WIXOM

5 

6 Kent F. Larsen, Esq.

7 Nevada Bar No. 3463

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CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on September 18, 2012, a true copy of the foregoing
WELLS FARGO BANK, N.A.'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S
FIRST SET OF REQUEST FOR ADMISSIONS was mailed, postage prepaid, to the
following as noted:

Mark A. Hutchison, Esq.
Joseph S. Kistler, Esq.
Timothy R. Koval, Esq.
HUTCHISON & STEFFAN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
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Attorneys for Plaintiff

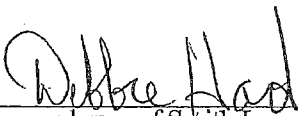

an employee of Smith Larsen & Wixom

EXHIBIT H

EXHIBIT H

AFFIDAVIT OF RAE LYNN STOCKMAN

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

Raelynn Stockman, being first duly sworn, deposes and says:

1. I am a Vice President and Regional Services Manager with Wells Fargo Bank, N.A. ("Wells Fargo").

2. I make this affidavit based upon personal knowledge of the facts contained herein, save and except those items set forth on information and belief.

3. Pursuant to the requirements of the Bank Secrecy Act, and the amendments thereto under the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. 5311 *et seq.*), Wells Fargo has established an anti-money laundering program, including various internal policies, procedures, and controls. This program is part of a cooperative effort between Wells Fargo and federal authorities to combat money laundering, identity theft, embezzlement, and fraud.


4. Consistent with the reporting requirements of the Bank Secrecy Act (31 U.S.C. 5318), Wells Fargo has created an Anti-Money Laundering ("AML") investigative division. The purpose of this investigative division is to ensure compliance with suspicious activity reporting (sometimes referred to as "SAR") requirements under the Bank Secrecy Act. The AML investigative division would not exist but for the suspicious activity reporting requirements of the Bank Secrecy

Act and the related federal regulations.

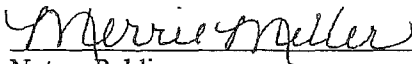
5. Consistent with the purposes of the Bank Secrecy Act and related federal regulations, Wells Fargo's AML and/or SAR policies, procedures, controls, and related documents are kept confidential.

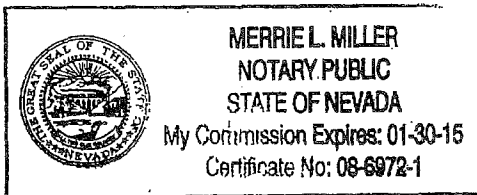
6. In this legal action, Plaintiff has served interrogatories and requests for production of documents which seek the disclosure of information generated by the ALM investigative division,

including policies, procedures, internal memorandum, and other written materials. This information was generated as a direct result of Wells Fargo's purpose of fulfilling its reporting obligations under the Bank Secrecy Act. Consistent with the purposes and provisions of the Bank Secrecy Act, Wells Fargo considers this requested information to be confidential. This information also pertains to an ongoing investigation and Wells Fargo believes that disclosure would compromise its investigative efforts, its cooperative efforts with law enforcement officials, and the purposes of the reporting requirements under the Bank Secrecy Act.


Raelynn Stockman

SUBSCRIBED and SWORN to before me
this 21st day of September, 2012.


Notary Public
My Commission Expires: 1-30-2015



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7
8 *Attorneys for Lisa Johnson*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 LISA JOHNSON, a Nevada resident,)	Case No.: A-12-655393-C
	)	Dept.: XXVI
12 Plaintiff,)	
13 vs.	)	PLAINTIFF'S REPLY IN SUPPORT
	)	OF MOTION TO COMPEL AND
14 WELLS FARGO BANK, NATIONAL	)	OPPOSITION TO WELLS FARGO
ASSOCIATION; DOES I through X,	)	BANK'S COUNTERMOTION FOR
15 inclusive; and ROE CORPORATIONS, I	)	PROTECTIVE ORDER
through X, inclusive,)	
	)	Date of Hearing: October 5, 2012
16 Defendants.	)	Time of Hearing: 9:00 a.m.
)	

17
18 Plaintiff Lisa Johnson ("Johnson" or "Plaintiff") submits her reply in support of her
19 motion to compel and opposition to Wells Fargo Bank, National Association's ("Wells
20 Fargo's" or "Defendant's") countermotion for protective order.

21 **1. Introduction.**

22 The Court should grant Johnson's motion to compel and deny Wells Fargo's
23 countermotion for protective order. The issue before the Court is whether Wells Fargo is
24 obligated to provide discovery to Johnson concerning the events and circumstances surrounding
25 defamatory and otherwise false statements that Johnson alleges that a Wells Fargo
26 representative made to a third-party concerning Johnson. Pursuant to Wells Fargo's discovery
27 obligations under NRCP 26(b), Wells Fargo should be required to disclose this information.

28 Wells Fargo's position in its opposition and countermotion seeks to thwart the broad
scope of discovery by asserting various inapplicable claims of confidentiality, including an

1 argument that Wells Fargo's alleged requirement to report suspicious account activity to the
2 government precludes it from explaining why it made defamatory statements against Johnson to
3 a third-party. This and other arguments are nothing more than attempts to escape Wells Fargo's
4 obligation to participate in discovery.

5 This behavior is nothing new. For example, aside from Wells Fargo's inadequate
6 discovery responses and the self-serving affidavit of Raelyn Stockman attached to its opposition
7 and countermotion, Wells Fargo has not produced a single discovery document to Johnson
8 more than eight months into the litigation. Further, Wells Fargo has: (1) failed to provide
9 Johnson with a proposed confidentiality agreement and protective order, notwithstanding its
10 promise to do so, (2) asked for a third-party authorization from a joint-account-holder with
11 Johnson when it had no intention of disclosing information concerning the joint-account-holder,
12 and (3) frequently requested extensions to discovery response deadlines only to object and
13 refuse to provide substantive responses to the majority of these requests. Johnson requests that
14 the Court require Wells Fargo to participate in discovery in good faith by granting our motion
15 to compel. Further, Johnson requests that the Court deny Wells Fargo's countermotion for
16 protective order inasmuch as it seeks to preclude disclosure of information that is not protected
17 by the Bank Secrecy Act. Finally, Wells Fargo's behavior entitles Johnson to fees and costs in
18 bringing this motion.

19 **2. Analysis.**

20 **A. Pursuant to EDCR 2.34, it is appropriate for the discovery commissioner to**
21 **adjudicate the parties' discovery disputes.**

22 It is appropriate for the Discovery Commissioner to adjudicate the discovery issues
23 presented in Johnson's motion to compel. On June 1, 2012, Johnson propounded a first set of
24 requests for production of documents, a first set of interrogatories, and a first set of requests for
25 admission to Wells Fargo, following which the bank delivered responses. As Johnson disputed
26 the adequacy of these responses, and as required by EDCR 2.34(d),¹ the parties engaged in a

27 ¹ Specifically, EDCR 2.34(d) states, "[d]iscovery motions may not be filed unless an
28 affidavit of moving counsel is attached thereto setting forth that after a discovery dispute

1 discovery dispute conference regarding the issues raised in Johnson's motion to compel on
2 August 17, 2012. Although the parties were able to resolve some issues during this conference,
3 the parties were unable to resolve many others.

4 EDCR 2.34(a) requires, "[u]nless otherwise ordered, all discovery disputes (except
5 disputes presented at a pretrial conference or at trial) must first be heard by the discovery
6 commissioner." In compliance with this mandate, on August 31, 2012, Johnson filed a motion
7 to compel discovery on the disputed items.

8 Wells Fargo seeks to delay a ruling on whether it must supplement its discovery
9 responses by claiming that only the district judge may resolve these disputes.² Specifically, it
10 claims that because Johnson requests declaratory relief to obtain information that is the subject
11 of her motion to compel,³ she may not pursue discovery of this information at this time. It
12 bases this position on EDCR 7.10(a), which states, "no judge except the judge having charge of
13 the cause or proceeding may enter any order therein."

14 Here, however, the Discovery Commissioner's adjudication of Johnson's motion to
15 compel does not run afoul of EDCR 7.10(a), as the same judge having charge of this proceeding
16 will be entering an order based on the Discovery Commissioner's report and recommendation.
17 Pursuant to EDCR 2.34(f), "[f]ollowing the hearing of any discovery motion, the commissioner
18 must prepare and file a report and recommendation for the court's order. . . ." Accordingly, the
19 district court makes the ultimate ruling concerning the discovery issues raised in Johnson's
20 motion to compel. Further, pursuant to EDCR 2.34(f), a party may object to the report and
21 recommendation, which objection would be adjudicated by the district judge having charge of

22 _____
23 conference or a good faith effort to confer, counsel have been unable to resolve the matter
24 satisfactorily. . . ."

25 ² See Wells Fargo Bank's Opp'n to Pl.'s Mot. to Compel and Wells Fargo Bank's
Counter-motion for Protective Order ("Opp'n and Counter-motion") at 6, on file with this Court.

26 ³ Johnson requests declaratory relief that she is entitled to disclosure of the reasons for
27 Wells Fargo's closure of her accounts and the accompanying statements and/or innuendos that
28 she is or was involved in criminal activity, which issues are also implicated in Johnson's
motion to compel. See the Complaint at ¶¶ 42-46, on file.

1 the proceeding. Accordingly, the Discovery Commissioner should adjudicate the discovery
2 issues raised in Johnson's motion to compel and deny Wells Fargo's countermotion in this
3 regard.

4 **B. Wells Fargo should be compelled to supplement its responses to requests for
admission nos. 2-9.**

5 Johnson's requests for admission nos. 2-9 to Wells Fargo properly request information
6 concerning defamatory and otherwise wrongful statements made by Wells Fargo employee
7 Arash Dounel to a third-party. Accordingly, Wells Fargo should be required to supplement its
8 responses to responses to these requests for admission. Inasmuch as Wells Fargo agrees to
9 provide responsive and adequate information upon Dounel's return from medical leave in
10 October, Johnson does not contest any upcoming supplementation.

11 However, Wells Fargo's objections that Johnson is improperly pursuing admission of
12 facts that are "central to the lawsuit" or "legal conclusions"⁴ are without merit. The purpose of
13 requests for admission is to obtain admissions of facts that are not in dispute.⁵ In *Smith v.*
14 *Emery*, a case that involved personal injuries from a defective furnace, the Supreme Court of
15 Nevada held that the respondent was required to admit or deny requests for admission that
16 pertained to factual issues in support of the appellants' claims.⁶ Specifically, the court ruled
17 that the following requests, among others, were unobjectionable:

18 No. 5 Admit that parts were missing from the furnace that cause [sic] ventilation
19 to be defective.

20 No. 6. Admit that no warning was provided with respect to the use of the
furnace.⁷

21 Similar to the requests for admission in *Smith v. Emery*, which sought admission of
22 facts in support of the plaintiff's claims for personal injuries, requests for admission nos. 3-9 in
23

24
25 ⁴ See the Opp'n and Countermotion at 14.

26 ⁵ See *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).

27 ⁶ See *id.*

28 ⁷ See *id.*

1 this case ask Wells Fargo to admit facts in support of Johnson's claims of defamation and false
2 light. Specifically, Johnson asked Wells Fargo to admit that Dounel made various statements
3 and assertions to a third-party concerning Johnson's bank accounts.⁸ These requests do not ask
4 Wells Fargo to admit any legal conclusions. Either Dounel made these statements and
5 assertions or he did not. Accordingly, Wells Fargo should be required to supplement its
6 responses to these requests for admission.

7 Wells Fargo claims that requests for admission nos. 6-7 are not related to any claim or
8 defense in this case.⁹ That position is without merit. Requests nos. 6-7 ask Wells Fargo to
9 admit that it stated that an individual who was a joint-account-holder with Johnson (*i.e.*,
10 Michael Kaplan) was not eligible to open an account with Wells Fargo.¹⁰ This information will
11 assist Johnson to confirm that Wells Fargo refused to allow Kaplan to open an account.
12 Johnson will then be able to follow up to ascertain the true reasons for this refusal and whether
13 it is based on the same reasons and information that form the basis of Wells Fargo's defamatory
14 statements against Johnson. Accordingly, Johnson's motion to compel this information should
15 be granted. Inasmuch as Wells Fargo's countermotion for protective order seeks to prevent it
16 from being required to supplement its responses, the countermotion should be denied.

17 **C. Wells Fargo should be required to supplement its answers to Johnson's**
18 **interrogatories and its responses to Johnson's requests for production of**
documents.

19 ***1. Johnson has a right to discover information concerning the defamatory and***
20 ***otherwise wrongful statements made against her.***

21 Johnson is entitled to discover information concerning Wells Fargo's basis for
22 defamatory and otherwise wrongful statements made against her, including information
23 concerning the closure of her accounts. Wells Fargo argues that Johnson has no legal right to
24 know why Wells Fargo exercised its alleged right to terminate the "at will" banking relationship

25 ⁸ See Plaintiff's Motion to Compel and for an Award of the Fees and Costs Incurred in
26 Bringing this Motion ("Motion") at Ex. 10, on file.

27 ⁹ See the Opp'n and Countermotion at 16.

28 ¹⁰ See the Motion at Ex. 10.

1 with Johnson.¹¹ Contrary to Wells Fargo's contentions, this is not a simple case of Wells Fargo
2 terminating a business relationship with a customer and thereafter declining to explain why it
3 ended the relationship.¹² Instead, this is a case where Wells Fargo terminated a business
4 relationship with a customer, made defamatory statements against the customer in explaining
5 the reasons for the termination to a third-party, and thereafter refused to explain the basis for
6 the defamatory statements, including the related reasons for the termination. Although Wells
7 Fargo cites to case law for the general proposition that a relationship between a bank and a
8 customer is generally "at will" and may be terminated by either party,¹³ Wells Fargo fails to cite
9 any case law precluding discovery under the circumstances of this case. Wells Fargo should not
10 be allowed to spread defamatory information and thereafter hide behind inapplicable legal
11 theories to prevent discovery of these issues. This is particularly true, as discussed *infra*, since
12 Wells Fargo alleges "truth" as an affirmative defense to the defamation claim.

13 Further, Wells Fargo makes the bald assertion that Arash Dounel, the bank employee
14 who made the defamatory statements, did not know the reasons why it closed Johnson's
15 accounts, and therefore the reasons for the closures are not relevant to the claims of defamation,
16 false light, and declaratory relief.¹⁴ Wells Fargo's argument falls short for multiple reasons.
17 First, Johnson's complaint does not "tacitly acknowledge" that Dounel did not know the
18 reasons for the account closures, as Wells Fargo alleges.¹⁵ The complaint actually states,
19 "Dounel *at first stated* that he could not see any reason why Wells Fargo closed the accounts."¹⁶
20 The complaint thereafter alleges that, among other things, "as the conversation progressed,

21
22 ¹¹ See the Opp'n and Countermotion at 6-7.

23 ¹² See *id.*

24 ¹³ See, e.g., *Kiley v. First Nat'l Bank of Maryland*, 102 Md.App. 317, 329-30, 649 A.2d
25 1145, 1150 (1994).

26 ¹⁴ See the Opp'n and Countermotion at 7.

27 ¹⁵ See *id.*

28 ¹⁶ See the Complaint at ¶ 11.

1 Dounel asserted that Johnson must have some type of criminal background, thereby suggesting
2 that the accounts were closed due to alleged criminal activity by Johnson.”¹⁷ As Dounel made
3 this and other wrongful statements against Johnson in the midst of discussing and reviewing
4 Wells Fargo’s account information concerning Johnson, Johnson is entitled to information
5 supporting Dounel’s contention that Wells Fargo closed her accounts due to alleged criminal
6 activity. This comports with the broad scope of discovery, which is permissible “if the
7 information sought appears reasonably calculated to lead to the discovery of admissible
8 evidence.”¹⁸

9 Further, one of Wells Fargo’s affirmative defenses is that Johnson’s claims of
10 defamation and false light are barred by principles of truth,¹⁹ meaning that Wells Fargo is
11 claiming that its allegedly defamatory statements and statements that placed her in a false light
12 are true. Since it has “put in issue”²⁰ its contention that these statements are true, Johnson is
13 entitled to discovery regarding Wells Fargo’s evidence regarding the alleged truth of these
14 statements, including bank information concerning Johnson’s alleged criminal activity that
15 supported the closure of her accounts.

16 Although Wells Fargo argues that it may pick and choose the information that it utilizes
17 in support of its affirmative defense of truth, it fails to recognize that discovery is a two-way
18 street. Either party is entitled to “obtain discovery regarding any matter, not privileged, which
19 is relevant to the subject matter involved in the pending action, whether it relates to the claim or
20 defense of the party seeking discovery or to the claim or *defense of any other party*”²¹

21
22 ¹⁷ See the Complaint at ¶ 12.

23 ¹⁸ See Nev. R. Civ. P. 26(b).

24 ¹⁹ See Wells Fargo’s Answer at Affirmative Defense No. 26, on file with this Court.

25
26 ²⁰ See *Pierson v. Robert Griffin Investigations, Inc.*, 92 Nev. 605, 607, 555 P.2d 843,
27 844 (1976) (holding that evidence of appellant’s criminal activity was admissible in a
defamation case when his character was put in issues by the respondents’ defense of truth).

28 ²¹ See Nev. R. Civ. P. 26(b)(1) (emphasis added).

1 Accordingly, Johnson is entitled to information to rebut Wells Fargo's affirmative defense that
2 the statements it made against Johnson were true. Accordingly, Johnson's motion to compel
3 this information should be granted and Wells Fargo's countermotion for protective order should
4 be denied in this respect.

5 **2. *The Bank Secrecy Act does not shield Wells Fargo from discovery.***

6 **a. Legal standard.**

7 Contrary to Wells Fargo's assertions, the Bank Secrecy Act does not shield Wells Fargo
8 from discovery concerning Johnson's claims of defamation and false light. The purpose of the
9 Bank Secrecy Act is "to require certain reports or records where they have a high degree of
10 usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of
11 intelligence or counterintelligence activities, including analysis, to protect against international
12 terrorism."²² The Bank Secrecy Act provides that, among other things, a bank may not notify a
13 person that it has reported a suspicious transaction to a government agency.²³ Further, pursuant
14 to 31 C.F.R. 1020.320(e)(1)(i),

15 No bank, and no director, officer, employee, or agent of any bank, shall disclose a
16 SAR [Suspicious Activity Report] or any information that would reveal the existence
17 of a SAR. Any bank, and any director, officer, employee, or agent of any bank that
18 is subpoenaed or otherwise requested to disclose a SAR or any information that
19 would reveal the existence of a SAR, shall decline to produce the SAR or such
20 information²⁴

21 However, a bank is required to disclose discovery related to documents and facts
22 pertaining to suspicious activity at issue that was created in the ordinary course of business.²⁵

23 Indeed, SAR protection only applies to the SARs themselves and not to other reports or
24 documents evidencing suspicious activity. *See Gregory v. Bank One, Ind., N.A.*, 200 F.Supp.2d
25 1000, 1002 (S.D. Ind. 2002) (analyzing the rule in the context of a defamation case and stating

26 ²² *See* 31 U.S.C. § 5311 (2011).

27 ²³ *See* 31 U.S.C. § 5318(g)(2)(A) (2011).

28 ²⁴ *See* 31 C.F.R. § 1020.320(e)(1)(i) (2011).

²⁵ *See Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL 5139874, at *3
(S.D.N.Y. Dec. 8, 2010).

1 that the rule “requires confidentiality only of SARs and their contents, not of other reports of
2 suspicious activity [the] requirement of confidentiality applies only to the SARs
3 themselves and the information contained therein, but not to their supporting documentation.”).
4 Nor do documents become privileged because they may prompt the filing of a SAR or because
5 they support the filing of a SAR or are referred to in a SAR.²⁶

6 Although a bank may undertake an internal investigation in anticipation of filing a SAR,
7 it is also a standard business practice for banks to investigate suspicious activity as a necessary
8 and appropriate measure to protect the bank’s interests, and the internal bank reports or
9 memorandum generated by the bank regarding such an investigation are not protected by SAR
10 privilege.²⁷ “The letter and spirit of the limitation is served by shielding any SAR filed by a
11 bank as well as any document that refers to a SAR having been filed or refers to information as
12 being a part of a SAR or otherwise reveals the preparation or filing of a SAR.”²⁸

13 One court stated:

14 [B]ased on this Court’s liberal pretrial discovery standard, the Court grants Plaintiff’s
15 request for any memoranda or documents drafted in response to the suspicious
16 activity at issue in this case. However, Defendants shall not produce any SARs or
17 previous drafts of SARs, need not indicate if and when a SAR was produced, and
18 shall not state what documents and facts were or were not included in any SARs.
19 Although BOA [Bank of America] may have undertaken an internal investigation in
20 anticipation of filing a SAR, it is also a standard business practice for banks to
investigate suspicious activity and BOA does not cite any binding precedent on this
Court which bars the production of this relevant documentation. The documents and

21 ²⁶ See *In re Whitley*, 2011 WL 6202895, at *4 (Bkrtcy. M.D.N.C. Dec. 13, 2011).

22 ²⁷ See *id.*, citing *Freedman & Gersten, LLP*, 2010 WL 5139874, at *1.

23 ²⁸ See *In re Whitley*, 2011 WL 6202895, at *4 (holding that, subject to the SAR
24 restrictions, the bank must disclose, among other things: (1) bank documents relative to the
25 accounts in question that were generated in the ordinary course of business, including
26 computer-generated reports of suspicious and/or unusual, irregular or improper account activity,
27 (2) documents relating to any investigation or inquiry by the bank or its agents of any account in
28 question, (3) documents that would evidence any response to the investigation and the findings,
or observation, notes of any such investigation relative to account activity of the individual in
question, including suspicious activity, (4) documents that would evidence follow-up
concerning suspicious activity, and (5) documents obtained by the bank from any source
relating to any investigation the bank may have made into the account of the individual in
question, including suspicious activity).

1 facts produced in the ordinary course of business are necessary and relevant for
2 purposes of Plaintiff discovering and/or assessing the precise facts of this incident .

3 The bank argued that it was precluded from producing information because the bank's
4 investigator who opened, prepared, and maintained the file, and prepared documents in
5 response to a fraudulent crime, did so in anticipation of the potential filing of an SAR.³⁰
6 However, the court rejected this argument and held that the bank was required to produce non-
7 SAR information to the plaintiff.³¹

8 Further, the court held that the plaintiff was "entitled to discovery related to [the bank's]
9 policies and procedures for handling suspicious activity and risk management, except for those
10 policies and procedures specifically designated for SARs."³²

11 **b. Application.**

12 Here, Johnson is entitled to information created in the ordinary course of business that
13 responds to her discovery requests. Specifically, Johnson is entitled to information concerning:
14 (1) the contents of, and basis for, bank employee Arash Dounel's defamatory statements against
15 Johnson made to Michael Kaplan concerning the closure of Johnson's accounts, (2)
16 communications between other Wells Fargo employees and Michael Kaplan concerning the
17 closure of these accounts, and (3) non-SAR documents concerning the review, risk assessment,
18 and closure of Johnson's accounts. All of this information is relevant to evaluate the basis of
19 Dounel's defamatory statements against Johnson and/or statements that placed her in a false
20 light, as well as Wells Fargo's affirmative defense that these statements are true.³³

21 ///

22
23 ²⁹ See *id.*

24 ³⁰ See *id.*

25 ³¹ See *id.*

26 ³² See *id.*

27 ³³ See Wells Fargo's Answer at Affirmative Defense No. 26 (stating that, "Plaintiff's
28 claims are barred, in whole or in part, by principles of truth . . .).

1 Contrary to Wells Fargo's argument, Johnson is not seeking any information that is
2 protected by the Bank Secrecy Act. The Bank Secrecy Act only precludes Johnson from
3 obtaining SARs filed by Wells Fargo and documents that reveal the preparation or filing of a
4 SAR. However, the Bank Secrecy Act does not prevent the bank from disclosing information
5 concerning the basis for Dounel's defamatory statements against her and the basis and process
6 for closing her accounts.

7 The mere possibility that information contained in a SAR report also forms the basis for
8 Dounel's defamatory statements and the closure of Johnson's accounts does not protect the
9 information from discovery. Documents do not become privileged "because they may prompt
10 the filing of a SAR or because they support the filing of a SAR or are referred to in a SAR."³⁴
11 Accordingly, Wells Fargo may not prevent discovery by claiming that the requested information
12 may be present in a SAR document.

13 Further, the presence of an allegedly isolated Anti-Money Laundering Investigative
14 Division ("AML Division") at Wells Fargo does not shield disclosure of relevant information.
15 The fact that a bank performs an investigation in anticipation of the potential filing of a SAR
16 does not universally shield the bank from discovery of allegedly suspicious account
17 information.³⁵ As the court stated in *Freedman & Gersten, LLP v. Bank of America*, it is a
18 standard business practice for banks to investigate allegedly suspicious activity.³⁶ The fact that
19 Wells Fargo designates a division or an individual (as was the case in *Freedman & Gersten*,
20 *LLP v. Bank of America*) to investigate an account in preparation of filing a SAR does not
21 absolve the bank from producing responsive information. It only prevents the bank from
22 disclosing SAR information.

23 Wells Fargo's alleged actions to investigate and prepare a SAR against Johnson are
24 distinct from its actions to defame Johnson and to close her accounts. It is possible that Wells

25
26 ³⁴ See *In re Whitley*, 2011 WL 6202895, at *4.

27 ³⁵ See *Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL 5139874, at *3.

28 ³⁶ See *id.*

1 Fargo used a common foundation of information to perform each of these actions. However,
2 Wells Fargo's suggestion that it cannot disclose information concerning the defamatory
3 statements against Johnson or the closure of her accounts without disclosing that a SAR has
4 been filed with the government is wrong.

5 The banks in *In re Whitley* and *Freedman & Gersten, LLP v. Bank of America, N.A.*
6 made similar arguments that the disclosure of bank documents concerning internal
7 investigations of suspicious activity of an account-holder would violate the Bank Secrecy Act.³⁷
8 In both cases, the court rejected the bank's blanket plea for confidentiality and held that the
9 bank must disclose all responsive non-SAR information.³⁸ This holding is consistent with the
10 case law that Wells Fargo cites in its opposition and counter-motion. *See In re Mezvinsky*, 2000
11 WL 33950697, at *3 (Bkrtcy. E.D. Pa. Sept. 7, 2000) (holding that the Bank Secrecy Act and
12 related regulations did not apply to documents that were predecessors to SARs or to other
13 specified reports); *Union Bank of California, N.A. v. Superior Court*, 130 Cal.App.4th 378,
14 390, 392, 29 Cal.Rptr.3d 894, 901, 903 (2005) (stating that supporting documentation
15 underlying a SAR that is generated or received in the ordinary course of a bank's business, as
16 well as various internal reports and memoranda of suspicious activity, is discoverable).
17 Accordingly, Wells Fargo should be required to disclose information that is responsive to
18 Johnson's discovery requests that does not directly reference a SAR report. Wells Fargo's
19 counter-motion for protective order to the contrary should be denied.

20 **3. *Johnson is willing to enter into a confidentiality order and has facilitated the***
21 ***provision of a third-party authorization to protect Wells Fargo's allegedly***
confidential information.

22 Wells Fargo's request to preclude discovery of investigative materials and risk analysis
23 procedures on other grounds of confidentiality should be denied as well. The broad scope of
24 NRCP 26(b) permits discovery of any information that appears reasonably calculated to lead to

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26 ³⁷ *See In re Whitley*, 2011 WL 6202895, at *3; *see also Freedman & Gersten, LLP v.*
Bank of America, N.A., 2010 WL 5139874, at *4.

27 ³⁸ *See In re Whitley*, 2011 WL 6202895, at *4; *see also Freedman & Gersten, LLP v.*
28 *Bank of America, N.A.*, 2010 WL 5139874, at *4.

1 the discovery of admissible evidence. Johnson offered, over three months ago, to enter into a
2 confidentiality agreement with Wells Fargo regarding the provision of allegedly confidential
3 materials, which Wells Fargo stated that it would draft and provide to Johnson for review.
4 However, Wells Fargo never produced a draft to Johnson. Wells Fargo now seeks to preclude
5 discovery of its “confidential plans, techniques, and methods” pursuant to NRCP 26(c)(7),³⁹
6 which provides that, among other things, a party may obtain a protective order “that a trade
7 secret or other confidential research, development, or commercial information not be revealed
8 or be revealed only in a designated way.”⁴⁰

9 Here, Wells Fargo should be required to comply with its prior representation to Johnson
10 that it would enter into a confidentiality agreement regarding these materials. A confidentiality
11 agreement in this regard would allow Wells Fargo to maintain the alleged confidentiality of
12 discovery information while allowing Johnson to obtain discovery concerning her claims of
13 defamation and false light. Wells Fargo’s claim that it is entitled to protection from disclosure
14 of risk analysis and investigative procedures allegedly to protect its customers from fraudulent
15 activity and to protect the “economic value of the corporation’s enterprise” are without merit.⁴¹
16 The broad rules of discovery permit this discovery. Wells Fargo’s case law citations do not
17 change this result. Indeed, the cases referenced in the opposition and counter-motion involve
18 claims of misappropriation of trade secrets and confidentiality of a government warrant
19 proceedings, none of which are applicable to this case.⁴²

20 Wells Fargo should not be allowed to spread false customer information and thereafter
21 refuse to permit discovery concerning this information based on principles of confidentiality.
22 Wells Fargo’s counter-motion to preclude this discovery should be denied.

24 ³⁹ See the Opp’n and Counter-motion at 12.

25 ⁴⁰ See Nev. R. Civ. P. 26(c)(7).

26 ⁴¹ See the Opp’n and Counter-motion at 12.

27 ⁴² See *Clark v. Bunker*, 453 F.2d 1006 (9th Cir. 1972); *Finkel v. Cashman Prof’l, Inc.*,
28 270 P.3d 1259 (Nev. 2012); *Times Mirror Co. V. United States*, 873 F.2d 1210 (9th Cir. 1989).

Regarding Wells Fargo's request not to disclose information concerning non-parties (i.e., Michael Kaplan),⁴³ Johnson has already facilitated the provision of a third-party authorization to permit Wells Fargo to disclose Kaplan's information in this litigation.⁴⁴ Accordingly, there is no issue that Wells Fargo would somehow breach a duty of confidentiality or privacy by disclosing Kaplan's account information in this litigation. Wells Fargo's request not to disclose Kaplan's information should be denied.

3. Wells Fargo should be required to pay Johnson's fees and costs in bringing this motion.

NRCP 37(a)(4) authorizes the party who has been required to bring a motion to obtain full and complete responses to discovery to recover the fees and costs incurred in bringing such a motion against the non-responsive party. Based on Wells Fargo's continued non-responsiveness, its failure to produce even a single substantive discovery document to Johnson more than eight months into the litigation, and the disingenuous discovery tactics that it has employed, Wells Fargo should be required to pay Johnson's fees and costs in bringing this motion and defending against the countermotion for protective order.

4. Conclusion.

Based on the foregoing reasons, Johnson respectfully requests that the Discovery Commissioner enter findings and recommendations granting Johnson's motion to compel Wells Fargo to provide supplemental responses to Johnson's first sets of interrogatories, requests for production of documents, and requests for admission. Further, Johnson requests that it be recommended that Wells Fargo's countermotion for protective order be denied, inasmuch as it seeks to preclude disclosure of information that is not protected by the Bank Secrecy Act.

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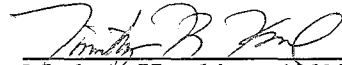
⁴³ See the Opp'n and Countermotion at 13.

⁴⁴ See the Motion at Ex. 7.

1 Johnson also requests that she be awarded her fees and costs incurred in bringing this motion
2 and in defending against Wells Fargo's counter motion for protective order.

3 DATED this 28th day of September, 2012.

4 HUTCHISON & STEFFEN, LLC

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 28th day of September, 2012, I caused the above and foregoing document entitled **PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO COMPEL AND OPPOSITION TO WELLS FARGO BANK'S COUNTERMOTION FOR PROTECTIVE ORDER** to be served as follows:

by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

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- ☐ to be served via facsimile; and/or
- ☐ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

To the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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An employee of Hutchison & Steffen, LLC

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