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Respondent.

Tracie K. Lindeman
Clerk of Supreme Court

**APPENDIX TO
APPELLANT'S OPENING BRIEF
VOLUME II**

Appeal from the Eighth Judicial District Court
Case No. A655393

Michael K. Wall (2098)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

*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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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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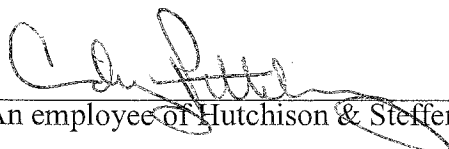
1 **CERTIFICATE OF SERVICE**

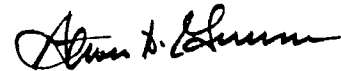
2 I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this
3 date **APPELLANT'S APPENDIX** was filed electronically with the Clerk of the Nevada
4 Supreme Court, and therefore electronic service was made in accordance with the master
5 service list as follows:

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CLERK OF THE COURT

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DISTRICT COURT**CLARK COUNTY, NEVADA**

LISA JOHNSON, a Nevada resident,)

CASE NO: A-12-655393-C

Plaintiff,)

DEPT: XXVI

v.)

**WELLS FARGO BANK'S REPLY IN
SUPPORT OF COUNTERMOTION
FOR PROTECTIVE ORDER**

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

Date: October 5, 2012

Time: 9:00 a.m.

Defendants.)

Plaintiff's opposition is an improper attempt to circumvent the exclusive powers of the District Court Judge and, by doing so, improperly obtain confidential information that is prohibited under Section 5318(g) of the Bank Secrecy Act and other governing authorities. In this reply, Wells Fargo will address Plaintiff's erroneous assertions and will reiterate why a protective order must be entered.

////

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1 **A. WELLS FARGO'S COUNTERMOTION SHOULD BE GRANTED**

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

4 Wells Fargo's countermotion must be granted because Plaintiff improperly seeks to have the
5 Discovery Commissioner "adjudicate" her third claim for relief in violation of EDCR 7.10(a).

6 First, Plaintiff's third claim for relief seeks declaratory relief in the form of an order from the
7 District Court Judge regarding whether or not she is entitled to know why Wells Fargo exercised its
8 legal right to end its banking relationship with her. (Plaintiff's Complaint, pp. 5-6.) Under EDCR
9 7.10(a), the District Court Judge is the only judicial officer who may hear the evidence on this claim
10 and render a decision thereon. Yet, in a manner that contradicts her own complaint, Plaintiff has
11 attempted to obtain this information under the guise of a discovery motion without first obtaining
12 a ruling on this substantive claim. This discovery tactic is an improper attempt to circumvent the
13 District Court Judge's exclusive authority to rule on this substantive claim. *Id.*

14 Second, Plaintiff attempts to rationalize her improper tactic by arguing that she is only
15 seeking a report and recommendation, and not an order, from the Discovery Commissioner on this
16 substantive issue. (Plaintiff's Opposition, pp. 2-4.) Plaintiff's rationalization has no merit. Under
17 7.10(b), only the District Court Judge may hear a substantive claim that has been assigned to that
18 Judge. In this regard, "no other" judicial officer "may do any act or thing in or about" the stated
19 cause of action. *Id.* Further, only the District Court Judge may enter a ruling on the substantive
20 claim after that Judge has conducted a hearing or other proceeding on the merits of the claim. *Id.*
21 Thus, only the District Court Judge (and not the Discovery Commissioner) may conduct a hearing
22 and render a decision on the declaratory relief claim. *Id.* Plaintiff's attempt to rationalize its
23 improper discovery tactic is without merit. *Id.*

24 Third, Plaintiff's very act of asserting her third claim for relief is a tacit admission that she
25 knows that she may not obtain the requested information without an order from the District Court
26 Judge. Indeed, why would Plaintiff even file her third claim for relief if she truly believed that she
27 could obtain this information merely by serving discovery requests? The answer is obvious.
28 Plaintiff knows that she is not legally entitled to this information without an order from the District

1 Court Judge. Thus, Plaintiff's attempt to obtain this information under the guise of a discovery
2 motion is defeated by her own complaint and is an improper attempt to circumvent the District Court
3 rules. *Id.*

4 Fourth, Wells Fargo anticipates filling a motion for summary judgment seeking dismissal of
5 Plaintiff's third claim for relief prior within the near future. Under these circumstances, the proper
6 course is to permit the District Court Judge to render a ruling on this substantive matter. *See*, EDCR
7 7.10. In the event the District Court Judge rules in favor of Wells Fargo, this issue will become
8 moot. In the event the District Court Judge were to rule in favor of Plaintiff, then, and only then,
9 would it be appropriate for the Discovery Commissioner to issue a report and recommendation
10 regarding the scope of permissible discovery. Until then, this is not a proper and/or ripe discovery
11 issue. *Id.*

12 Fifth, it is interesting why Plaintiff is so intent on circumventing the established rules of the
13 District Court. Plaintiff has sought the requested information by asserting her third claim for relief.
14 This substantive claim is pending before the District Court Judge. A decision will be rendered at the
15 appropriate time by the District Court Judge on this substantive claim. Why does Plaintiff insist on
16 circumventing the established rules by implementing improper tactics which contradict her own
17 complaint?

18 In sum, Wells Fargo respectfully submits that its countermotion for a protective order must
19 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 Plaintiff has not disputed the well-established legal principal that the relationship between
23 a bank and a customer is "at will" and may be terminated by either party **for reasons of its own.**
24 (*See*, Plaintiff's Opposition, pp. 1-15; Wells Fargo's Countermotion, pp. 6-7, *citing, e.g., Groos*
25 *National Bank v. Comptroller of Currency*, 573 F.2d 889, 897 (5th Cir. 1978); 5(A) *Michie on Banks*
26 *& Banking*, Ch. 9, § 9, p. 55 (1994).) Instead, Plaintiff seeks to side-step this established legal
27 principal by making assertions which have no legal support. Plaintiff's attempt is improper.
28

1 First, Plaintiff incorrectly claims that she is entitled to know why Wells Fargo exercised its
2 legal right to end its banking relationship with Plaintiff because she is “entitled to information”
3 regarding the “basis for” alleged statements by Wells Fargo employee, Arash Dounel. (Plaintiff’s
4 Opposition, pp. 7:4-5, 10:14-15.) Plaintiff is wrong and her argument is a *non-sequitur*.

5 The fallacy in Plaintiff’s argument lies in the fact that Mr. Dounel does not know why Wells
6 Fargo exercised its legal right to end its banking relationship with Plaintiff. This is because Wells
7 Fargo’s reason for ending the relationship are confidential and are not communicated to employees
8 such as Mr. Dounel. (*See*, Aff. of Raelynn Stockman, ¶¶ 4-5, attached as Exhibit H to Wells Fargo’s

9 Opposition and Countermotion.) Thus, the “basis” of Mr. Dounel’s alleged comments (if any) are
10 separate and distinct from the reason why Wells Fargo ended its banking relationship with Plaintiff.
11 Accordingly, Plaintiff may not use alleged comments by Mr. Dounel as a means to improperly side-
12 step the legal principal that Wells Fargo could end the banking relationship for “reasons of its own.”
13 *Id.*

14 Second, as a courtesy to Plaintiff, Wells Fargo has offered to make Mr. Dounel available in
15 Las Vegas for a deposition on October 24, 2012. (*See*, Notice of Deposition of Arash Dounel,
16 attached hereto as Exhibit A.) Wells Fargo has offered to bring Mr. Dounel to Las Vegas for this
17 deposition rather than have counsel for the parties travel to California where Mr. Dounel works and
18 resides. Plaintiff may depose Mr. Dounel regarding personal knowledge that he may have regarding
19 discoverable information. NRCP 26. Thus, Plaintiff’s accusation that Wells Fargo has attempted
20 to avoid discovery is patently false.

21 However, Plaintiff has also noticed the Rule 30(b)(6) deposition of Wells Fargo for the
22 improper purpose of asking the “reason(s)” why Wells Fargo closed the accounts at issue. (Notice
23 of NRCP 30(b)(6) Deposition, attached hereto as Exhibit B.) A protective order must be issued on
24 this deposition because: (1) Wells Fargo had the legal right to end the banking relationship for
25 reasons of its own; (2) Mr. Dounel’s alleged comments (if any) were not based on personal
26 knowledge of why Wells Fargo decided to end the banking relationship; and (3) the information
27
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1 regarding why Wells Fargo chose to end the banking relationship is confidential under the Bank
2 Secrecy Act and other governing authorities. *Id.*

3 Accordingly, Wells Fargo's countermotion must be granted. *Id.*

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

5 Wells Fargo's countermotion for a protective order should also be granted because Plaintiff's
6 opposition improperly attempts to side-step the confidentiality provisions of the Bank Secrecy Act
7 (31 U.S.C. 5311 *et seq.*) (*See*, Plaintiff's Opposition, pp. 8-12.) Specifically, Plaintiff incorrectly
8 asserts that the Bank Secrecy Act only applies to SARs and not to other supporting documents. (*Id.*,
9 p. 8:20-21.) Plaintiff's assertion is misplaced and incorrect.

10 First, Plaintiff's argument is misplaced because she seems to forget that Wells Fargo's
11 countermotion does, in fact, seek a protective order that includes, among other protections, an order
12 barring discovery of: (1) any SAR (if any exists); (2) the contents of any SAR; and (3) discovery
13 regarding the issue of whether or not a SAR was prepared and/or filed. (Wells Fargo's Opposition
14 and Countermotion, p. 11:12-23.) Thus, Wells Fargo's countermotion should be granted since
15 Plaintiff acknowledges that the Bank Secrecy Act prohibits discovery regarding these issues. *See*,
16 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k).

17 Second, Plaintiff casually glosses over the specific language in the Code of Federal
18 Regulations which not only prohibits the disclosure of a SAR, but which also prohibits the disclosure
19 of "any [other] information" that would reveal whether or not a SAR was prepared and/or filed. 12
20 C.F.R. 21.11(k) (Emphasis added.) Indeed, Plaintiff's opposition fails to address the intent of the
21 Department of Treasury when it promulgated these critical regulatory provisions. (*Id.*)

22 Third, Plaintiff completely ignores the seminal case of *Union Bank of California, N.A. v.*
23 *Superior Court*, wherein the Department of Treasury, Office of the Comptroller of the Currency
24 ("OCC"), successfully argued (as the author of the applicable Code of Federal Regulations) that the
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1 Bank Secrecy Act bars the discovery of the same type of information that is at issue in this case. (*Id.*)

2 Plaintiff ignores this case law because she has no rebuttal to it. (*Id.*)

3 In *Union Bank of California, N.A. v. Superior Court*, the appellate court held that the trial
4 court erred by improperly requiring a bank to disclose documents generated as a result of complying
5 with the SAR reporting requirements. *Id.*, 130 Cal. App. 4th 378. The trial court entered its
6 erroneous ruling despite the fact that the OCC filed an *amicus curiae* brief urging the trial court to
7 protect not just SARs but also the entire "process" of investigating whether or not a SAR should

8
9 be filed. *Id.* 130 Cal. App. 4th at 386-87. The appellate court reversed trial court's erroneous
10 decision by granting a writ of mandamus in favor of the bank based on the fact that the Department
11 of Treasury/OCC consistently took the position that "information on the SAR is confidential." *Id.*,
12 130 Cal. App. 4th at 393, citing, 61 Fed. Reg. 4336. (Feb. 5, 1996.) In this regard, the appellate
13 court specifically addressed what the Department of Treasury/OCC meant when it stated that
14 "information on the SAR" is confidential under the Bank Secrecy Act. *Id.*

15 The appellate court initially began its analysis by stating what was not included in the phrase
16 "information on the SAR." In doing so, the appellate court addressed the cases relied upon by
17 Plaintiff in its opposition. Regarding these cases, the appellate court stated that "factual
18 documents" in the form of "transactional and account documents such as wire transfers,
19 statements, checks, and deposit slips are the types of documents" that are not protected under
20 Section 5318(g) of the Bank Secrecy Act. *Id.*, 130 Cal. App. 4th at 390-91. These types of documents
21 are not protected because they are generated in the "ordinary course of business" and would exist
22 regardless of the SAR reporting requirements. *Id.* In this regard, Wells Fargo has no objection to
23 disclosing these types of account documents under the terms of an appropriate protective order. *Id.*

1 Indeed, Wells Fargo has previously identified these documents in its NRCP 16.1 Disclosures. (*See*,
2 Exhibit C attached hereto.)¹

3 However, **by contrast**, the appellate court held that **internal documents** generated by a bank
4 as part of its compliance with the SAR reporting requirements **are confidential** because they
5 constitute “other information” that is protected under the Bank Secrecy Act. *Id.*, 130 Cal. App. 4th
6 at 391. In this regard, the appellate court stated that internal documents which are “prepared as part
7 of a financial institution’s process for complying with federal reporting requirements ... **fall within**
8 **the scope of the SAR privilege** because they may reveal the contents of a SAR and disclose whether
9 a SAR has been prepared or filed.” *Id.* 130 Cal. App. 4th at 391. (Emphasis added.) Discovery of this
10 information is prohibited regardless of whether or not a SAR was actually filed. *Id.*, 130 Cal. App.
11 4th at 397-98.

12 Specifically, the appellate court stated:

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

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

20 This privilege is intended to preserve the purposes of the Bank Secrecy Act (and the
21 amendments thereto as articulated in the Annunzio-Wylie Anti-Money Laundering Act). Indeed,
22 disclosure of this type of information would “**undermine**” the **very purpose** of the **Bank Secrecy**
23 **Act**. In this regard, disclosure of a bank’s internal documents and investigative methods “through
24 civil discovery” would:

25 ¹

26 It is presumed that these documents are already in Plaintiff’s possession since these
27 transactional documents were generated by her and the corresponding account statements were
28 mailed to her. In the event that Plaintiff has not retained copies of these documents, Wells Fargo
will provide her with another copy of these documents.

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

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

Finally, Plaintiff ignores the fact that a bank's policies and procedures regarding compliance with the SAR reporting requirements are also privileged. *Id.* 130 Cal. App. 4th at 398. This is because disclosure of the policies and procedures would expose a bank's decision-making process regarding the SAR requirements. *Id.*; *Freedman & Gerstein v. Bank of America*, 2010 WL 5139874 (D.N.J.) *4, *citing*, 31 U.S.C. 5311 (Declaration of Purpose of the Bank Secrecy Act/Anti-Money Laundering Act). Disclosure of this information "simply is not within the spirit" of the Bank Secrecy Act. *Freedman & Gerstein v. Bank of America, supra*. (Emphasis added.)

Here, Plaintiff completely ignores this governing law. This governing law is consistent with the Code of Federal Regulations as promulgated by the Department of Treasury/OCC. *Id.* Indeed, this governing law is based, in part, on the *amicus curiae* brief that was filed by the Department of Treasury/OCC in *Union Bank of California, N.A. v. Superior Court, supra*. Accordingly, Wells Fargo's countermotion should be granted and a protective order should be entered barring the discovery of any and all documents and procedures generated by Wells Fargo as part of its process of complying with the SAR reporting requirements. *Id.*²

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²

As set forth in its Opposition and Countermotion, Wells Fargo acknowledges that an *in camera* review of its documents may be required by the District Court. However, Wells Fargo respectfully submits that such a review should only be conducted in the event that Plaintiff were to prevail on her claim for declaratory relief. *See*, EDCR 7.10(a).

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

3 Plaintiff's opposition makes the circular argument that Wells Fargo's investigative materials
 4 and its risk analysis and investigative procedures should not be afforded confidential and/or
 5 proprietary protection simply because Plaintiff does not think that they should be protected.
 6 (Plaintiff's Opposition, p. 13.) This circular argument does not rebut the legal authorities set forth
 7 in Wells Fargo's counter motion. (Wells Fargo's Counter motion, p. 5.)³

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

9 Plaintiff makes the presumptuous argument that non-party customer information should be
 10 disclosed because Plaintiff's boyfriend (Michael Kaplan) has consented to such a disclosure.
 11 (Plaintiff's Opposition, p. 14:1-6.) Plaintiff's argument is misplaced.

12 First, Plaintiff's argument is misplaced because (in the event that an *in camera* review
 13 becomes appropriate) it will be readily apparent to the Court that the confidential documents do not
 14 pertain to Mr. Kaplan. Thus, the fact that Mr. Kaplan may or may not have consented to the
 15 disclosure of this information is entirely irrelevant. Simply put, Mr. Kaplan does not have the right
 16 to consent to the disclosure of confidential information pertaining to other customers who are not
 17 parties to this action. (Wells Fargo's Opposition and Counter motion, p. 13, citing *Valley Bank of*
 18 *Nevada v. Superior Court*, 15 Cal. 3d 652, 542 P.2d 977 (1975); 10 Am. Jur. 2d, *Banks and*
 19 *Financial Institutions*, § 642 (2007); *Peterson v. Idaho First National Bank*, 83 Idaho 578, 588, 367
 20 P.2d 284, 290 (1961); *Suburban Trust Company v. Waller*, 44 Md. App. 335, 408 A.2d 758 (1979);
 21 Gramm-Leach-Bliley Act, § 501 *et seq.*, 15 U.S.C. § 6801 *et seq.*)

22 Second, any documents that may pertain to Mr. Kaplan in his capacity as a joint account-
 23 holder with Plaintiff are presumed to be in Plaintiff's possession because: (1) these transactional

24 _____
 3

25 Again, Wells Fargo acknowledges that an *in camera* review of its documents may be
 26 required in order to confirm that the subject information is entitled to protection under NRCP
 27 26(c)(7). Wells Fargo respectfully submits that if such a review is required, it should only be
 28 conducted in the event that Plaintiff were to prevail on her claim for declaratory relief. *See*, EDCR
 7.10(a).

1 documents were generated by Plaintiff and/or Mr. Kaplan as joint account-holders; and (2) the
2 corresponding account statements have previously been mailed to Plaintiff in her capacity as an
3 account holder. In the event that Plaintiff has not retained copies of these documents, Wells Fargo
4 will provide her with an additional copy of these documents.

5 6. Collateral/Miscellaneous Points

6 Wells Fargo respectfully submits that Plaintiff's opposition improperly makes additional
7 assertions that (although irrelevant) are simply inaccurate. Accordingly, Wells Fargo is compelled
8 to respond.

9 First, Plaintiff incorrectly asserts that Wells Fargo has spread false statements regarding
10 Plaintiff and has then refused to permit discovery regarding these alleged statements (if any).
11 (Plaintiff's Opposition, p. 13:20-22.) This is simply false. Specifically, even assuming, *arguendo*,
12 that the allegations of Plaintiff's complaint were true, Mr. Dounel did not make any alleged
13 comments to anyone but Mr. Kaplan. (See, Plaintiff's Complaint.) Further, Plaintiff acknowledges
14 that Mr. Dounel informed Mr. Kaplan that he did not know why the accounts were closed. (*Id.*)
15 Indeed, Plaintiff acknowledges that it was only after Mr. Kaplan continued to press Mr. Dounel for
16 information he did not know, that Mr. Dounel made the alleged "suggestions." (*Id.*) Thus, if the
17 alleged comments were "spread" to anyone else, they were spread by Plaintiff and/or Mr. Kaplan –
18 and not by Wells Fargo. (*Id.*) Further, Wells Fargo is not refusing to permit Mr. Dounel from being
19 deposed regarding any alleged comments. Indeed, as stated, Wells Fargo has actually extended the
20 courtesy of bringing Mr. Dounel to Las Vegas for his deposition. Thus, Plaintiff's assertion is
21 without merit.

22 Second, Plaintiff incorrectly suggests that a confidentiality order would cure any harm
23 resulting from disclosure of the information that is confidential under the Bank Secrecy Act or other
24 governing authorities. (Plaintiff's Opposition, pp. 12-13.) This is false. Indeed, it is well-established
25 that the confidentiality provisions of the Bank Secrecy Act constitute a discovery and evidentiary
26 privilege which cannot be waived or compromised. See, 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k).
27 Thus, Plaintiff's assertion is without merit. *Id.*

B. REQUEST FOR ATTORNEYS FEES EXPENSES

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

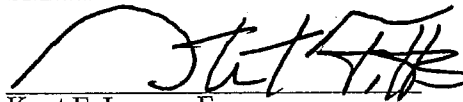
C. CONCLUSION

Accordingly, Wells Fargo respectfully submits that its counter-motion should be granted and that a protective order should be entered:

1. Prohibiting discovery of a suspicious activity report, if any exists;
2. Prohibiting discovery of the contents of a suspicious activity report, if any exists;
3. Prohibiting discovery regarding the issue of whether or not a suspicious activity report was prepared and/or filed;
4. Prohibiting discovery regarding any or all drafts, internal documents, and/or policies and procedures that Wells Fargo generated and/or implemented in connection with the aforementioned provisions of the Bank Secrecy Act and the related Code of Federal Regulations; and
5. Prohibiting discovery regarding why Wells Fargo exercised its legal right to end its banking relationship for reasons of its own.

DATED this 3RD day of October, 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.

SMITH LARSEN & WIXOM

A T T O R N E Y S
HILLS CENTER BUSINESS PARK
1936 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

RECEIPT OF COPY

TSK *Reply in Support*

RECEIPT OF A COPY of the foregoing Wells Fargo Bank's ~~Opposition to Plaintiff's~~
of Countermotion for Protective Order *TSK*
~~Motion to Compel and Wells Fargo Bank's Countermotion for Protective Order~~ is hereby

acknowledged this 4th day of October, 2012.

Joseph S. Kistler

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

EXHIBIT A

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

8 | *Attorneys for Lisa Johnson*

///

HUTCHISON & STEFFEN

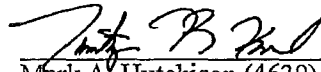
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

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The deposition shall continue from day to day until

DATED this 24th day of September, 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 ^{September} 21st day of August, 2012, I caused the above and foregoing document entitled

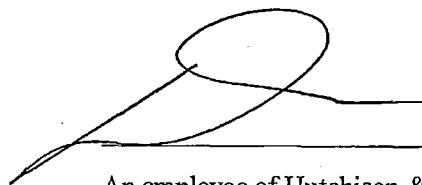
NOTICE OF TAKING THE DEPOSITION OF ARASH DOUNEL to be served as follows:

- ☒ 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

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

13 *Attorneys for Lisa Johnson*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 LISA JOHNSON, a Nevada resident,
17 Plaintiff,

18 vs.

19 WELLS FARGO BANK, NATIONAL
20 ASSOCIATION; DOES I through X,
21 inclusive; and ROE CORPORATIONS, I
22 through X, inclusive,
23 Defendants.

24 Case No. A-12-655393-C
25 Dept. XXVI

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

1 TO: ALL INTERESTED PARTIES AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on 24th day of October, 2012 at 3:00 p.m., that the
3 Plaintiff by and through her counsel of record of the law firm of Hutchison and Steffen, upon
4 oral examination, before a notary public or other officer authorized by law to administer oaths,
5 will take THE DEPOSITION OF PERSON MOST KNOWLEDGEABLE FOR WELLS
6 FARGO BANK NATIONAL ASSOCIATION PURSUANT TO N.R.C. P. 30 (b)(6) regarding:
7 Wells Fargo's knowledge and information as to the following Wells Fargo accounts, including
8 the reason(s) Wells Fargo closed the following accounts:

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

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

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

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

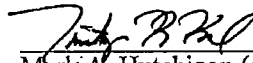
HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

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

3 DATED this 24th day of September, 2012.
4

5 HUTCHISON & STEFFEN, LLC

6 

7 Mark A. Hutchison (4639)

8 Joseph S. Kistler (3458)

9 Timothy R. Koval (12014)

10 Peccole Professional Park

11 10080 West Alta Drive, Suite 200

12 Las Vegas, NV 89145

13 Attorneys for Plaintiff Lisa Johnson
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CERTIFICATE OF SERVICE

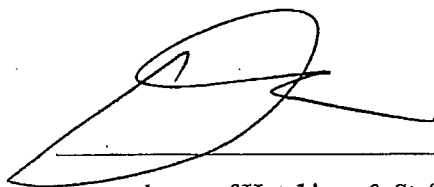
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 28th day of September, 2012, I caused the above and foregoing document entitled **NOTICE OF TAKING THE DEPOSITION OF ARASH DOUNEL** to be served as follows:

- ☒ 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 C

1 **ECCP**
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.

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13	LISA JOHNSON, a Nevada resident,	)	CASE NO: A-12-655393-C
14)	
15	Plaintiff,	)	DEPT: XXVI
16)	
17	v.)	
18	WELLS FARGO BANK, NATIONAL	)	RULE 16.1 EARLY CASE
19	ASSOCIATION; DOES 1 through X,	)	CONFERENCE DISCLOSURES OF
20	inclusive; and ROE CORPORATIONS,	)	DEFENDANT WELLS FARGO BANK
21	1 through X, inclusive	)	N.A.
22)	
23	Defendants.)	

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

27 ...

28 ...

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

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

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

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

13 13. Wells Fargo reserves the right to disclose the name(s) of expert(s) in
14 accordance with NRCF 26(b)(4).
15

16 14. Rebuttal witnesses, as may be needed.

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

18 16. Wells Fargo reserves the right to supplement this list as discovery
19 continues.
20

21 III. DOCUMENTS

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

23 A. Consumer Account Agreement re: account ending in #4164. Michael
24 Kaplan, owner; Lisa Johnson, authorized signor. A copy of this document is believed to be
25 in the possession of Plaintiff. Wells Fargo will disclose a copy of this agreement upon entry
26 of an appropriate stipulated confidentiality agreement and protective order.
27

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

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

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

21 G. Wells Fargo August 18, 2011 letter to Guitarfile, LLC re: account
22 ending in #7051. A copy of this document is believed to be in the possession of Plaintiff.
23 Wells Fargo will disclose a copy of this document upon entry of an appropriate stipulated
24 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 ...

SMITH LARSEN & WIXOM

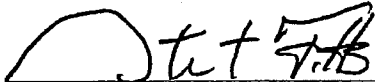
ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

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.

SMITH LARSEN & WIXOM

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

CERTIFICATE OF SERVICE BY MAIL

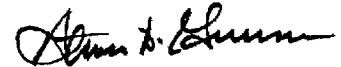
I HEREBY CERTIFY that on May 15, 2012 a true copy of the foregoing RULE 16.1

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



CLERK OF THE COURT

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

TRAN

LISA JOHNSON,	)	CASE NO. A-12-655393-C
)	
Plaintiff,	)	DEPT. NO. XXVI
vs.)	
)	
WELLS FARGO BANK, NATIONAL ASSN.;)	
et al.,)	
Defendants.)	

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

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;

FRIDAY, OCTOBER 5, 2012

APPEARANCES:

FOR THE PLAINTIFF: JOSEPH S. KISTLER, ESQ.

FOR THE DEFENDANT: STEWART C. FITTS, ESQ.

RECORDER/TRANSCRIBER: RICHARD KANGAS

RECEIVED
OCT 23 2012
CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 FRIDAY, OCTOBER 5, 2012, 9:27 A.M.

3 * * * * *

4 DISCOVERY COMMISSIONER: Johnson.

5 MR. KISTLER: Good morning, Your Honor. Joseph
6 Kistler of Hutchison & Steffen on behalf of Mrs. Johnson.

7 MR. FITTS: Good morning, Your Honor, Stewart
8 Fitts on behalf of Wells Fargo Bank.

9 DISCOVERY COMMISSIONER: Good morning.

10 I've had some interesting issues this week, and
11 this is definitely one of them. This is plaintiff's motion
12 to compel and related countermotion - opposition and
13 countermotion for a protective order by the defendant. And
14 I've read through everything. I think the real issue is
15 whether the Federal banking laws preclude inquiry into the
16 area that the plaintiffs are seeking answers to in
17 discovery, and whether or not a non-party customer, Michael
18 Kaplan, who is very intertwined in these events, can -
19 whether his information can be disclosed pursuant to
20 relevant banking laws without him actually being a party,
21 and even if he was a party could it be disclosed.

22 The problem of course is that under the banking
23 laws and the Patriot Act, which is very far-reaching, it
24 looks to me, plaintiff's counsel, that this information is
25 protected. The problem is, if it's protected then arguably
the plaintiff is never able to prove her case.

There seems to me to be somewhat of a qualitative

1 difference between allowing the plaintiff information after
2 the accounts are closed, that's her information, versus
3 providing information where there might be an ongoing
4 investigation by the Federal Government into nefarious
5 activities. That seems to me to be a distinction, because
6 clearly the Patriot Act and the Federal banking laws
7 suggest - the Bank Secrecy Act suggest that the banks are
8 not to give up any information where there's an
9 investigation. Why? Because you don't want to tip off a
10 terrorist, for example, that their bank accounts are being
investigated. So that makes perfect sense to me.

11 But unfortunately, as I said, it's a very far-
12 reaching act. And if you just look at the language of the
13 statute it seems like that information should not be
14 provided by the bank. And again I go back to what I said
15 earlier, there's this tension then between protecting the
16 banks and the Federal Government in investigating
17 activities that we may well want investigated to protect
18 the general public, versus in this particular case the
19 plaintiff is not able then arguably to prove the case of
20 defamation. And that's a problem to me; it becomes a no-
21 win situation. And it shields the bank I think from being
22 responsible in providing information to its customers, or
potential customers.

23 The one thing that bothers me, and I just read it,
24 and it seems to me to be a true inconsistency, and maybe
25 it's, you know - I mean, the defendant suggests it's
because it never happened. But to me, if this teller who

1 we - I think we've tracked down now, right? His deposition
2 is going to be taken. If he did, you know, the - in the
3 motion work, the defendant's position is he didn't remember
4 or doesn't - you know, he would not have known the reasons
5 why the bank closed the account. Well, if that's true,
6 then why would he have said what he said, if he did in fact
7 say it. There's an inconsistency there that I think a jury
8 is gonna go, wait a minute, or just - you know, I mean, I'm
looking at it and going, wait a minute.

9 So obviously there's something in the system,
10 perhaps; I don't know. You know, your position is the
11 teller didn't know, but then how did the teller make - why
12 did the teller make these statements. Now, either one of
13 two things are true. Number one, he made the statements
14 because he in fact had some information that he could
15 access. Or number two, he didn't make the statements and
16 the plaintiffs are making this up. And, you know,
17 unfortunately we'll never ever, ever under these Patriot
18 Act banking laws be able to know the answers to those
questions.

19 So about the only thing I think that I can order,
20 having reviewed everything, is to require the defendant to
21 answer the admissions. Now, what this does is the
22 following. If they deny the statements are being made,
23 then we may be at an impasse, because based on the banking
24 law, the Federal law, I don't think they can give up the
reasoning, or their rationale for closing her accounts.

25 And I think it's very clear that you can't get

1 Michael Kaplan's information right now. Now, if he
2 authorizes you to go get it, I still think the reason that
3 they chose not to let him open an account is probably
4 protected under the banking law and Patriot Act, but you
5 may be able to get any documents that actually pertain to
6 his account; you know, if he had one there, or his
7 application to open an account. You may be able to get to
8 certain non-protected documents, but I think you're going
9 to have to get an authorization, plaintiff's counsel, from
10 Mr. Kaplan to do that.

11 So basically I can't give over any of the
12 documents; those are all protected. But I can make
13 plaintiff's - or defense counsel answer the admissions. If
14 they admit that, then that's probably what you need for
15 your defamation case. If they deny it, then the question
16 is, we've got a he-said, she-said, and I can't order them
17 to produce their documents covered by the banking laws in
18 order to - I guess it's the SAR - that's capital SAR -
19 information. I can't require them to give that over.

20 Now, what they are willing to do and what I am
21 going to require them to do is give over your client's, Ms.
22 Johnson's, all her bank information, you know, all her
23 accounts statement, her checking account, deposits, checks,
24 whatever information they have that she's entitled to have
25 for the years that she banked there. You can have all
that.

MR. KISTLER: Judge, if I can just very briefly
address a few of the - a couple of the points that you -

1 that you mentioned. What we have here is, in the context
2 of why was this account closed, this bank employee, who
3 continued to be a bank employee, supposedly said to Mr.
4 Kaplan the reason it - the reason it was closed must be
5 based on her criminal activity, she must have warrants
6 outstanding, you should hire a private investigator to have
her checked out.

7 So the question becomes, one, was the statement
8 made; and two, if the statement was made, was that the
9 reason that the bank closed the account. Because in this
10 case, Your Honor, the defendant has defended the case based
11 on the affirmative defense of truth, that the statement
12 made and the reason for the closing of the account was
13 because of Ms. Johnson's criminal activities or that she
14 had warrants outstanding, et cetera, et cetera. How in the
15 world can they maintain that affirmative defense if in fact
16 they refused - or they used the statute, that we don't
17 believe is applicable, at least for the background
information -

18 DISCOVERY COMMISSIONER: Well, I think it's - I
19 think it's applicable.

20 MR. KISTLER: Your Honor, how can they maintain
21 the affirmative -

22 DISCOVERY COMMISSIONER: That's a -

23 MR. KISTLER: - defense -

24 DISCOVERY COMMISSIONER: That's a different issue.

25 MR. KISTLER: And so -

 DISCOVERY COMMISSIONER: And I was going to get

1 there.

2 MR. KISTLER: Oh, okay, I'm sorry to interrupt
3 Your Honor.

4 DISCOVERY COMMISSIONER: No, that's all right;
5 you're fine. But that is - that is the last thing. And
6 then the fair result, if you read my notes, my last little
7 note here is, "The fair result may be not to allow
8 defendant to use the truth defense."

8 MR. KISTLER: Right. So what we would ask -

9 DISCOVERY COMMISSIONER: Ahh, I know, it's
10 horrible, isn't it?

11 MR. FITTS: Yes.

12 MR. KISTLER: We -

13 DISCOVERY COMMISSIONER: You know, the banks and
14 the casinos fall into the same category, just so you all
15 know.

16 MR. KISTLER: Judge, we understand - I understand
17 the Court's rationale in stating what the Court stated.

18 DISCOVERY COMMISSIONER: Yeah. But that's the
19 problem.

20 MR. KISTLER: How -

21 DISCOVERY COMMISSIONER: And you can't have it
22 both ways, and I don't think they can - I don't think they
23 can give over those documents. I am really confident that
24 they cannot give over the documents showing the rationale
25 for them closing the account.

26 MR. FITTS: Your Honor, I'm -

27 MR. KISTLER: Excuse me, if I could - if I could -

1 MR. FITTS: Your Honor, I'm - I'm happy to listen
2 to the argument, and I will, but I just want to reserve the
3 right to address that issue at the appropriate time.

4 DISCOVERY COMMISSIONER: Sure. Absolutely.
5 I'm sorry, sir, go ahead.

6 MR. KISTLER: A central issue of the case, a
7 central issue of the case that was put into the case based
8 upon this bank employee's statement. In other words, there
9 is an excellent argument, Judge, that by saying why the
10 account was closed, the employee has already stepped
11 outside and has already waived whatever requirements are
12 placed upon the bank under this Federal statute.

13 DISCOVERY COMMISSIONER: I don't have enough
14 foundation to make that decision right now.

15 MR. KISTLER: So - all right, Judge. And I agree
16 with you, whether the statements were said or not, a
17 critical issue of the case, we asked for admissions and the
18 bank's response was, that's a - that's a central issue of
19 the case, we don't have to admit or deny a central issue of
20 the case; and we don't know.

21 DISCOVERY COMMISSIONER: That's why you brought
22 the motion.

23 MR. KISTLER: That's why we brought the motion.

24 DISCOVERY COMMISSIONER: And that's why I'm going
25 to make the ruling.

MR. KISTLER: Great.

DISCOVERY COMMISSIONER: I'm overruling them on
that.

1 MR. KISTLER: Judge, what we would ask for then
2 is, we would ask that the affirmative defense be stricken,
3 the affirmative defense of truth, we recommend it to be
4 stricken based upon this.

5 DISCOVERY COMMISSIONER: I think that's a decision
6 that Judge Sturman will need to make, but you're going to
7 have to do the discovery first to set forth the foundation.
8 In all seriousness, I think you have to move for partial
9 summary judgment to strike that affirmative defense. I
10 want her to hear that issue and make that decision because
11 that's an admissibility issue. So I think you should
12 definitely bring that motion to her attention. I think you
13 need to take the deposition of the teller first and get the
14 answers to the admissions.

15 MR. KISTLER: Is it fair to say, Your Honor, that
16 in the report and recommendation that I can - if I'm
17 permitted to draft the -

18 DISCOVERY COMMISSIONER: You will be.

19 MR. KISTLER: - recommendation.

20 DISCOVERY COMMISSIONER: You will be.

21 MR. KISTLER: Am I permitted to at least state
22 Your Honor's skepticism as to whether or not that defense
23 can be maintained, given this -

24 DISCOVERY COMMISSIONER: You can say I questioned -

25 MR. KISTLER: You questioned -

DISCOVERY COMMISSIONER: - whether the defense can
be maintained without the bank being required to turn over
the documents, which they are prohibited from doing under

1 the Federal laws.

2 MR. KISTLER: Judge, the last - the last issue, or
3 the last question that I would pose to Your Honor, or make
4 a request of Your Honor is, since at long last the
5 deposition has been scheduled of the critical bank employee
6 for October the 24th, can we require the supplemental
7 responses of the bank by, say, no later than Friday,
8 October the 19th -

9 DISCOVERY COMMISSIONER: Yes.

10 MR. KISTLER: - so that I will have those prior to
11 the time that I depose Mr. Dounell?

12 DISCOVERY COMMISSIONER: Yes, you may have them
13 before.

14 MR. KISTLER: That being said, Your Honor, we did
15 ask for fees and costs in having to bring this. We do
16 think that the position on admissions was really incorrect,
17 objectively incorrect, and we would ask for our fees and
18 costs in being required to compel those answers.

19 DISCOVERY COMMISSIONER: I appreciate that, and I
20 did give it some consideration. But I also realize the
21 reason the defendant did that was to be consistent in their
22 position; and I probably would've done the same thing. So
23 I think no fees or costs. I think it was a good faith - I
24 think it was a good faith motion, and a good faith defense
25 as well.

Mr. Fitts.

MR. FITTS: Yes, Your Honor.

And with respect to the affirmative defense of

1 truth as a defense, the truth as a defense was certainly
2 raised. We know that this bank employee has been on
3 certified medical leave, and I can't - I believe as a
4 matter of law require communication when someone is on a
5 certified medical leave. I don't even know why; there
6 could be a variety of reasons. And so that's why, the
7 first reason why the request for admissions we haven't been
8 able to answer. But -

8 DISCOVERY COMMISSIONER: And I'm not awarding any
9 fees or costs, I'm just going to require you to do it.

10 MR. FITTS: But what I want to say on the defense,
11 on the - on the affirmative defense of truth, I
12 respectfully don't agree with either one - either the
13 statements were made or they weren't. Well, I agree with
14 that, but what if there's something in between where
15 someone's trying to pester someone and saying, well, what
16 would I - what would you do if you were in my situation?

16 DISCOVERY COMMISSIONER: Well, you can argue that
17 in -

18 MR. FITTS: Yes, and that's -

19 DISCOVERY COMMISSIONER: - front of the jury. And
20 that's why -

21 MR. FITTS: - that's why I just want to state for
22 the record that the defense of truth -

23 DISCOVERY COMMISSIONER: Yes, but you would be the
24 bank; you're the adult.

24 MR. FITTS: Yes, we are, Your Honor.

25 DISCOVERY COMMISSIONER: You're the adult; your

1 tellers are the adults.

2 MR. FITTS: And, you know, Your Honor, I agree; we
3 can address that with Judge Sturman.

4 DISCOVERY COMMISSIONER: Yes.

5 MR. FITTS: But I just wanted to state for the
6 record that the defense of truth depends upon what did the
7 bank employee state, or what does he say he stated, and
8 then therefore based upon what he says he states, was that
9 true. And that's far - that could be far different from
10 what they say the bank employee said.

11 DISCOVERY COMMISSIONER: Well, but the problem is,
12 according to your own very-well-written analysis, and your
13 citation of the Federal law, you can't turn over the
14 documentation that would support your position.

15 MR. FITTS: Right. And our position, I would be
16 shocked if this bank employee knows the reason why, Your
17 Honor. And that's why I state -

18 DISCOVERY COMMISSIONER: Right, but if he said it -

19 MR. FITTS: - it may be something different.

20 DISCOVERY COMMISSIONER: Yeah, but if he said it -

21 MR. FITTS: Well, we don't know, we don't know
22 what was said, and that's what I want to state for the
23 record.

24 DISCOVERY COMMISSIONER: I understand that.

25 MR. FITTS: Okay.

DISCOVERY COMMISSIONER: I said if he said it.
You all are not listening to me. If he said it, if he said
it, that alone may form a basis for their defamation claim.

1 Now, whether it survives summary judgment, I can't tell you
2 that. The validity of it, I can't tell you that. What a
3 jury would think about it, I can't tell you that.

4 But I'm just saying that that's why I think it is
5 perfectly fine to answer the admission, because what he
6 said cannot be protected by the Federal banking laws,
7 because you're not turning over information; you're -
8 you're confirming whether or not he said these statements,
9 the validity of which I am not making you support.

10 MR. FITTS: Your Honor, I agree with you, and I
11 apologize if I did not understand that correctly.

12 DISCOVERY COMMISSIONER: Yeah, I said if.

13 MR. FITTS: Okay. I apologize, Your Honor.

14 The next point I just wanted to make just for the
15 record is simply that this confidentiality is basically the
16 Federal Government's privilege; it can't be waived. It
17 just cannot be waived, and the case law states it's an
18 unwaiverable -

19 DISCOVERY COMMISSIONER: Okay. Did I say anything
20 different?

21 MR. FITTS: No. No, no, this is in response to
22 plaintiff's argument, Your Honor.

23 DISCOVERY COMMISSIONER: You won that issue; you
24 won that issue.

25 MR. FITTS: I just wanted to address that because
I don't believe it was addressed in the written briefs, so
I just want to make sure there's a complete record. So -

DISCOVERY COMMISSIONER: Yeah. And I think that

1 the judge is going to have to decide whether it's unfair to
2 penalize the bank and tell them they cannot waive - raise
3 the affirmative defense, which I think seems unfair because
4 we don't have the supporting documentation on it, or if
5 it's an unfair penalty because they're doing what the
6 Federal Government is telling them they have to do. But
7 that would be a Judge Sturman issue.

8 MR. FITTS: Your Honor, so just for clarification,
9 is the countermotion then for a protective order granted?

10 DISCOVERY COMMISSIONER: I'm getting that -

11 MR. FITTS: Okay.

12 DISCOVERY COMMISSIONER: - to that right now.

13 MR. FITTS: Thank you.

14 DISCOVERY COMMISSIONER: Plaintiff's counsel,
15 you're going to prepare the report and recommendation.
16 Plaintiff's motion to compel is granted in part and denied
17 in part. The opposition and countermotion for protective
18 order is granted in part and denied in part. The
19 defendants will be required to answer the admissions by
20 October 19th of 2012. I expect the answers to be to the
21 plaintiff. This is what you can do: you can admit, you
22 can deny, or you can explain why you can neither nor deny,
23 but you have to give a specific reason. Understood?

24 MR. FITTS: Yes.

25 DISCOVERY COMMISSIONER: And you have to hand
deliver those admissions to the plaintiff by - plaintiff's
counsel by October 19th of 2012. Do not mail them out; I
want them hand delivered because of that deposition that's

1 set for October 24th. And that would also - that would go
2 to all the admissions. I think it's number 2 and numbers 3
3 through 9, are the admissions at issue. So those
4 admissions need to be answered appropriately.

5 With respect to the requests to produce and the
6 interrogatories, except for Interrogatory 12 which I need
7 to address in a minute, but with respect to the
8 interrogatories and the requests to produce, I'm going to
grant protection on them for now.

9 Then Interrogatory Number 12 regards the apology,
10 and I believe it is simply asking whether or not the
11 apology was made. I'm not sure that I -

12 MR. KISTLER: Judge, that's in the first third of
13 page 19 of my motion.

14 DISCOVERY COMMISSIONER: Right, I've got it. And
15 I think Interrogatory Number 12 can be supplemented and
16 answered, because I don't think we are asking for any
17 information that would be violative of Federal banking law
or the Patriot Act.

18 So all other interrogatories though are protected
19 for now, for the reasons set forth in defendant's motion
20 and the - well, both the Federal statutes and specifically
21 the Patriot Act.

22 Anything further?

23 MR. FITTS: Yes. We do - so with respect to the
24 October 24th deposition, they have noticed the PMK regarding
the reasons why the bank chose to end the banking -

25 DISCOVERY COMMISSIONER: Protected, the PMK is

1 protected.

2 MR. FITTS: Thank you.

3 DISCOVERY COMMISSIONER: The reasons why the bank
4 has chosen to discontinue business with one of its
5 customers remains protected.

6 MR. FITTS: Okay.

7 DISCOVERY COMMISSIONER: Now - and I'm also going
8 to specifically protect any banking information from
9 Michael Kaplan, who is a non-party. If Mr. Kaplan wants to
10 execute a release for his banking information, including
11 maybe his application to set up an account, he can do that.
12 But short of that, I'm going to protect the bank from
13 having to respond, and I think I already have to those
14 requests to produce and interrogatories.

15 Now, I will not protect, and I'm not sure if it
16 really falls under one of the requests to produce; it may.
17 And I apologize, I didn't exactly pick out which one. I
18 will require the bank to turn over all the account
19 information of Ms. Johnson, to the extent that the
20 plaintiff desires to have complete records from her
21 account.

22 MR. KISTLER: Judge, I believe Mr. Kaplan early on
23 in the case did execute a release. It was requested by the
24 bank for his banking information, and we executed a release
25 that was provided to us by the bank, and yet no information
was given.

DISCOVERY COMMISSIONER: Okay. So if he has done
that -

1 MR. KISTLER: So I believe that release has been
2 executed.

3 DISCOVERY COMMISSIONER: Okay. I apologize, I
4 didn't mean to interrupt you. If a release has in fact
5 been executed by Mr. Kaplan for his banking records, then
6 those records need to be produced.

7 MR. FITTS: Could we just have that a notarized
8 signature, just for protection? It's confidential
9 information. I believe that they are representing Mr.
10 Kaplan, at least it looks like from the disclosures, so I'd
11 just like to have it a notarized consent.

12 DISCOVERY COMMISSIONER: Okay. So just place in
13 there that upon execution of an appropriately-notarized
14 consent that's agreeable to the bank, that Mr. Kaplan's
15 banking records can be produced.

16 MR. KISTLER: Judge, I hope we -

17 DISCOVERY COMMISSIONER: That are not privileged.

18 MR. KISTLER: I hope we don't have to come back
19 again, but just to give you an idea of the flavor -

20 DISCOVERY COMMISSIONER: Oh, I'm counting on it.

21 MR. KISTLER: - of the flavor, that release was
22 executed by Mr. Kaplan months ago. No documents have been
23 forthcoming, and this is the first time that anything has
24 been said about, oh, we'd like to have signature notarized
25 so that we can -

DISCOVERY COMMISSIONER: So now we know the rules.
Let's play by the rules and get it done.

All right. I would be very unhappy about this,

1 except your trial date is 1/6 of '14, so there's time.
2 That doesn't excuse delays. If you didn't like the release
3 you should've called plaintiff's counsel earlier and said,
4 this release is insufficient; if you do it right, we'll
5 give you the information.

6 MR. FITTS: Your Honor, I appreciate Your Honor's
7 ruling. If there are some - I think some issues, we'll
8 talk, we don't need to make a record. But I do appreciate
9 Your Honor's ruling.

10 DISCOVERY COMMISSIONER: Okay.

11 MR. FITTS: And if I misunderstood the if that you
12 were talking about, please accept my apologies.

13 DISCOVERY COMMISSIONER: Not a problem.

14 MR. FITTS: I know your job is very difficult.

15 DISCOVERY COMMISSIONER: Oh, no.

16 MR. KISTLER: Judge, I'll prepare the
17 recommendation then, and -

18 DISCOVERY COMMISSIONER: You prepare the
19 recommendation -

20 MR. KISTLER: - submit them to opposing counsel.

21 MR. FITTS: Okay.

22 DISCOVERY COMMISSIONER: Run it by Mr. Fitts to
23 approve as to form and content.

24 MR. KISTLER: Thank you very much -

25 DISCOVERY COMMISSIONER: I'll look forward to
seeing it. Good luck with the deposition.

MR. FITTS: Thank you so much.

MR. KISTLER: Thank you very much, Your Honor.

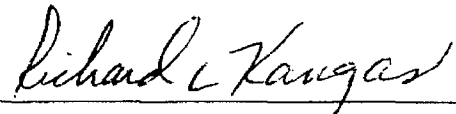
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DISCOVERY COMMISSIONER: Bye-bye.

ROCEEDING CONCLUDED AT 9:50 A.M.

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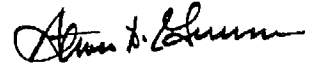
ATTEST: I do hereby certify that I have transcribed the audio-video recording of this proceeding in the above-entitled case to the best of my ability.



RICHARD L. KANGAS
Court Recorder/Transcriber

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CLERK OF THE COURT

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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

DISCOVERY COMMISSIONER'S
REPORT AND
RECOMMENDATIONS

DISCOVERY HEARING DATE:

October 5, 2012

APPEARANCES:

1. Plaintiff Lisa Johnson:

Joseph S. Kistler, Esq.
HUTCHISON & STEFFEN

2. Defendant Wells Fargo Bank, N.A.

Stewart C. Fitts, Esq.,
SMITH LARSEN & WIXOM

I.

FINDINGS

On August 31, 2012, Plaintiff Lisa Johnson ("Johnson") filed a Motion to Compel. On September 26, 2012, Defendant Wells Fargo ("Wells Fargo") filed an Opposition to Plaintiff's Motion to Compel and a Countermotion for Protective Order. On September 28, 2012, Plaintiff filed a Reply in Support of Motion to Compel and Opposition to Wells Fargo's Countermotion for Protective Order. On October 4, 2012, Wells Fargo filed a Reply in Support of Countermotion for Protective Order. On October 5, 2012, the Discovery Commissioner conducted a hearing.

After consideration of the pleadings and papers on file herein, the briefs submitted by the parties, and the arguments of counsel, and with good cause appearing, the Discovery Commissioner recommends and orders as set forth below.

II.**RECOMMENDATIONS**

IT IS HEREBY RECOMMENDED that Plaintiff's Motion to Compel is GRANTED in part and DENIED in part, as follows:

1. Wells Fargo is required is required to hand-deliver supplemental responses to Plaintiff's Request for Admissions Nos. 2-9 by October 19, 2012. Wells Fargo may admit, deny, or specifically explain why it cannot admit or deny the requests;

2. Wells Fargo is required to hand-deliver a supplemental answer to Plaintiff's Interrogatory No. 12 by October 19, 2012;

3. Wells Fargo is not required to provide further responses to Plaintiff's Requests for Production of Documents.

4. Wells Fargo is not required to provide further answers to Plaintiff's interrogatories Nos. 1-11, and No. 13.

5. Wells Fargo is required to provide copies of all records pertaining to the accounts of

1 Plaintiff that are the subject of this action, except that Wells Fargo is not required to provide any
2 all documents pertaining to the reasons why Wells Fargo closed Plaintiff's accounts;

3 6. Upon receipt of a notarized consent signed by Michael Kaplan, Wells Fargo is
4 required to provide copies of all records pertaining to the accounts of Mr. Kaplan, except that Wells
5 Fargo is not required to provide any all documents pertaining to the reasons why Wells Fargo
6 closed Plaintiff's accounts;

7 7. Plaintiff's request to strike the affirmative defense of truth is denied, as this is a
8 substantive issue for the District Court Judge to hear; and
9

10 8. Plaintiff's request for an award of attorneys' fees and costs is denied. .

11 IT IS FURTHER RECOMMENDED that Wells Fargo's Countermotion for Protective order
12 is GRANTED in part, and DENIED in part, as follows:

13 1. Wells Fargo is not be required to disclose the reasons why is closed Plaintiff's
14 accounts, as this information is protected under the Bank Secrecy Act and other federal law
15 authorities;

16 2. Plaintiff is precluded from conducting discovery regarding the reasons why Wells
17 Fargo closed Plaintiff's accounts; and
18

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SMITH LARSEN & WIXOM

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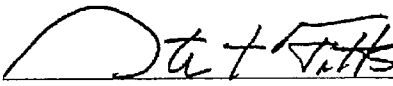
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3. Wells Fargo's request for attorneys' fees and costs is denied.

DATED this 19 day of October, ~~May~~, 2012.


DISCOVERY COMMISSIONER

Submitted by:
SMITH LARSEN & WIXOM



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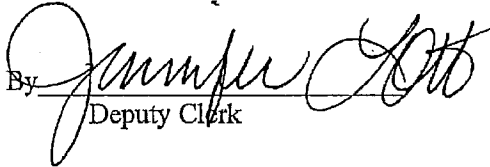
NOTICE

Pursuant to NRCP 16.1(d) (2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections. [Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. See E.D.C.R. 2.34(F)] A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2012.

X Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the 23 day of Oct. 2012.

STEVEN D. GRIERSON, Clerk of the
Court

By 
Deputy Clerk

SMITH LARSEN & WIXOM

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CASE NAME: Lisa Johnson v. Wells Fargo
Bank, National Association,
CASE NUMBER: A-12-655393-C

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

☒ ^{mm} No timely objection having been received in the office of the Discovery Commissioner
pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said
objections, and good cause appearing,

* * *

AND

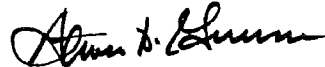
☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations
are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations
are affirmed and adopted as modified in the following manner. (attached hereto)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set
for _____, 2012, at _____ a.m.

DATED this 7 day of November, 2012.


DISTRICT JUDGE 



CLERK OF THE COURT

ODCR

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Attorneys for Lisa Johnson

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,
Plaintiff,

vs.

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

Defendants.

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

**OBJECTION TO DISCOVERY
COMMISSIONER'S OCTOBER 19,
2012 REPORT AND
RECOMMENDATIONS**

Pursuant to EDCR 2.34(f), plaintiff Lisa Johnson ("Johnson" or "Plaintiff") objects to the Discovery Commissioner's October 19, 2012 report and recommendations ("Report and Recommendations"). Johnson objects to the over-breadth of the Report and Recommendations, which allows defendant Wells Fargo Bank, National Association ("Wells Fargo" or "Defendant") not to disclose the reasons why it closed the accounts of Johnson and Michael Kaplan ("Kaplan"), her boyfriend. The Discovery Commissioner determined that the Bank Secrecy Act and other federal law authorities precludes Wells Fargo from disclosing the reasons why its closed Johnson's accounts. However, these authorities at most only preclude Wells Fargo from disclosing documentation that Wells Fargo prepared for the purpose of investigating or drafting a potential suspicious activity report ("SAR") against Johnson or Kaplan. These authorities do not allow Wells Fargo to cloak its internal reports and memoranda with a veil of

1 confidentiality simply by claiming they concern suspicious activity or concern a transaction that
2 resulted in the filing of a SAR.

3 Contrary to the Discovery Commissioner's recommendations, the requested information
4 concerning the closures of Johnson's accounts is discoverable. Indeed, Arash Dounel
5 ("Dounel"), a Wells Fargo employee, made defamatory and otherwise wrongful statements
6 against Johnson concerning the reasons Wells Fargo closed her accounts, including false
7 allegations that Johnson had a criminal record published to Kaplan. In its affirmative defenses,
8 Wells Fargo claimed that Dounel's statements against Johnson were true. As the alleged
9 truthfulness of Dounel's statements and the underlying reasons why Wells Fargo closed
10 Johnson's accounts are central issues in this litigation, Wells Fargo should be required disclose
11 this information to Johnson.

12 **1. Factual and procedural background.**

13 On January 26, 2012, Johnson filed a lawsuit against Wells Fargo because Dounel, a
14 Wells Fargo representative, made defamatory and otherwise wrongful statements against
15 Johnson to Kaplan concerning the closures of Johnson's bank accounts at Wells Fargo.¹
16 Specifically, Dounel falsely stated to Kaplan that Johnson must have some type of criminal
17 background, thereby suggesting that her accounts were closed due to alleged criminal activity
18 by Johnson.² Dounel further falsely asserted to Kaplan that Johnson "must have arrest warrants
19 outstanding."³ Dounel also advised Kaplan that he "should hire a private investigator to check
20 up on [Johnson]."⁴ Wells Fargo maintains as an affirmative defense that these statements are
21 true.⁵

22 ///

23 ¹ See the Complaint at ¶¶ 9-17, on file with this Court.

24 ² See *id.* at ¶ 12.

25 ³ See *id.* at ¶ 13.

26 ⁴ See *id.* at ¶ 14.

27 ⁵ See Wells Fargo's Answer at Affirmative Defense No. 26, on file.

1 In June 2012, Johnson propounded to Wells Fargo, among other things, an Amended
2 First Set of Requests for Production of Documents and an Amended First Set of
3 Interrogatories.⁶ These discovery requests include Requests for Production of Documents nos.
4 2-10 and Interrogatories nos. 1-12, all of which request information concerning the closure of
5 Johnson's accounts at Wells Fargo, her and Kaplan's eligibility to open new accounts, and the
6 bases for Dounel's wrongful statements against Johnson.⁷ Specifically, Johnson's Amended
7 Requests for Production state in relevant part as follows:

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

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

13 **REQUEST NO. 4:** Please provide all documents concerning the basis or bases for
14 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.

15 **REQUEST NO. 5:** Please provide all documents concerning the basis or bases for
16 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
17 to that effect.

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

20 **REQUEST NO. 7:** Please provide all documents concerning the basis or bases for
21 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.

22 **REQUEST NO. 8:** Please provide all documents concerning the basis or bases for
23 Chad Maze's statement to Michael Kaplan that if Mr. Kaplan wanted to open an
24 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
25 of your trust, but including Lisa could not be one of the options." For reference
purposes, please see Lisa J. 0048.

26 ⁶ See Johnson's Amended First Set of Requests for Production of Documents, attached
27 as Exhibit 1; Johnson's Amended First Set of Interrogatories, attached as Exhibit 2.

28 ⁷ See Exhibit 1 at Requests Nos. 2-10; Exhibit 2 at Interrogatories Nos. 1-12.

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. 008.⁸

Johnson’s Amended First Set of Interrogatories state in relevant part 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. XXXXXX7051, (2) Guitarfile, LLC, account no. XXXXXXXXXXXXX2957, and (3) account of Michael Kaplan and Lisa Johnson, account no. XXXXXX4164.

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. 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 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?

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.

⁸ See Exhibit 1 at Requests Nos. 2-10.

1 **INTERROGATORY NO. 9:** Please explain in full detail the steps that Wells
2 Fargo took to perform “ongoing reviews of its account relationships in connection
3 with the Bank’s responsibilities to oversee and manage risks in its banking
4 operations” concerning the closure of the accounts referenced in Interrogatory No.
5 1, as referenced in Lisa J. 006 to Lisa J. 009.

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

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

13 **INTERROGATORY NO. 12:** Please explain in full detail the contents of “the
14 apology that [Arash Dounel has] given [Michael Kaplan] thus far verbally”
15 regarding Wells Fargo’s closure of the accounts referenced in Interrogatory No. 1.
16 For reference purposes, please see Lisa J. 0045.⁹

17 However, Wells Fargo failed to produce any information responsive to these items.¹⁰ In fact,
18 aside from a self-serving affidavit and meager discovery responses, Wells Fargo has failed to
19 produce a single discovery document to Johnson in this litigation.

20 Consequently, on August 31, 2012, Johnson filed a motion to compel, among other
21 things, supplemental responses to Johnson’s Requests for Production of Documents nos. 2-10
22 and Interrogatories nos. 1-12.¹¹ On September 26, 2012, Wells Fargo filed an Opposition to
23 Plaintiff’s Motion to Compel and a Countermotion for Protective Order to prevent the
24 disclosure of the reasons its closed Johnson’s accounts.¹² Thereafter, Johnson filed a Reply in
25 Support of her Motion to Compel and Opposition to Wells Fargo Bank’s Countermotion for
26

27 ⁹ See Exhibit 2 at Interrogatories Nos. 1-12.

28 ¹⁰ See Wells Fargo’s Responses to Plaintiff’s Amended First Set of Requests for
Production of Documents at Nos. 2-10, attached as Exhibit 3; Wells Fargo’s Answers to
Plaintiff’s Amended First Set of Interrogatories at Nos. 1-12, attached as Exhibit 4.

¹¹ See Johnson’s Motion to Compel dated August 31, 2012, on file.

¹² See Wells Fargo Bank’s Opp’n to Pl.’s Mot. to Compel and Wells Fargo Bank’s
Countermotion for Protective Order, on file.

1 Protective Order¹³ and Wells Fargo filed a Reply in Support of its Countermotion for Protective
2 Order.¹⁴

3 On October 5, 2012, the Discovery Commissioner heard Johnson's Motion to Compel
4 and Wells Fargo's Countermotion for Protective Order. The Discovery Commissioner
5 determined that, aside from Interrogatory No. 12 concerning the contents of a letter of apology
6 that Dounel drafted regarding Wells Fargo's closure of Johnson's accounts, Wells Fargo is not
7 required to provide further answers to Johnson's First Set of Interrogatories.¹⁵ Further, the
8 Discovery Commissioner determined that Wells Fargo is not required to provide supplemental
9 responses to Johnson's First Set of Requests for Production of Documents.¹⁶ Although the
10 Discovery Commissioner determined that Wells Fargo must provide copies of all records
11 pertaining to Johnson's and Kaplan's accounts, the Discovery Commissioner determined that
12 Wells Fargo is not required to provide any documents pertaining to the reasons why Wells
13 Fargo closed Johnson's accounts.¹⁷ The Discovery Commissioner reasoned that the Bank
14 Secrecy Act and other federal law authorities protect the information concerning the reasons for
15 the account closures from disclosure in this litigation.¹⁸

16 Johnson objects to these recommendations because they provide Wells Fargo overly-
17 broad protection from disclosure of relevant, discoverable materials in this litigation.

18 ///

21 ¹³ See Johnson's Reply in Support of Motion to Compel and Opposition to Wells Fargo
22 Bank's Countermotion for Protective Order, on file.

23 ¹⁴ See Wells Fargo Bank's Reply in Support of Countermotion for Protective Order, on
24 file.

25 ¹⁵ See the Discovery Commissioner's Report and Recommendations dated October 19 at
26 2, 2012, attached as Exhibit 5.

27 ¹⁶ See *id.*

28 ¹⁷ See *id.* at 2-3.

¹⁸ See *id.* at 3.

1 **2. The SAR discovery privilege is extremely limited.**

2 Johnson objects to the Discovery Commissioner's ruling that Wells Fargo is not
3 required to disclose the reasons why it closed Johnson's accounts. NRCP 26(b)(1) sets forth
4 the broad scope of discovery:

5 Parties may obtain discovery regarding any matter, not privileged, which is
6 relevant to the subject matter involved in the pending action, whether it
7 relates to the claim or defense of the party seeking discovery or to the claim
8 or defense of any other party, including the existence, description, nature,
9 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. . . .

10 NRCP 34 allows a party to serve on another party requests for production relating to
11 matters that are within the scope of NRCP 26(b). Further, NRCP 33 allows a party to serve on
12 another party written interrogatories relating to any matter that may be inquired into under
13 NRCP 26(b).

14 Contrary to the Discovery Commissioner's ruling, the Bank Secrecy Act does not shield
15 Wells Fargo from disclosing why it closed Johnson's accounts. The purpose of the Bank
16 Secrecy Act is "to require certain reports or records where they have a high degree of usefulness
17 in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or
18 counterintelligence activities, including analysis, to protect against international terrorism."¹⁹
19 The Bank Secrecy Act provides that, among other things, a bank may not notify a person that it
20 has reported a suspicious transaction to a government agency.²⁰ Further, pursuant to 31 C.F.R.

21 1020.320(e)(1)(I),

22 No bank, and no director, officer, employee, or agent of any bank, shall disclose a
23 SAR or any information that would reveal the existence of a SAR. Any bank, and
24 any director, officer, employee, or agent of 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 information²¹

25
26 ¹⁹ See 31 U.S.C. § 5311 (2011).

27 ²⁰ See 31 U.S.C. § 5318(g)(2)(A) (2011).

28 ²¹ See 31 C.F.R. § 1020.320(e)(1)(i) (2011).

1 In other words, a bank is not required to disclose documents prepared by the bank for the
2 purpose of investigating or drafting a possible SAR.²²

3 However, courts construe this privilege narrowly because it prevents otherwise
4 admissible and relevant evidence from coming to light.²³ Indeed, SAR protection only applies
5 to the SARs themselves and not to other reports or documents evidencing suspicious activity.
6 See *Gregory v. Bank One, Ind., N.A.*, 200 F.Supp.2d 1000, 1002 (S.D. Ind. 2002) (analyzing the
7 rule in the context of a defamation case and stating that the rule “requires confidentiality only of
8 SARs and their contents, not of other reports of suspicious activity . . . [the] requirement of
9 confidentiality applies only to the SARs themselves and the information contained therein, but
10 not to their supporting documentation.”). Nor do documents become privileged because they
11 may prompt the filing of a SAR or because they support the filing of a SAR or are referred to in
12 a SAR.²⁴

13 Consistent with this narrow construction, banks are required to disclose discovery
14 related to documents and facts pertaining to suspicious activity at issue that was created in the
15 ordinary course of business.²⁵ This includes transaction and account documents such as wire
16 transfers, statements, checks, and deposit slips.²⁶

17 Further, banks must disclose information related to procedures in place for detecting
18 suspicious activity independent of procedures for complying with federal reporting
19
20

21 ²² See *Union Bank of California, N.A. v. Superior Ct.*, 130 Cal.App.4th 378, 392, 400,
22 29 Cal.Rptr.3d 894, 903, 909 (2005) (holding that a bank was not required to produce a specific
23 form that the bank used to comply with its obligation under federal law to report suspicious
activity and to file SARs).

24 ²³ See *id.* at 392.

25 ²⁴ See *In re Whitley*, 2011 WL 6202895, at *4 (Bkrtcy. M.D.N.C. Dec. 13, 2011).

26 ²⁵ See *Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL 5139874, at *3
27 (S.D.N.Y. Dec. 8, 2010).

28 ²⁶ See *Union Bank of California, N.A. v. Superior Ct.*, 130 Cal.App.4th, at 391.

1 obligations.²⁷ For example, documents designed to fulfill general risk management functions
2 are not subject to SAR privilege.²⁸ Further, “[a] bank may not cloak its internal reports and
3 memoranda with a veil of confidentiality simply by claiming they concern suspicious activity or
4 concern a transaction that resulted in the filing of a SAR.”²⁹

5 Although a bank may undertake an internal investigation in anticipation of filing a SAR,
6 it is also a standard business practice for banks to investigate suspicious activity as a necessary
7 and appropriate measure to protect the bank’s interests, and the internal bank reports or
8 memorandum generated by the bank regarding such an investigation are not protected by SAR
9 privilege.³⁰ “The letter and spirit of the limitation is served by shielding any SAR filed by a
10 bank as well as any document that refers to a SAR having been filed or refers to information as
11 being a part of a SAR or otherwise reveals the preparation or filing of a SAR.”³¹

12 One court stated:

13 [B]ased on this Court’s liberal pretrial discovery standard, the Court grants Plaintiff’s
14 request for any memoranda or documents drafted in response to the suspicious
15 activity at issue in this case. However, Defendants shall not produce any SARs or
16 previous drafts of SARs, need not indicate if and when a SAR was produced, and
17 shall not state what documents and facts were or were not included in any SARs.
18 Although BOA [Bank of America] may have undertaken an internal investigation in

17 ²⁷ See *id.* at 392.

18 ²⁸ See *id.* at 396.

19 ²⁹ See *id.* at 392.

20 ³⁰ See *In re Whitley*, 2011 WL 6202895, at *4, citing *Freedman & Gersten, LLP*, 2010
21 WL 5139874, at *1.

22 ³¹ See *id.* (holding that, subject to the SAR restrictions, the bank must disclose, among
23 other things: (1) bank documents relative to the accounts in question that were generated in the
24 ordinary course of business, including computer-generated reports of suspicious and/or unusual,
25 irregular or improper account activity, (2) documents relating to any investigation or inquiry by
26 the bank or its agents of any account in question, (3) documents that would evidence any
27 response to the investigation and the findings, or observation, notes of any such investigation
28 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).

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 facts produced in the ordinary course of business are necessary and relevant for purposes of Plaintiff discovering and/or assessing the precise facts of this incident .
...³²

As here, the bank in *Whitley* argued that it was precluded from producing any information whatsoever because the bank's investigator who opened, prepared, and maintained the file, and prepared documents in response to a fraudulent crime, did so in anticipation of the potential filing of an SAR.³³ However, the court rejected this argument and held that the bank was required to produce non-SAR information to the plaintiff.³⁴ Further, the court held that the plaintiff was "entitled to discovery related to [the bank's] policies and procedures for handling suspicious activity and risk management, except for those policies and procedures specifically designated for SARs."³⁵

3. The SAR privilege does not prevent the disclosure of discoverable materials in this litigation.

Here, the Discovery Commissioner correctly determined that Johnson is entitled to discovery concerning "all records pertaining to the accounts of Plaintiff that are the subject of this action"³⁶ However, the Discovery Commissioner incorrectly determined that Johnson is not entitled to any information pertaining to the reasons why Wells Fargo closed her accounts.³⁷ The fundamental problem is that the Discovery Commissioner's recommendations appear to categorize jointly: (1) undiscoverable documents that Wells Fargo potentially prepared for the purpose of investigating or drafting a possible SAR against Johnson, and (2)

³² See *id.*

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ See Exhibit 5 at 3.

³⁷ See *id.*

1 discoverable documentation concerning general risk management, loss prevention, account
2 closure, and customer service procedures and communications pertaining to Wells Fargo's
3 decision to close Johnson's accounts that was independent of its SAR reporting obligations.

4 The Discovery Commissioner's recommendations seek to extend SAR privilege to
5 information contained in the second category when there is no legal basis for doing so. For
6 example, Wells Fargo delivered three account closure letters to Johnson stating: "Wells Fargo
7 performs ongoing reviews of its account relationships in connection with the Bank's
8 responsibilities to oversee and manage risks in its banking operations. We recently reviewed
9 your account relationship and, as a result of this review, we have decided to close the above-
10 referenced account(s). . . ." ³⁸ Wells Fargo's Prevention Contact Center drafted two of these
11 letters, while Wells Fargo's Business Direct department drafted the other. ³⁹ As these letters
12 demonstrate, Wells Fargo's decision to close Johnson's accounts was based, at least in part, on
13 its own general risk management and loss prevention efforts, which are independent of its
14 federal reporting requirements. Further, one of the letters states that Wells Fargo closed the
15 account(s) because, "[b]ank policy excludes lending to certain types of businesses." ⁴⁰
16 Accordingly, Wells Fargo's own policies (not those of the federal government) formed the
17 bases for its decisions to close Johnson's accounts. These policies and deliberations are subject
18 to discovery.

19 To suggest that Wells Fargo would not evaluate Johnson's accounts or make the
20 decision to close her accounts absent a government reporting requirement is inconsistent with
21 the evidence presented in this case and defies logic. Although Wells Fargo claims that all
22 information concerning the reasons why it closed Johnson's accounts is based on

24 ³⁸ See the letter from Wells Fargo to Michael Kaplan and Lisa Johnson dated August 18,
25 2011, attached as Exhibit 6; the letter from Wells Fargo to Lisa Johnson dated August 15, 2011,
26 attached as Exhibit 7; the letter from Wells Fargo to Guitarfile, LLC dated August 18, 2011,
attached as Exhibit 8.

27 ³⁹ See *id.*

28 ⁴⁰ See Exhibit 7.

1 documentation that is subject to SAR privilege,⁴¹ a bank “may not cloak its internal reports and
2 memoranda with a veil of confidentiality simply by claiming they concern suspicious activity or
3 concern a transaction that resulted in the filing of a SAR.”⁴² As the court stated in *Freedman &*
4 *Gersten, LLP v. Bank of America*, it is a standard business practice for banks to investigate
5 allegedly suspicious activity.⁴³ The fact that Wells Fargo may have designated a division or an
6 individual (as was the case in *Freedman & Gersten, LLP v. Bank of America*) to investigate an
7 account in preparation of filing a SAR does not absolve Wells Fargo from producing responsive
8 information. It only prevents Wells Fargo from disclosing SAR information.

9 Further, Wells Fargo’s alleged actions to investigate and prepare a SAR against Johnson
10 are distinct from its actions to defame Johnson and to close her accounts. Wells Fargo’s
11 suggestion that it cannot disclose information concerning the defamatory statements against
12 Johnson or the closure of her accounts without disclosing that a SAR has been filed with the
13 government is wrong. The banks in *In re Whitley* and *Freedman & Gersten, LLP v. Bank of*
14 *America, N.A.* made similar arguments that the disclosure of bank documents concerning
15 internal investigations of suspicious activity of an account-holder would violate the Bank
16 Secrecy Act.⁴⁴ In both cases, the court rejected the bank’s blanket plea for confidentiality and
17 held that the bank must disclose all responsive non-SAR information.⁴⁵ This holding is
18 consistent with the case law that Wells Fargo cited in its Opposition and Countermotion before
19

20
21 ⁴¹ See the Aff. of Raelynn Stockman at ¶¶ 3-6, attached as Exhibit H to Wells Fargo
22 Bank’s Opp’n to Pl.’s Mot. to Compel and Wells Fargo Bank’s Countermotion for Protective
Order, on file.

23 ⁴² See *Union Bank of California, N.A. v. Superior Ct.*, 130 Cal.App.4th, at 392.

24 ⁴³ See *In re Whitley*, 2011 WL 6202895, at *4, citing *Freedman & Gersten, LLP*, 2010
25 WL 5139874, at *1.

26 ⁴⁴ See *id.* at *3; see also *Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL
27 5139874, at *4.

28 ⁴⁵ See *In re Whitley*, 2011 WL 6202895, at *4; see also *Freedman & Gersten, LLP v.*
Bank of America, N.A., 2010 WL 5139874, at *4.

the Discovery Commissioner. *See In re Mezvinsky*, 2000 WL 33950697, at *3 (Bkrtcy. E.D. Pa. Sept. 7, 2000) (holding that the Bank Secrecy Act and related regulations did not apply to documents that were predecessors to SARs or to other specified reports); *Union Bank of California, N.A. v. Superior Court*, 130 Cal.App.4th 378, 390, 392, 29 Cal.Rptr.3d 894, 901, 903 (2005) (stating that supporting documentation underlying a SAR that is generated or received in the ordinary course of a bank's business, as well as various internal reports and memoranda of suspicious activity, is discoverable).

Although Wells Fargo's arguments before the Discovery Commissioner concerning SAR privilege relied chiefly on the holding of a California court of appeals in *Union Bank of California, N.A. v. Superior Court*, that case is distinguishable from the present matter. In that case, plaintiff investors alleged that a bank was complicit with a customer in operating a Ponzi scheme.⁴⁶ The plaintiffs in that case primarily requested the production of information concerning a specific form that the bank used to comply with its obligation under federal law to report suspicious activity and to file SARs.⁴⁷ Although the plaintiffs argued that the form was used for general risk management purposes, the court held that there was no evidence that the form was designed to fulfill a general risk management function or that it served any purpose other than to fulfill the bank's obligations to file SARs.⁴⁸ Ultimately, the court held that, pursuant to the SAR privilege, the bank was not required to produce the form or to respond to any discovery requests concerning the contents of the form.⁴⁹

Here, however, Johnson is not seeking to compel production of any forms or other documents that Wells Fargo used to investigate or draft a potential SAR. Instead, Johnson seeks to compel information concerning the closure of her accounts from non-SAR sources

⁴⁶ *See Union Bank of California, N.A. v. Superior Court*, 130 Cal.App.4th 378, 384-85, 29 Cal.Rptr.3d 894, 897 (2005).

⁴⁷ *See id.* at 386.

⁴⁸ *See id.* at 396-97.

⁴⁹ *See id.* at 400.

(e.g., information from general risk management, loss prevention, account closure, and customer service sources). Unlike the plaintiffs in *Union Bank of California, N.A.*, who specifically sought to learn whether the bank had filed a SAR concerning a customer,⁵⁰ Johnson is not seeking to learn whether Wells Fargo filed a SAR against her. Her discovery is directed at the reasons why Wells Fargo closed her accounts, not whether she was reported to a government agency.

Accordingly, Wells Fargo should be required to produce documents and other information concerning the closure of Johnson's accounts that were not prepared by Wells Fargo for the purpose of investigating or drafting a SAR. More specifically, Johnson is entitled to information concerning: (1) the contents of, and basis for, bank employee Dounel's defamatory statements against Johnson made to Kaplan concerning the closure of Johnson's accounts, (2) communications between other Wells Fargo employees and Kaplan concerning the closure of these accounts, and (3) non-SAR information concerning the review, risk assessment, and closure of Johnson's accounts. All of this information is relevant to evaluate the basis of Dounel's defamatory statements against Johnson and/or statements that placed her in a false light, as well as Wells Fargo's affirmative defense that these statements are true.⁵¹

4. Conclusion.

Based on the foregoing reasons, Johnson respectfully requests that this Court not follow the Discovery Commissioner's recommendations to preclude Wells Fargo from producing any information pertaining to the reasons why Wells Fargo closed Johnson's accounts. Further,

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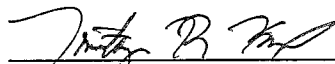
⁵⁰ See *id.* at 385.

⁵¹ See Wells Fargo's Answer at Affirmative Defense No. 26 (stating that, "Plaintiff's claims are barred, in whole or in part, by principles of truth . . .), on file.

1 Johnson requests that this Court order Wells Fargo to produce documents and other information
2 concerning the closure of Johnson's accounts that were not prepared by Wells Fargo for the
3 purpose of investigating or drafting a SAR.

4 DATED this 5th day of November, 2012.

5 HUTCHISON & STEFFEN, LLC

6
7 
8 Mark A. Hutchison (4639)
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CERTIFICATE OF SERVICE

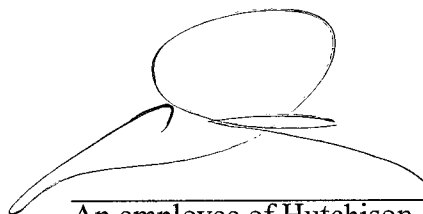
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 5th day of November, 2012, I caused the above and foregoing document entitled **OBJECTION TO DISCOVERY COMMISSIONER'S OCTOBER 19, 2012 REPORT AND RECOMMENDATIONS** to be served as follows:

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

- ☒ 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
☐ 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:

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



An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

EXHIBIT 1

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

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Fax: (702) 252-5006

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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

right to make additional supplemental disclosures.

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

RESPONSES

REQUEST NO. 1:

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

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

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

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.

RESPONSE:

In addition to the general objections, Wells Fargo also 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

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 **RESPONSE:**

7
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9 seeks improperly seeks privileged and confidential bank supervisory information and
10 confidential proprietary and business information. Wells Fargo also objects on grounds that
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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.

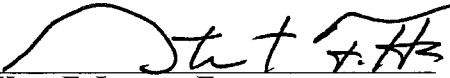
22 **RESPONSE:**

23
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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 22 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

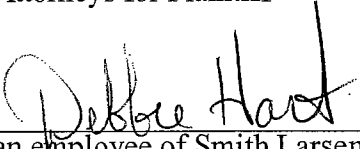
18 Attorneys for Defendants

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

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 2

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- 1 3. All/Each. The terms “all” and “each” shall be construed as all and each.
- 2 4. And/Or. The connectives “and/or” shall be construed either disjunctively
- 3 or conjunctively as necessary to bring within the scope of the discovery request all responses that
- 4 might otherwise be construed to be outside of its scope.
- 5 5. Number. The use of the singular form of any word includes the plural and
- 6 vice versa.
- 7 6. You/Your. The terms “you” and “your” refer to the defendant and all
- 8 agents, employees, representatives, investigators, consultants, and attorneys of the defendant.
- 9 7. Identify. The term “identify” when used with respect to a person, shall be
- 10 deemed to request the person’s full name, the person’s last known business address (if a natural
- 11 person), the person’s last known residence, and the person’s business and residence telephone
- 12 number.
- 13 B. Instructions
- 14 1. If you cannot answer an Interrogatory after conducting a reasonable
- 15 investigation, so state and answer to the extent you are able. State the nature of the information
- 16 you cannot provide and what efforts you have made to acquire the unknown information.
- 17 2. All information is to be divulged which is in your possession or control,
- 18 or which can be ascertained upon reasonable investigation of areas within your control. The
- 19 knowledge of your attorney(s) is deemed to be your knowledge, so that, apart from privileged
- 20 matters, if your attorney(s) have knowledge of the information sought herein such knowledge
- 21 must be incorporated into these Answers, even if the information is unknown to you
- 22 individually.
- 23 3. If you are unable to state an answer to these Interrogatories based upon
- 24 your own personal knowledge, please so state. Identify the person(s) you believe to have such
- 25 knowledge, what you believe the answer to the Interrogatory to be, and the facts upon which you
- 26 base your Answer.
- 27 4. Pursuant to NRCP 26(e), you are under a duty to supplement your
- 28 responses to these Interrogatories as follows:

1 “(1) A party is under a duty seasonably to supplement his response with respect
2 to any question directly addressed to (A) the identity and location of persons having knowledge
3 of discoverable matters, and (B) the identity of each person expected to be called as an expert
4 witness at trial, the subject matter on which he is expected to testify, and the substance of his
5 testimony.

6 “(2) A party is under a duty seasonably to amend a prior response if he obtains
7 information upon the basis of which (A) he knows that the response was incorrect when made,
8 or (B) he knows that the response though correct when made is no longer true and the
9 circumstances are such that a failure to amend the response is in substance a knowing
10 concealment.”

11 5. These interrogatories are continuing in character, so as to require you to
12 file supplementary answers in a seasonable manner if you obtain further or different information
13 before trial.

14 6. Where knowledge or information in possession of a party is requested,
15 such request includes information and knowledge either in your possession, under your control,
16 within your dominion, or available to you, regardless of whether this information is in your
17 personal possession, or is possessed by your agents, attorneys, servants, employees, independent
18 contractors, representatives, insurers or others with whom you have a relationship and from
19 whom you are capable of deriving information, documents or material.

20 7. Each interrogatory shall be accorded a separate answer and each subpart
21 of an interrogatory shall be accorded a separate answer.

22 **INTERROGATORIES**

23 **INTERROGATORY NO. 1:**

24 Please explain in full detail why you decided to close the following Wells Fargo accounts
25 associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account no.
26 2273587051, (2) Guitarfile, LLC, account no. 4856200225012957, and (3) account of Michael
27 Kaplan and Lisa Johnson, account no. 3980024164.

28 ///

1 **INTERROGATORY NO. 2:**

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

4 **INTERROGATORY NO. 3:**

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

7 **INTERROGATORY NO. 4:**

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

11 **INTERROGATORY NO. 5:**

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

14 **INTERROGATORY NO. 6:**

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

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 to
20 open an account at Wells Fargo or words to that effect?

21 **INTERROGATORY NO. 8:**

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

27 ///

1 **INTERROGATORY NO. 9:**

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

6 **INTERROGATORY NO. 10:**

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

10 **INTERROGATORY NO. 11:**

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

13 **INTERROGATORY NO. 12:**

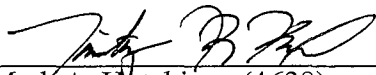
14 Please explain in full detail the contents of "the apology that [Arash Dounel has] given
15 [Michael Kaplan] thus far verbally" regarding Wells Fargo's closure of the accounts referenced
16 in Interrogatory No. 1. For reference purposes, please see Lisa J. 0045.

17 **INTERROGATORY NO. 13:**

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

20 DATED this 15th day of June, 2012.

21 **HUTCHISON & STEFFEN, LLC**

22
23 
24 Mark A. Hutchison (4639)
25 Timothy R. Koval (12014)
26 Peccole Professional Park
27 10080 West Alta Drive, Suite 200
28 Las Vegas, NV 89145

Attorneys for Plaintiff Lisa Johnson

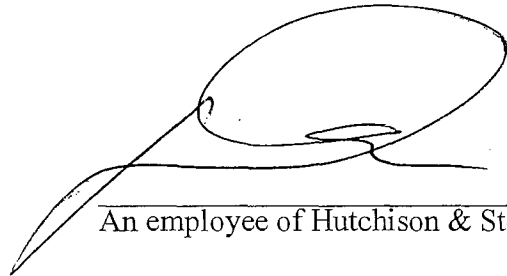
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 19th day of June, 2012, I caused the above and foregoing document entitled **PLAINTIFF'S AMENDED FIRST SET OF INTERROGATORIES TO DEFENDANT WELLS FARGO BANK, NATIONAL ASSOCIATION** 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
- ☐ 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:

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


An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 3

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
inclusive; and ROE CORPORATIONS,)	AMENDED FIRST SET OF REQUEST
1 through X, inclusive)	FOR PRODUCTION OF DOCUMENTS
)	
Defendants.)	
)	

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right to make additional supplemental disclosures.

GENERAL OBJECTIONS

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RESPONSES

REQUEST NO. 1:

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

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RESPONSE:

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2 **RESPONSE:**

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10
11 6.

12 **REQUEST NO. 8:**

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14 statement to Michael Kaplan that if Mr. Kaplan wanted to open an account with Wells Fargo,
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In addition to the general objections, Wells Fargo objects on grounds that this request seeks 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. 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. 1 For reference purposes, please see Lisa J. 006 to Lisa J. 008.

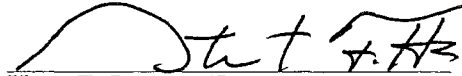
RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks 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

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 22 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

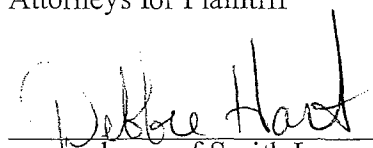
18 Attorneys for Defendants

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

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 4

ORIGINAL

INTG

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

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

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

AA000318

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. 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.

1 **INTERROGATORY NO. 6:**

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

4 **ANSWER:**

5 In addition to the general objections, Wells Fargo objects on grounds that this
6 interrogatory assumes facts not in evidence and improperly seeks confidential information
7 pertaining to a non-party customer. Wells Fargo objects on grounds that this interrogatory
8 improperly seeks privileged and confidential bank supervisory information and confidential
9 proprietary and business information. Please also refer to the response to Request for
10 Admission No. 5.
11

12 **INTERROGATORY NO. 7:**

13 On November 8, 2011, why did a Wells Fargo representative named Joceda Freeman
14 and/or a Wells Fargo representative named Sheila state that Michael Kaplan was not eligible
15 to open an account at Wells Fargo or words to that effect?
16

17 **ANSWER:**

18 In addition to the general objections, Wells Fargo objects on grounds that this
19 interrogatory assumes facts not in evidence and is vague and ambiguous. Wells Fargo also
20 objects on grounds that whether or not Mr. Kaplan is or was eligible to open an account is
21 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
22 Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and
23 improperly seeks confidential information pertaining to a non-party customer. Wells Fargo
24 objects on grounds that this interrogatory improperly seeks privileged and confidential bank
25 supervisory information and confidential proprietary and business information. Please also
26 refer to the response to Request for Admission No. 6.
27
28

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 **ANSWER:**

8
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 **INTERROGATORY NO. 13:**

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

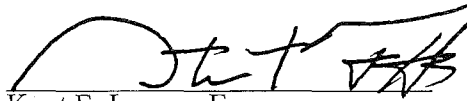
18 **ANSWER:**

19
20 Subject to and without waiving the general objections, Wells Fargo objects on
21 grounds that this interrogatory seeks information that is irrelevant and not reasonably
22 calculated to lead to the discovery of admissible evidence. Subject to and without waiving
23 these objections, Mr. Dounel is currently employed by Wells Fargo in Encino, California.
24 Wells Fargo maintains an attorney-client privilege with respect to Mr. Dounel and Plaintiff,
25 Plaintiff's counsel, and Mr. Kaplan (who appears to be represented by Plaintiff's counsel
26 in this matter), may not have communications with Mr. Dounel without the express written
27
28

1 consent of Wells Fargo and its legal counsel.

2 DATED this 2 day of August, 2012

3 SMITH LARSEN & WIXOM

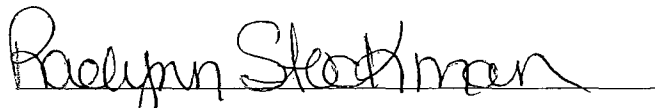
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5 Kent F. Larsen, Esq.
6 Nevada Bar No. 3463
7 Stewart C. Fitts, Esq.
8 Nevada Bar No. 5635
9 SMITH LARSEN & WIXOM
10 Hills Center Business Park
11 1935 Village Center Circle
12 Las Vegas, Nevada 89134
13 Tel: (702) 252-5002
14 Fax: (702) 252-5006
15 Attorneys for Defendants
16 Wells Fargo Bank, N.A.
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VERIFICATION OF DEFENDANT WELLS FARGO BANK, N.A.'S
ANSWERS TO PLAINTIFF'S AMENDED FIRST SET OF INTERROGATORIES

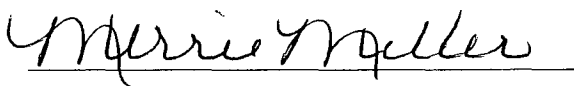
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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.

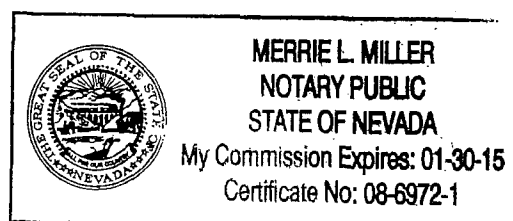

Raelynn Stockman

SUBSCRIBED AND SWORN to before me

this 2nd day of August, 2012.



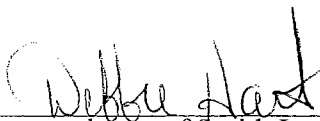
Notary Public



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

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 5

DCRR

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.

COURTESY
COPY**DISTRICT COURT****CLARK COUNTY, NEVADA**

LISA JOHNSON, a Nevada resident,)

CASE NO: A-12-655393-C

Plaintiff,)

DEPT: XXVI

v.)

**DISCOVERY COMMISSIONER'S
REPORT AND
RECOMMENDATIONS**WELLS FARGO BANK, NATIONAL)
ASSOCIATION; DOES 1 through X,)
inclusive; and ROE CORPORATIONS,)
1 through X, inclusive)

Defendants.)

DISCOVERY HEARING DATE:**October 5, 2012****APPEARANCES:**

1. Plaintiff Lisa Johnson:

Joseph S. Kistler, Esq.

~~SMITH LARSEN & WIXOM~~

2. Defendant Wells Fargo Bank, N.A.

Stewart C. Fitts, Esq.,
SMITH LARSEN & WIXOM**I.**

FINDINGS

On August 31, 2012, Plaintiff Lisa Johnson ("Johnson") filed a Motion to Compel. On September 26, 2012, Defendant Wells Fargo ("Wells Fargo") filed an Opposition to Plaintiff's Motion to Compel and a Countermotion for Protective Order. On September 28, 2012, Plaintiff filed a Reply in Support of Motion to Compel and Opposition to Wells Fargo's Countermotion for Protective Order. On October 4, 2012, Wells Fargo filed a Reply in Support of Countermotion for Protective Order. On October 5, 2012, the Discovery Commissioner conducted a hearing.

After consideration of the pleadings and papers on file herein, the briefs submitted by the parties, and the arguments of counsel, and with good cause appearing, the Discovery Commissioner recommends and orders as set forth below.

II.

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that Plaintiff's Motion to Compel is GRANTED in part and DENIED in part, as follows:

1. Wells Fargo is required is required to hand-deliver supplemental responses to Plaintiff's Request for Admissions Nos. 2-9 by October 19, 2012. Wells Fargo may admit, deny, or specifically explain why it cannot admit or deny the requests;
2. Wells Fargo is required to hand-deliver a supplemental answer to Plaintiff's Interrogatory No. 12 by October 19, 2012;
3. Wells Fargo is not required to provide further responses to Plaintiff's Requests for Production of Documents.
4. Wells Fargo is not required to provide further answers to Plaintiff's interrogatories Nos. 1-11, and No. 13.
5. Wells Fargo is required to provide copies of all records pertaining to the accounts of

1 Plaintiff that are the subject of this action, except that Wells Fargo is not required to provide any
2 all documents pertaining to the reasons why Wells Fargo closed Plaintiff's accounts;

3 6. Upon receipt of a notarized consent signed by Michael Kaplan, Wells Fargo is
4 required to provide copies of all records pertaining to the accounts of Mr. Kaplan, except that Wells
5 Fargo is not required to provide any all documents pertaining to the reasons why Wells Fargo
6 closed Plaintiff's accounts;

7
8 7. Plaintiff's request to strike the affirmative defense of truth is denied, as this is a
9 substantive issue for the District Court Judge to hear; and

10 8. Plaintiff's request for an award of attorneys' fees and costs is denied. .

11 IT IS FURTHER RECOMMENDED that Wells Fargo's Countermotion for Protective order
12 is GRANTED in part, and DENIED in part, as follows:

13 1. Wells Fargo is not be required to disclose the reasons why is closed Plaintiff's
14 accounts, as this information is protected under the Bank Secrecy Act and other federal law
15 authorities;

16 2. Plaintiff is precluded from conducting discovery regarding the reasons why Wells
17 Fargo closed Plaintiff's accounts; and

18 [The remainder of this page is intentionally left blank.]
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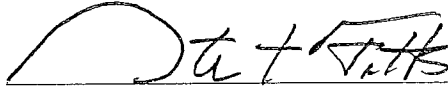
3. Wells Fargo's request for attorneys' fees and costs is denied.

DATED this 19 ^{October,} day of ~~May~~, 2012.

~~BONNIE A. BULLA~~
DISCOVERY COMMISSIONER

Submitted by:
SMITH LARSEN & WIXOM

Approved as to form/content:
HUTCHISON & STEFFEN, LLC



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.

Mark A. Hutchison, Esq.
Nevada Bar No. 4639
Timothy Koval, Esq.
Nevada Bar No. 12014
Peccole Professional Plaza
10080 West Alta, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

NOTICE

Pursuant to NRCP 16.1(d) (2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections. [Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. See E.D.C.R. 2.34(F)] A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2012.

X Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the 23 day of Oct, 2012.

STEVEN D. GRIERSON, Clerk of the
Court

By Jennifer Lott
Deputy Clerk

CASE NAME: Lisa Johnson v. Wells Fargo
Bank, National Association.
CASE NUMBER: A-12-655393-C

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

_____ No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner. (attached hereto)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for _____, 2012, at _____ a.m.

DATED this _____ day of _____, 2012.

DISTRICT JUDGE

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 6



MA 0143-043
P.O. Box 7406
San Francisco, CA 94120-7406

August 18, 2011

MICHAEL KAPLAN
LISA JOHNSON
9517 CANYON MESA DR
LAS VEGAS NV 89144-1523

Account Number(s): xxxxxx4164

Dear Customers:

Wells Fargo performs ongoing reviews of its account relationships in connection with the Bank's responsibilities to oversee and manage risks in its banking operations. We recently reviewed your account relationship and, as a result of this review, we have decided to close the above-referenced account(s). The account(s) will be closed at the end of business on September 22, 2011.

The 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. You may elect to close the account(s) before this date. Please note that the Bank reserves the right to close the subject account(s) sooner than September 22, 2011 if circumstances arise that warrant such an earlier closing.

Checks drawn against your account(s) that are presented to the Bank after September 22, 2011 will be returned unpaid. A cashier's check for the amount in your account(s) will be mailed to you within ten (10) days of the date your account(s) are closed.

If you have any payments directly deposited to your account(s), these payments will no longer be accepted after your account(s) are closed. You should, therefore, make other arrangements to receive any such payments. Similarly, any payments you make to others that are automatically withdrawn from your account(s) will be discontinued after your account(s) are closed. Therefore, if you presently have any such automatic payments withdrawn from your account(s), you also should make arrangements to ensure that these payments continue to be made on time.

For assistance or if you have questions, please call us at 1-888-231-0757 Monday through Friday from 6:00 a.m. to 6:30 p.m. or Saturday from 7:00 a.m. to 4:00 p.m., Pacific Time.

Prevention Contact Center

LP-FIU

Lisa J. 006

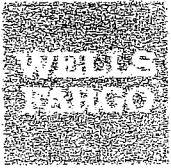
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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 7



Wells Fargo Bank, N.A.
Business Direct
P.O. Box 29482
Phoenix, AZ 85038-8650

8/15/2011

Guitarfile LLC
Lisa Johnson
9517 Canyon Mesa Dr
Las Vegas NV 89144

Subject: Closure Notification for your Visa Business Card account ending in – 2957

Dear Lisa Johnson:

Wells Fargo (the "Company") performs ongoing reviews of its account relationships in connection with the Company's responsibilities to oversee and manage risks in its business operations. We recently reviewed the Company's account relationship with Guitarfile LLC and, as a result of this review, we have decided to close the accounts referenced above, and terminate our relationship with Guitarfile LLC. The termination will be effective at the close of business on 9/16/2011.

M22 Bank policy excludes lending to certain types of businesses.

The Company's risk assessment process and the results of this process are confidential, and the Company's decision to close the subject accounts is final. Please note that you will not be able to make further purchases or advances on subject accounts after the account is closed.

If Lisa Johnson has any recurring scheduled transactions to the subject accounts, these transactions will no longer be accepted after the accounts are closed. Therefore, you should make other arrangements. This closure does not release you from any obligations owed nor does it impact our rights to collect on this debt, in accordance with all applicable laws.

If you have questions, please call the National Business Banking Center at 1-800-CALL-WELLS (1-800-225-5935), 24 hours a day, 7 days a week.

Sincerely,
Wells Fargo Bank N.A.
Business Direct

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning Wells Fargo Bank, N.A. is Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010-0905.

Lisa J. 007

AA000339

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 8



M A0143-043
P.O. Box 7406
San Francisco, CA 94120-7406

August 18, 2011

GUITARFILE, LLC
OPERATING ACCOUNT
9517 CANYON MESA DR
LAS VEGAS NV 89144-1523

Account Number(s): xxxxxx7051

To Whom This Concerns:

Wells Fargo performs ongoing reviews of its account relationships in connection with the Bank's responsibilities to oversee and manage risks in its banking operations. We recently reviewed your account relationship and, as a result of this review, we have decided to close the above-referenced account(s). The account(s) will be closed at the end of business on September 22, 2011.

The 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. You may elect to close the account(s) before this date. Please note that the Bank reserves the right to close the subject account(s) sooner than September 22, 2011 if circumstances arise that warrant such an earlier closing.

Checks drawn against your account(s) that are presented to the Bank after September 22, 2011 will be returned unpaid. A cashier's check for the amount in your account(s) will be mailed to you within ten (10) days of the date your account(s) are closed.

If you have any payments directly deposited to your account(s), these payments will no longer be accepted after your account(s) are closed. You should, therefore, make other arrangements to receive any such payments. Similarly, any payments you make to others that are automatically withdrawn from your account(s) will be discontinued after your account(s) are closed. Therefore, if you presently have any such automatic payments withdrawn from your account(s), you also should make arrangements to ensure that these payments continue to be made on time.

For assistance or if you have questions, please call us at 1-888-231-0757 Monday through Friday from 6:00 a.m. to 6:30 p.m. or Saturday from 7:00 a.m. to 4:00 p.m., Pacific Time.

Prevention Contact Center

LP-FIU

Lisa J. 008
AA000341

**Details of filing titled:
Objection to Discovery Commissioner s Report an...
for Case Number A-12-655393-C**

E-File ID:	3598751
Lead File Size:	2751110 bytes
Date Filed:	2012-11-05 16:39:58.0
Case Title:	A-12-655393-C
Case Name:	Lisa Johnson, Plaintiff(s) vs. Wells Fargo Bank National Association, Defendant(s)
Filing Title:	Objection to Discovery Commissioner s Report and Recommendation
Filing Type:	EFO
Filer's Name:	Janet Tolleson
Filer's Email:	jtolleson@hutchlegal.com
Account Name:	Hutchison & Steffen
Filing Code:	ODCR
Amount:	\$ 3.50
Court Fee:	\$ 0.00
Card Fee:	\$ 0.00
Payment:	Filing still processing. Payment not yet captured.
Comments:	
Courtesy Copies:	dchildress@hutchlegal.com
Firm Name:	Hutchison & Steffen, LLC
Your File Number:	1549.058
Status:	Submitted - (B)
Date Accepted:	
Review Comments:	
Reviewer:	
File Stamped Copy:	
Cover Document:	
Lead Document:	ljohn-wfbobj.pdf2751110 bytes
Data Reference ID:	
Credit Card Response:	System Response: VREC7C4A38EC Reference:

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
(702) 385-2500
(877) HSNVLAW
Fax (702)385-2086
hsnvlaw.com

FACSIMILE TRANSMITTAL

DATE: November 5, 2012

TO: Discovery Commissioner

FAX NO.: 671-4485

FROM: Tim Koval, Esq. (David)

OUR FILE # 1549-058

RE: Lisa Johnson v. WFB case # A-12-655393

SPECIAL INSTRUCTIONS: Please see attach documents. Thank you.

NUMBER OF PAGES (including cover page):

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AA000343


CLERK OF THE COURT

1 **OPP**
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 LISA JOHNSON, a Nevada resident,)
13)
14 Plaintiff,)
15)
16 v.)

CASE NO: A-12-655393-C

DEPT: XXVI

17 WELLS FARGO BANK, NATIONAL)
18 ASSOCIATION; DOES 1 through X,)
19 inclusive; and ROE CORPORATIONS,)
20 1 through X, inclusive)
21 Defendants.)

**WELLS FARGO BANK N.A.'S
OPPOSITION TO PLAINTIFF'S
OBJECTION TO DISCOVERY
COMMISSIONER'S OCTOBER 19,
2012 REPORT AND
RECOMMENDATIONS**

22 Plaintiff's Objection to the Discovery Commissioner's Report and Recommendation of
23 October 19, 2012 is in violation of the District Court rules because the objection improperly includes
24 points and authorities. (*See*, Plaintiff's Objection, pp. 1-15.) EDCR 1.91(d) specifically **prohibits**
25 Plaintiff from including points and authorities in support of an objection:

26 . . . Within 5 days after being served with a copy [of the Discovery Commissioner's
27 Report and Recommendation], and party may serve and file specific objections to the
28 recommendations with a courtesy copy delivered to the office of the
arbitration/alternative dispute resolution commissioner. **No points and authorities**

SMITH LARSEN & WIXOM

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

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from any party or oral argument are permitted without leave of court.

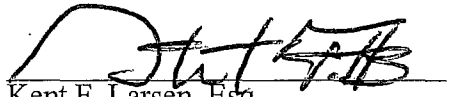
(Emphasis added.)

Thus, EDCR 1.91(d) only permits an objecting party to identify specific objections to all or a part of the Discovery Commissioner's Report & Recommendation. It does not permit a party to include additional "points and authorities" since the matter has already been fully briefed in points and authorities that were previously filed and submitted to the Discovery Commissioner. *Id.*

Here, Plaintiff has violated EDCR 1.91(d) by improperly including "points and authorities" with its objection. This blatant violation of the District Court rules should not be tolerated because it is nothing more than an improper attempt to unduly persuade the District court regarding matters that have already been fully briefed. *Id.* Accordingly, Plaintiff's improper points and authorities must be stricken. *Id.*

DATED this 6 day of November, 2012

SMITH LARSEN & WIXOM

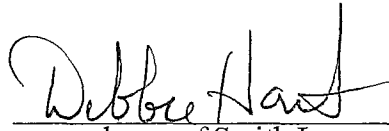


Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.
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SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
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Tel: (702) 252-5002
Fax: (702) 252-5006
Attorneys for Defendants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

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on November 8, 2012 a true copy of the foregoing **WELLS FARGO BANK N.A.'S OPPOSITION TO PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S OCTOBER 19, 2012 REPORT AND RECOMMENDATIONS** was mailed, postage prepaid, to the following as noted:

Mark A. Hutchison, Esq.
Joseph S. Kistler, 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

Attorneys for Lisa Johnson

Hrg: 12-19-12 @ 9:00 am

///

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
OOBO WEST ALTA DRIVE, SUITE 2
LAS VEGAS, NV 89145

OFF 12-3-12
APPLY 12-21-12

100-443882

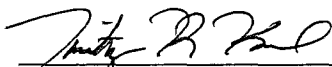
AA000347

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring **PLAINTIFF'S MOTION FOR RECONSIDERATION**, before the Discovery Commissioner of the above-entitled Court on the _____ day of _____, 2012, at the hour of _____ o'clock ____ .m., or as soon thereafter as counsel may be heard.

DATED this 9th day of November, 2012.

HUTCHISON & STEFFEN, LLC



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

Attorneys for Lisa Johnson

POINTS AND AUTHORITIES

On October 23, 2012, the Discovery Commissioner placed the Report and Recommendations in the folder of Plaintiff's counsel in the clerk's office. Pursuant to EDCR 2.34(f), Johnson's deadline to file her Objection to Discovery Commissioner's October 19, 2012 Report and Recommendations ("Objection") was November 5, 2012. Accordingly, on November 5, 2012, Johnson filed her Objection with this Court. A true and correct copy of the filed Objection is attached as Exhibit 1. That same day, while Johnson was awaiting a file-stamped copy of the Objection from the Court, Johnson sent a courtesy copy of the Objection to the Discovery Commissioner via facsimile.¹ The next day, after receiving the file-stamped copy of the Objection from the Court, Johnson hand-delivered a courtesy copy of the Objection to the Discovery Commissioner. Thereafter, the Discovery Commissioner's office returned the courtesy copy of the Objection with a notation, "[t]his was submitted too late. Our office

¹ See the proof of facsimile, attached as Exhibit 2.

1 already sent the DCRR to the Judge.”² Apparently, the Court, unaware of our timely filed
2 Objection, approved the Discovery Commissioner’s Report and Recommendations, without
3 consideration of our Objection. As Johnson complied with the filing and delivery requirements
4 of EDCR 2.34(f), Johnson requests that this Court reconsider its decision to affirm the Report
5 and Recommendation and that it consider Johnson’s previously filed Objection (Ex. 1).

6 DATED this 9th day of November, 2012.

7
8 HUTCHISON & STEFFEN, LLC

9 

10 Mark A. Hutchison (4639)
11 Joseph S. Kistler (3458)
12 Timothy R. Koval (12014)
13 Peccole Professional Park
14 10080 West Alta Drive, Suite 200

15 Las Vegas, NV 89145

16 *Attorneys for Lisa Johnson*
17
18
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28 ² See a copy of the notation on the front page of the Objection, attached as Exhibit 1.

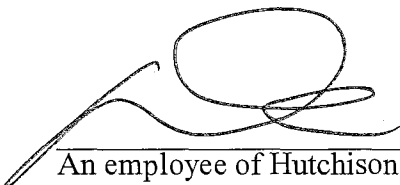
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 9th day of November, 2012, I caused the above and foregoing document entitled **PLAINTIFF'S MOTION FOR RECONSIDERATION** 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

- ☐ 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
- ☐ 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:

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


An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 1

ACTIVITY REPORT

TIME : 11/05/2012 19:45
 NAME : HUTCHISON & STEFFEN
 FAX : 7023852086
 TEL : 7023852500
 SER.# : BROCOJ140145

NO.	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
#145	11/05	10:07	249#3825#024#	41	02	OK	TX
#146	11/05	10:08	249#3825#024#	26	02	OK	TX ECM
#147	11/05	10:10	249#3825#024#	01:01	02	OK	TX
#148	11/05	10:12	249#3825#024#	34	02	OK	TX ECM
#149	11/05	11:30	241#4125#010#	01:02	03	OK	TX ECM
#150	11/05	12:02	259#9999#223#	40	03	OK	TX ECM
#151	11/05	12:04	241#4125#010#	01:18	07	OK	TX ECM
#152	11/05	12:21	243#3723#030#	00	00	BUSY	TX
#154	11/05	12:23	243#4789#001#	47	03	OK	TX ECM
#155	11/05	12:25	243#3723#030#	15	01	OK	TX ECM
#153	11/05	12:39	243#3723#030#	00	00	BUSY	TX
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#163	11/05	14:28	241#4125#010#	44	03	OK	TX ECM
#164	11/05	14:30	241#4125#010#	16	01	OK	TX ECM
#165	11/05	14:38	300#9999#300#1	03:30	14	OK	TX ECM
#166	11/05	14:42	237#0700#140#	04:22	15	OK	TX
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#167	11/05	14:53	237#0700#140#	08:26	15	OK	TX
#171	11/05	15:03	242#0180#427#	00	00	BUSY	TX
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#173	11/05	15:06	242#0180#427#	18	01	OK	TX ECM
#175	11/05	15:39	241#4125#010#	05:08	14	OK	TX
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#177	11/05	17:05	250#2968#024#	14:08	43	OK	TX
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#179	11/05	17:43	252#4819#001#	38	02	OK	TX
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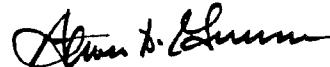
BUSY: BUSY/NO RESPONSE
 NG : POOR LINE CONDITION / OUT OF MEMORY
 CV : COVERPAGE
 POL : POLLING
 RET : RETRIEVAL

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 2


CLERK OF THE COURT

*This was submitted
to late. Our office
already sent the DCCR
to the Judge.*

ODCR
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Timothy R. Koval (12014)
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Email: jkistler@hutchlegal.com
Email: tkoval@hutchlegal.com

Attorneys for Lisa Johnson

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,
Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES I through X,
inclusive; and ROE CORPORATIONS, I
through X, inclusive,
Defendants.

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

) **OBJECTION TO DISCOVERY**
) **COMMISSIONER'S OCTOBER 19,**
) **2012 REPORT AND**
) **RECOMMENDATIONS**

Pursuant to EDCR 2.34(f), plaintiff Lisa Johnson ("Johnson" or "Plaintiff") objects to the Discovery Commissioner's October 19, 2012 report and recommendations ("Report and Recommendations"). Johnson objects to the over-breadth of the Report and Recommendations, which allows defendant Wells Fargo Bank, National Association ("Wells Fargo" or "Defendant") not to disclose the reasons why it closed the accounts of Johnson and Michael Kaplan ("Kaplan"), her boyfriend. The Discovery Commissioner determined that the Bank Secrecy Act and other federal law authorities precludes Wells Fargo from disclosing the reasons why its closed Johnson's accounts. However, these authorities at most only preclude Wells Fargo from disclosing documentation that Wells Fargo prepared for the purpose of investigating or drafting a potential suspicious activity report ("SAR") against Johnson or Kaplan. These authorities do not allow Wells Fargo to cloak its internal reports and memoranda with a veil of

1 confidentiality simply by claiming they concern suspicious activity or concern a transaction that
2 resulted in the filing of a SAR.

3 Contrary to the Discovery Commissioner's recommendations, the requested information
4 concerning the closures of Johnson's accounts is discoverable. Indeed, Arash Dounel
5 ("Dounel"), a Wells Fargo employee, made defamatory and otherwise wrongful statements
6 against Johnson concerning the reasons Wells Fargo closed her accounts, including false
7 allegations that Johnson had a criminal record published to Kaplan. In its affirmative defenses,
8 Wells Fargo claimed that Dounel's statements against Johnson were true. As the alleged
9 truthfulness of Dounel's statements and the underlying reasons why Wells Fargo closed
10 Johnson's accounts are central issues in this litigation, Wells Fargo should be required disclose
11 this information to Johnson.

12 **1. Factual and procedural background.**

13 On January 26, 2012, Johnson filed a lawsuit against Wells Fargo because Dounel, a
14 Wells Fargo representative, made defamatory and otherwise wrongful statements against
15 Johnson to Kaplan concerning the closures of Johnson's bank accounts at Wells Fargo.¹
16 Specifically, Dounel falsely stated to Kaplan that Johnson must have some type of criminal
17 background, thereby suggesting that her accounts were closed due to alleged criminal activity
18 by Johnson.² Duonel further falsely asserted to Kaplan that Johnson "must have arrest warrants
19 outstanding."³ Duonel also advised Kaplan that he "should hire a private investigator to check
20 up on [Johnson]."⁴ Wells Fargo maintains as an affirmative defense that these statements are
21 true.⁵

22 ///

23 ¹ See the Complaint at ¶¶ 9-17, on file with this Court.

24 ² See *id.* at ¶ 12.

25 ³ See *id.* at ¶ 13.

26 ⁴ See *id.* at ¶ 14.

27 ⁵ See Wells Fargo's Answer at Affirmative Defense No. 26, on file.

1 In June 2012, Johnson propounded to Wells Fargo, among other things, an Amended
2 First Set of Requests for Production of Documents and an Amended First Set of
3 Interrogatories.⁶ These discovery requests include Requests for Production of Documents nos.
4 2-10 and Interrogatories nos. 1-12, all of which request information concerning the closure of
5 Johnson's accounts at Wells Fargo, her and Kaplan's eligibility to open new accounts, and the
6 bases for Dounel's wrongful statements against Johnson.⁷ Specifically, Johnson's Amended
7 Requests for Production state in relevant part as follows:

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

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

13 **REQUEST NO. 4:** Please provide all documents concerning the basis or bases for
14 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.

15 **REQUEST NO. 5:** Please provide all documents concerning the basis or bases for
16 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
17 to that effect.

18 **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
19 "must have arrest warrants outstanding" or words to that effect.

20 **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
21 open an account at Wells Fargo on November 8, 2011.

22 **REQUEST NO. 8:** Please provide all documents concerning the basis or bases for
23 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
24 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
25 purposes, please see Lisa J. 0048.

26 ⁶ See Johnson's Amended First Set of Requests for Production of Documents, attached
27 as Exhibit 1; Johnson's Amended First Set of Interrogatories, attached as Exhibit 2.

28 ⁷ See Exhibit 1 at Requests Nos. 2-10; Exhibit 2 at Interrogatories Nos. 1-12.

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. 008.⁸

10 Johnson's Amended First Set of Interrogatories state in relevant part as follows:

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

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

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

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

26 **INTERROGATORY NO. 5:** On October 6, 2011, why did Arash Dounel state
27 to Michael Kaplan that Mr. Kaplan "should hire a private investigator to check to
28 check up on" Lisa 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?

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.

⁸ See Exhibit 1 at Requests Nos. 2-10.

1 **INTERROGATORY NO. 9:** Please explain in full detail the steps that Wells
2 Fargo took to perform "ongoing reviews of its account relationships in connection
3 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.

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

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

9 **INTERROGATORY NO. 12:** Please explain in full detail the contents of "the
10 apology that [Arash Dounel has] given [Michael Kaplan] thus far verbally"
regarding Wells Fargo's closure of the accounts referenced in Interrogatory No. 1.
11 For reference purposes, please see Lisa J. 0045.⁹

12 However, Wells Fargo failed to produce any information responsive to these items.¹⁰ In fact,
13 aside from a self-serving affidavit and meager discovery responses, Wells Fargo has failed to
14 produce a single discovery document to Johnson in this litigation.

15 Consequently, on August 31, 2012, Johnson filed a motion to compel, among other
16 things, supplemental responses to Johnson's Requests for Production of Documents nos. 2-10
17 and Interrogatories nos. 1-12.¹¹ On September 26, 2012, Wells Fargo filed an Opposition to
18 Plaintiff's Motion to Compel and a Countermotion for Protective Order to prevent the
19 disclosure of the reasons its closed Johnson's accounts.¹² Thereafter, Johnson filed a Reply in
20 Support of her Motion to Compel and Opposition to Wells Fargo Bank's Countermotion for

21
22
23 ⁹ See Exhibit 2 at Interrogatories Nos. 1-12.

24 ¹⁰ See Wells Fargo's Responses to Plaintiff's Amended First Set of Requests for
25 Production of Documents at Nos. 2-10, attached as Exhibit 3; Wells Fargo's Answers to
Plaintiff's Amended First Set of Interrogatories at Nos. 1-12, attached as Exhibit 4.

26 ¹¹ See Johnson's Motion to Compel dated August 31, 2012, on file.

27 ¹² See Wells Fargo Bank's Opp'n to Pl.'s Mot. to Compel and Wells Fargo Bank's
28 Countermotion for Protective Order, on file.

1 Protective Order¹³ and Wells Fargo filed a Reply in Support of its Countermotion for Protective
2 Order.¹⁴

3 On October 5, 2012, the Discovery Commissioner heard Johnson's Motion to Compel
4 and Wells Fargo's Countermotion for Protective Order. The Discovery Commissioner
5 determined that, aside from Interrogatory No. 12 concerning the contents of a letter of apology
6 that Dounel drafted regarding Wells Fargo's closure of Johnson's accounts, Wells Fargo is not
7 required to provide further answers to Johnson's First Set of Interrogatories.¹⁵ Further, the
8 Discovery Commissioner determined that Wells Fargo is not required to provide supplemental
9 responses to Johnson's First Set of Requests for Production of Documents.¹⁶ Although the
10 Discovery Commissioner determined that Wells Fargo must provide copies of all records
11 pertaining to Johnson's and Kaplan's accounts, the Discovery Commissioner determined that
12 Wells Fargo is not required to provide any documents pertaining to the reasons why Wells
13 Fargo closed Johnson's accounts.¹⁷ The Discovery Commissioner reasoned that the Bank
14 Secrecy Act and other federal law authorities protect the information concerning the reasons for
15 the account closures from disclosure in this litigation.¹⁸

16 Johnson objects to these recommendations because they provide Wells Fargo overly-
17 broad protection from disclosure of relevant, discoverable materials in this litigation.

18 ///

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20

21 ¹³ See Johnson's Reply in Support of Motion to Compel and Opposition to Wells Fargo
22 Bank's Countermotion for Protective Order, on file.

23 ¹⁴ See Wells Fargo Bank's Reply in Support of Countermotion for Protective Order, on
24 file.

25 ¹⁵ See the Discovery Commissioner's Report and Recommendations dated October 19 at
26 2, 2012, attached as Exhibit 5.

27 ¹⁶ See *id.*

28 ¹⁷ See *id.* at 2-3.

¹⁸ See *id.* at 3.

1 **2. The SAR discovery privilege is extremely limited.**

2 Johnson objects to the Discovery Commissioner's ruling that Wells Fargo is not
3 required to disclose the reasons why it closed Johnson's accounts. NRCP 26(b)(1) sets forth
4 the broad scope of discovery:

5 Parties may obtain discovery regarding any matter, not privileged, which is
6 relevant to the subject matter involved in the pending action, whether it
7 relates to the claim or defense of the party seeking discovery or to the claim
8 or defense of any other party, including the existence, description, nature,
9 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. . . .

10 NRCP 34 allows a party to serve on another party requests for production relating to
11 matters that are within the scope of NRCP 26(b). Further, NRCP 33 allows a party to serve on
12 another party written interrogatories relating to any matter that may be inquired into under
13 NRCP 26(b).

14 Contrary to the Discovery Commissioner's ruling, the Bank Secrecy Act does not shield
15 Wells Fargo from disclosing why it closed Johnson's accounts. The purpose of the Bank
16 Secrecy Act is "to require certain reports or records where they have a high degree of usefulness
17 in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or
18 counterintelligence activities, including analysis, to protect against international terrorism."¹⁹
19 The Bank Secrecy Act provides that, among other things, a bank may not notify a person that it
20 has reported a suspicious transaction to a government agency.²⁰ Further, pursuant to 31 C.F.R.

21 1020.320(e)(1)(I),

22 No bank, and no director, officer, employee, or agent of any bank, shall disclose a
23 SAR or any information that would reveal the existence of a SAR. Any bank, and
24 any director, officer, employee, or agent of 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 information²¹

25 _____
26 ¹⁹ See 31 U.S.C. § 5311 (2011).

27 ²⁰ See 31 U.S.C. § 5318(g)(2)(A) (2011).

28 ²¹ See 31 C.F.R. § 1020.320(e)(1)(i) (2011).

1 In other words, a bank is not required to disclose documents prepared by the bank for the
2 purpose of investigating or drafting a possible SAR.²²

3 However, courts construe this privilege narrowly because it prevents otherwise
4 admissible and relevant evidence from coming to light.²³ Indeed, SAR protection only applies
5 to the SARs themselves and not to other reports or documents evidencing suspicious activity.
6 *See Gregory v. Bank One, Ind., N.A.*, 200 F.Supp.2d 1000, 1002 (S.D. Ind. 2002) (analyzing the
7 rule in the context of a defamation case and stating that the rule “requires confidentiality only of
8 SARs and their contents, not of other reports of suspicious activity [the] requirement of
9 confidentiality applies only to the SARs themselves and the information contained therein, but
10 not to their supporting documentation.”). Nor do documents become privileged because they
11 may prompt the filing of a SAR or because they support the filing of a SAR or are referred to in
12 a SAR.²⁴

13 Consistent with this narrow construction, banks are required to disclose discovery
14 related to documents and facts pertaining to suspicious activity at issue that was created in the
15 ordinary course of business.²⁵ This includes transaction and account documents such as wire
16 transfers, statements, checks, and deposit slips.²⁶

17 Further, banks must disclose information related to procedures in place for detecting
18 suspicious activity independent of procedures for complying with federal reporting
19
20

21 ²² *See Union Bank of California, N.A. v. Superior Ct.*, 130 Cal.App.4th 378, 392, 400,
22 29 Cal.Rptr.3d 894, 903, 909 (2005) (holding that a bank was not required to produce a specific
23 form that the bank used to comply with its obligation under federal law to report suspicious
activity and to file SARs).

24 ²³ *See id.* at 392.

25 ²⁴ *See In re Whitley*, 2011 WL 6202895, at *4 (Bkrtcy. M.D.N.C. Dec. 13, 2011).

26 ²⁵ *See Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL 5139874, at *3
27 (S.D.N.Y. Dec. 8, 2010).

28 ²⁶ *See Union Bank of California, N.A. v. Superior Ct.*, 130 Cal.App.4th, at 391.

obligations.²⁷ For example, documents designed to fulfill general risk management functions are not subject to SAR privilege.²⁸ Further, “[a] bank may not cloak its internal reports and memoranda with a veil of confidentiality simply by claiming they concern suspicious activity or concern a transaction that resulted in the filing of a SAR.”²⁹

Although a bank may undertake an internal investigation in anticipation of filing a SAR, it is also a standard business practice for banks to investigate suspicious activity as a necessary and appropriate measure to protect the bank’s interests, and the internal bank reports or memorandum generated by the bank regarding such an investigation are not protected by SAR privilege.³⁰ “The letter and spirit of the limitation is served by shielding any SAR filed by a bank as well as any document that refers to a SAR having been filed or refers to information as being a part of a SAR or otherwise reveals the preparation or filing of a SAR.”³¹

One court stated:

[B]ased on this Court’s liberal pretrial discovery standard, the Court grants Plaintiff’s request for any memoranda or documents drafted in response to the suspicious activity at issue in this case. However, Defendants shall not produce any SARs or previous drafts of SARs, need not indicate if and when a SAR was produced, and shall not state what documents and facts were or were not included in any SARs. Although BOA [Bank of America] may have undertaken an internal investigation in

²⁷ See *id.* at 392.

²⁸ See *id.* at 396.

²⁹ See *id.* at 392.

³⁰ See *In re Whitley*, 2011 WL 6202895, at *4, citing *Freedman & Gersten, LLP*, 2010 WL 5139874, at *1.

³¹ See *id.* (holding that, subject to the SAR restrictions, the bank must disclose, among other things: (1) bank documents relative to the accounts in question that were generated in the ordinary course of business, including computer-generated reports of suspicious and/or unusual, irregular or improper account activity, (2) documents relating to any investigation or inquiry by the bank or its agents of any account in 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 anticipation of filing a SAR, it is also a standard business practice for banks to
2 investigate suspicious activity and BOA does not cite any binding precedent on this
3 Court which bars the production of this relevant documentation. The documents and
4 facts produced in the ordinary course of business are necessary and relevant for
5 purposes of Plaintiff discovering and/or assessing the precise facts of this incident .
6

7 As here, the bank in *Whitley* argued that it was precluded from producing any information
8 whatsoever because the bank's investigator who opened, prepared, and maintained the file, and
9 prepared documents in response to a fraudulent crime, did so in anticipation of the potential
10 filing of an SAR.³³ However, the court rejected this argument and held that the bank was
11 required to produce non-SAR information to the plaintiff.³⁴ Further, the court held that the
12 plaintiff was "entitled to discovery related to [the bank's] policies and procedures for handling
13 suspicious activity and risk management, except for those policies and procedures specifically
14 designated for SARs."³⁵

15 **3. The SAR privilege does not prevent the disclosure of discoverable materials in this**
16 **litigation.**

17 Here, the Discovery Commissioner correctly determined that Johnson is entitled to
18 discovery concerning "all records pertaining to the accounts of Plaintiff that are the subject of
19 this action"³⁶ However, the Discovery Commissioner incorrectly determined that Johnson
20 is not entitled to any information pertaining to the reasons why Wells Fargo closed her
21 accounts.³⁷ The fundamental problem is that the Discovery Commissioner's recommendations
22 appear to categorize jointly: (1) undiscoverable documents that Wells Fargo potentially
23 prepared for the purpose of investigating or drafting a possible SAR against Johnson, and (2)

24 ³² See *id.*

25 ³³ See *id.*

26 ³⁴ See *id.*

27 ³⁵ See *id.*

28 ³⁶ See Exhibit 5 at 3.

³⁷ See *id.*

1 discoverable documentation concerning general risk management, loss prevention, account
2 closure, and customer service procedures and communications pertaining to Wells Fargo's
3 decision to close Johnson's accounts that was independent of its SAR reporting obligations.

4 The Discovery Commissioner's recommendations seek to extend SAR privilege to
5 information contained in the second category when there is no legal basis for doing so. For
6 example, Wells Fargo delivered three account closure letters to Johnson stating: "Wells Fargo
7 performs ongoing reviews of its account relationships in connection with the Bank's
8 responsibilities to oversee and manage risks in its banking operations. We recently reviewed
9 your account relationship and, as a result of this review, we have decided to close the above-
10 referenced account(s). . . ." ³⁸ Wells Fargo's Prevention Contact Center drafted two of these
11 letters, while Wells Fargo's Business Direct department drafted the other. ³⁹ As these letters
12 demonstrate, Wells Fargo's decision to close Johnson's accounts was based, at least in part, on
13 its own general risk management and loss prevention efforts, which are independent of its
14 federal reporting requirements. Further, one of the letters states that Wells Fargo closed the
15 account(s) because, "[b]ank policy excludes lending to certain types of businesses." ⁴⁰
16 Accordingly, Wells Fargo's own policies (not those of the federal government) formed the
17 bases for its decisions to close Johnson's accounts. These policies and deliberations are subject
18 to discovery.

19 To suggest that Wells Fargo would not evaluate Johnson's accounts or make the
20 decision to close her accounts absent a government reporting requirement is inconsistent with
21 the evidence presented in this case and defies logic. Although Wells Fargo claims that all
22 information concerning the reasons why it closed Johnson's accounts is based on
23 _____

24 ³⁸ See the letter from Wells Fargo to Michael Kaplan and Lisa Johnson dated August 18,
25 2011, attached as Exhibit 6; the letter from Wells Fargo to Lisa Johnson dated August 15, 2011,
26 attached as Exhibit 7; the letter from Wells Fargo to Guitarfile, LLC dated August 18, 2011,
attached as Exhibit 8.

27 ³⁹ See *id.*

28 ⁴⁰ See Exhibit 7.

1 documentation that is subject to SAR privilege,⁴¹ a bank “may not cloak its internal reports and
2 memoranda with a veil of confidentiality simply by claiming they concern suspicious activity or
3 concern a transaction that resulted in the filing of a SAR.”⁴² As the court stated in *Freedman &
4 Gersten, LLP v. Bank of America*, it is a standard business practice for banks to investigate
5 allegedly suspicious activity.⁴³ The fact that Wells Fargo may have designated a division or an
6 individual (as was the case in *Freedman & Gersten, LLP v. Bank of America*) to investigate an
7 account in preparation of filing a SAR does not absolve Wells Fargo from producing responsive
8 information. It only prevents Wells Fargo from disclosing SAR information.

9 Further, Wells Fargo’s alleged actions to investigate and prepare a SAR against Johnson
10 are distinct from its actions to defame Johnson and to close her accounts. Wells Fargo’s
11 suggestion that it cannot disclose information concerning the defamatory statements against
12 Johnson or the closure of her accounts without disclosing that a SAR has been filed with the
13 government is wrong. The banks in *In re Whitley* and *Freedman & Gersten, LLP v. Bank of
14 America, N.A.* made similar arguments that the disclosure of bank documents concerning
15 internal investigations of suspicious activity of an account-holder would violate the Bank
16 Secrecy Act.⁴⁴ In both cases, the court rejected the bank’s blanket plea for confidentiality and
17 held that the bank must disclose all responsive non-SAR information.⁴⁵ This holding is
18 consistent with the case law that Wells Fargo cited in its Opposition and Countermotion before
19

20
21 ⁴¹ See the Aff. of Raelynn Stockman at ¶¶ 3-6, attached as Exhibit H to Wells Fargo
22 Bank’s Opp’n to Pl.’s Mot. to Compel and Wells Fargo Bank’s Countermotion for Protective
Order, on file.

23 ⁴² See *Union Bank of California, N.A. v. Superior Ct.*, 130 Cal.App.4th, at 392.

24 ⁴³ See *In re Whitley*, 2011 WL 6202895, at *4, citing *Freedman & Gersten, LLP*, 2010
25 WL 5139874, at *1.

26 ⁴⁴ See *id.* at *3; see also *Freedman & Gersten, LLP v. Bank of America, N.A.*, 2010 WL
27 5139874, at *4.

28 ⁴⁵ See *In re Whitley*, 2011 WL 6202895, at *4; see also *Freedman & Gersten, LLP v.
Bank of America, N.A.*, 2010 WL 5139874, at *4.

1 the Discovery Commissioner. *See In re Mezvinsky*, 2000 WL 33950697, at *3 (Bkrtcy. E.D.
2 Pa. Sept. 7, 2000) (holding that the Bank Secrecy Act and related regulations did not apply to
3 documents that were predecessors to SARs or to other specified reports); *Union Bank of*
4 *California, N.A. v. Superior Court*, 130 Cal.App.4th 378, 390, 392, 29 Cal.Rptr.3d 894, 901,
5 903 (2005) (stating that supporting documentation underlying a SAR that is generated or
6 received in the ordinary course of a bank's business, as well as various internal reports and
7 memoranda of suspicious activity, is discoverable).

8 Although Wells Fargo's arguments before the Discovery Commissioner concerning
9 SAR privilege relied chiefly on the holding of a California court of appeals in *Union Bank of*
10 *California, N.A. v. Superior Court*, that case is distinguishable from the present matter. In that
11 case, plaintiff investors alleged that a bank was complicit with a customer in operating a Ponzi
12 scheme.⁴⁶ The plaintiffs in that case primarily requested the production of information
13 concerning a specific form that the bank used to comply with its obligation under federal law to
14 report suspicious activity and to file SARs.⁴⁷ Although the plaintiffs argued that the form was
15 used for general risk management purposes, the court held that there was no evidence that the
16 form was designed to fulfill a general risk management function or that it served any purpose
17 other than to fulfill the bank's obligations to file SARs.⁴⁸ Ultimately, the court held that,
18 pursuant to the SAR privilege, the bank was not required to produce the form or to respond to
19 any discovery requests concerning the contents of the form.⁴⁹

20 Here, however, Johnson is not seeking to compel production of any forms or other
21 documents that Wells Fargo used to investigate or draft a potential SAR. Instead, Johnson
22 seeks to compel information concerning the closure of her accounts from non-SAR sources
23

24 ⁴⁶ *See Union Bank of California, N.A. v. Superior Court*, 130 Cal.App.4th 378, 384-85,
25 29 Cal.Rptr.3d 894, 897 (2005).

26 ⁴⁷ *See id.* at 386.

27 ⁴⁸ *See id.* at 396-97.

28 ⁴⁹ *See id.* at 400.

(e.g., information from general risk management, loss prevention, account closure, and customer service sources). Unlike the plaintiffs in *Union Bank of California, N.A.*, who specifically sought to learn whether the bank had filed a SAR concerning a customer,⁵⁰ Johnson is not seeking to learn whether Wells Fargo filed a SAR against her. Her discovery is directed at the reasons why Wells Fargo closed her accounts, not whether she was reported to a government agency.

Accordingly, Wells Fargo should be required to produce documents and other information concerning the closure of Johnson's accounts that were not prepared by Wells Fargo for the purpose of investigating or drafting a SAR. More specifically, Johnson is entitled to information concerning: (1) the contents of, and basis for, bank employee Dounel's defamatory statements against Johnson made to Kaplan concerning the closure of Johnson's accounts, (2) communications between other Wells Fargo employees and Kaplan concerning the closure of these accounts, and (3) non-SAR information concerning the review, risk assessment, and closure of Johnson's accounts. All of this information is relevant to evaluate the basis of Dounel's defamatory statements against Johnson and/or statements that placed her in a false light, as well as Wells Fargo's affirmative defense that these statements are true.⁵¹

4. Conclusion.

Based on the foregoing reasons, Johnson respectfully requests that this Court not follow the Discovery Commissioner's recommendations to preclude Wells Fargo from producing any information pertaining to the reasons why Wells Fargo closed Johnson's accounts. Further,

///

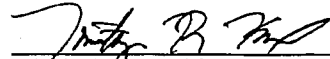
⁵⁰ See *id.* at 385.

⁵¹ See Wells Fargo's Answer at Affirmative Defense No. 26 (stating that, "Plaintiff's claims are barred, in whole or in part, by principles of truth . . .), on file.

1 Johnson requests that this Court order Wells Fargo to produce documents and other information
2 concerning the closure of Johnson's accounts that were not prepared by Wells Fargo for the
3 purpose of investigating or drafting a SAR.

4 DATED this 5th day of November, 2012.

5 HUTCHISON & STEFFEN, LLC

6
7 

8 Mark A. Hutchison (4639)
9 Joseph S. Kistler (3458)
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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 5th day of November, 2012, I caused the above and foregoing document entitled **OBJECTION TO DISCOVERY COMMISSIONER'S OCTOBER 19, 2012**

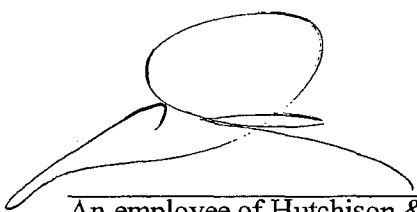
REPORT AND RECOMMENDATIONS to be served as follows:

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

- ☒ 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
- ☐ 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:

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



An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 1

ORIGINAL

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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
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. 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
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

A T T O R N E Y S
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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 22 day of August, 2012

6 SMITH LARSEN & WIXOM

7 
8

9 Kent F. Larsen, Esq.

10 Nevada Bar No. 3463

11 Stewart C. Fitts, Esq.

12 Nevada Bar No. 5635

13 SMITH LARSEN & WIXOM

14 Hills Center Business Park

15 1935 Village Center Circle

16 Las Vegas, Nevada 89134

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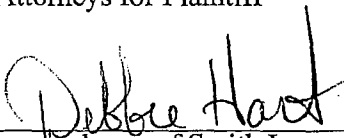
19 Attorneys for Defendants

20 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

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 2

1 **ROGS**

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

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-12-655393-C

) Dept. XXVI

) **PLAINTIFF'S AMENDED FIRST**
) **SET OF INTERROGATORIES TO**
) **DEFENDANT WELLS FARGO**
) **BANK, NATIONAL ASSOCIATION**

23 **TO: WELLS FARGO BANK, NATIONAL ASSOCIATION, Defendant; and**

24 **TO: STEWART FITTS, ESQ., its attorney:**

25 Plaintiff Lisa Johnson, requests that Defendant Wells Fargo Bank, National Association
26 answer under oath, in accordance with Rules 26 and 33 of the Nevada Rules of Civil Procedure,
27 the following Amended Interrogatories. The amended material is underlined and marked in

28 bold.

29 **DEFINITIONS AND INSTRUCTIONS**

30 The following definitions and instructions shall apply to each interrogatory:

31 A. **Definitions**

32 1. **Person.** The term "person" is defined as any natural person or business,
33 legal or governmental entity or association.

34 2. **Concerning.** The term "concerning" means relating to, referring to,
35 describing, evidencing, or constituting.

- 1 3. All/Each. The terms “all” and “each” shall be construed as all and each.
- 2 4. And/Or. The connectives “and/or” shall be construed either disjunctively
- 3 or conjunctively as necessary to bring within the scope of the discovery request all responses that
- 4 might otherwise be construed to be outside of its scope.
- 5 5. Number. The use of the singular form of any word includes the plural and
- 6 vice versa.
- 7 6. You/Your. The terms “you” and “your” refer to the defendant and all
- 8 agents, employees, representatives, investigators, consultants, and attorneys of the defendant.
- 9 7. Identify. The term “identify” when used with respect to a person, shall be
- 10 deemed to request the person’s full name, the person’s last known business address (if a natural
- 11 person), the person’s last known residence, and the person’s business and residence telephone
- 12 number.

13 B. Instructions

- 14 1. If you cannot answer an Interrogatory after conducting a reasonable
- 15 investigation, so state and answer to the extent you are able. State the nature of the information
- 16 you cannot provide and what efforts you have made to acquire the unknown information.
- 17 2. All information is to be divulged which is in your possession or control,
- 18 or which can be ascertained upon reasonable investigation of areas within your control. The
- 19 knowledge of your attorney(s) is deemed to be your knowledge, so that, apart from privileged
- 20 matters, if your attorney(s) have knowledge of the information sought herein such knowledge
- 21 must be incorporated into these Answers, even if the information is unknown to you
- 22 individually.
- 23 3. If you are unable to state an answer to these Interrogatories based upon
- 24 your own personal knowledge, please so state. Identify the person(s) you believe to have such
- 25 knowledge, what you believe the answer to the Interrogatory to be, and the facts upon which you
- 26 base your Answer.
- 27 4. Pursuant to NRCP 26(e), you are under a duty to supplement your
- 28 responses to these Interrogatories as follows:

“(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

“(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.”

5. These interrogatories are continuing in character, so as to require you to file supplementary answers in a seasonable manner if you obtain further or different information before trial.

6. Where knowledge or information in possession of a party is requested, such request includes information and knowledge either in your possession, under your control, within your dominion, or available to you, regardless of whether this information is in your personal possession, or is possessed by your agents, attorneys, servants, employees, independent contractors, representatives, insurers or others with whom you have a relationship and from whom you are capable of deriving information, documents or material.

7. Each interrogatory shall be accorded a separate answer and each subpart of an interrogatory shall be accorded a separate answer.

INTERROGATORIES

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. 2273587051, (2) Guitarfile, LLC, account no. 4856200225012957, and (3) account of Michael Kaplan and Lisa Johnson, account no. 3980024164.

/ / /

1 **INTERROGATORY NO. 2:**

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

4 **INTERROGATORY NO. 3:**

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

7 **INTERROGATORY NO. 4:**

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

11 **INTERROGATORY NO. 5:**

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

14 **INTERROGATORY NO. 6:**

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

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 to
20 open an account at Wells Fargo or words to that effect?

21 **INTERROGATORY NO. 8:**

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

27 ///

28

1 **INTERROGATORY NO. 9:**

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

6 **INTERROGATORY NO. 10:**

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

10 **INTERROGATORY NO. 11:**

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

13 **INTERROGATORY NO. 12:**

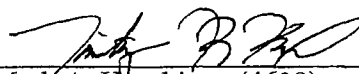
14 Please explain in full detail the contents of "the apology that [Arash Dounel has] given
15 [Michael Kaplan] thus far verbally" regarding Wells Fargo's closure of the accounts referenced
16 in Interrogatory No. 1. For reference purposes, please see Lisa J. 0045.

17 **INTERROGATORY NO. 13:**

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

20 DATED this 15th day of June, 2012.

21 **HUTCHISON & STEFFEN, LLC**

22
23 
24 Mark A. Hutchison (4639)
25 Timothy R. Koval (12014)
26 Peccole Professional Park
27 10080 West Alta Drive, Suite 200
28 Las Vegas, NV 89145

Attorneys for Plaintiff Lisa Johnson

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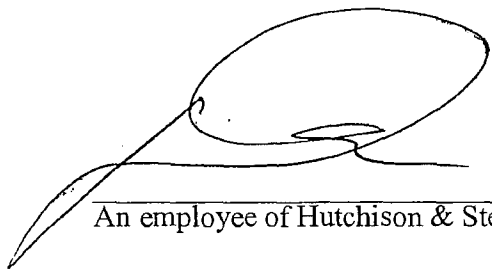
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 19th day of June, 2012, I caused the above and foregoing document entitled **PLAINTIFF'S AMENDED FIRST SET OF INTERROGATORIES TO DEFENDANT WELLS FARGO BANK, NATIONAL ASSOCIATION** 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
- ☐ 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:

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



An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 3

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.

ORIGINAL

10 **DISTRICT COURT**11 **CLARK COUNTY, NEVADA**

12 LISA JOHNSON, a Nevada resident,)

CASE NO: A-12-655393-C

13 Plaintiff,)

DEPT: XXVI

14 v.)

15 WELLS FARGO BANK, NATIONAL)
16 ASSOCIATION; DOES 1 through X,)
17 inclusive; and ROE CORPORATIONS,)
18 1 through X, inclusive)**WELLS FARGO BANK, N.A.'S
RESPONSES TO PLAINTIFF'S
AMENDED FIRST SET OF REQUEST
FOR PRODUCTION OF DOCUMENTS**19 Defendants.)
20)
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 **SUPPLEMENTAL NRCP 16.1 DISCLOSURES**

26 These disclosures are supplemental to the disclosures made in conjunction with the
 27 early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the
 28

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.
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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.
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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
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
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closure of the subject accounts.

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.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks 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. 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. 1 For reference purposes, please see Lisa J. 006 to Lisa J. 008.

RESPONSE:

In addition to the general objections, Wells Fargo objects on grounds that this request seeks 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

SMITH LARSEN & WIXOM

A T T O R N E Y S

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LAS VEGAS, NEVADA 89134

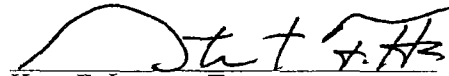
TEL (702) 252-5002 • FAX (702) 252-5006

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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 22 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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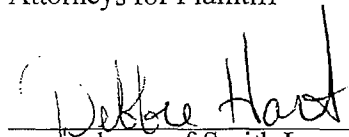
Attorneys for Defendants

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

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 4

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. 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

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. 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

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

22 **ANSWER:**

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

A T T O R N E Y S

HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

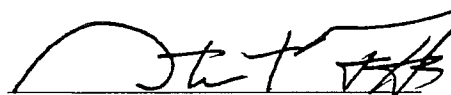
LAS VEGAS, NEVADA 89134

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

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

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Fax: (702) 252-5006

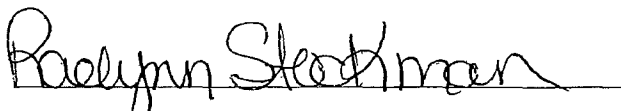
Attorneys for Defendants

Wells Fargo Bank, N.A.

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

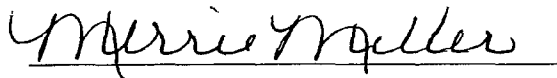
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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.

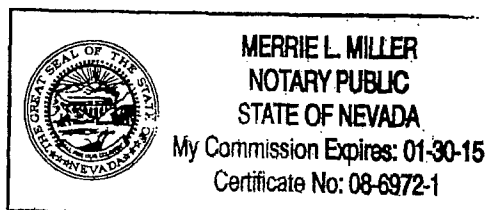

Raelynn Stockman

SUBSCRIBED AND SWORN to before me

this 2nd day of August, 2012.



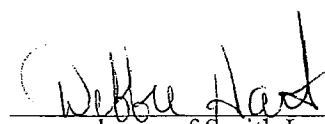
Notary Public



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 5

DCRR

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.

COURTESY
COPY**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

**DISCOVERY COMMISSIONER'S
REPORT AND
RECOMMENDATIONS****DISCOVERY HEARING DATE:**

October 5, 2012

APPEARANCES:

1. Plaintiff Lisa Johnson:

Joseph S. Kistler, Esq.
[REDACTED]

2. Defendant Wells Fargo Bank, N.A.

Stewart C. Fitts, Esq.,
SMITH LARSEN & WIXOM

I.

FINDINGS

On August 31, 2012, Plaintiff Lisa Johnson ("Johnson") filed a Motion to Compel. On September 26, 2012, Defendant Wells Fargo ("Wells Fargo") filed an Opposition to Plaintiff's Motion to Compel and a Countermotion for Protective Order. On September 28, 2012, Plaintiff filed a Reply in Support of Motion to Compel and Opposition to Wells Fargo's Countermotion for Protective Order. On October 4, 2012, Wells Fargo filed a Reply in Support of Countermotion for Protective Order. On October 5, 2012, the Discovery Commissioner conducted a hearing.

After consideration of the pleadings and papers on file herein, the briefs submitted by the parties, and the arguments of counsel, and with good cause appearing, the Discovery Commissioner recommends and orders as set forth below.

II.

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that Plaintiff's Motion to Compel is GRANTED in part and DENIED in part, as follows:

1. Wells Fargo is required is required to hand-deliver supplemental responses to Plaintiff's Request for Admissions Nos. 2-9 by October 19, 2012. Wells Fargo may admit, deny, or specifically explain why it cannot admit or deny the requests;

2. Wells Fargo is required to hand-deliver a supplemental answer to Plaintiff's Interrogatory No. 12 by October 19, 2012;

3. Wells Fargo is not required to provide further responses to Plaintiff's Requests for Production of Documents.

4. Wells Fargo is not required to provide further answers to Plaintiff's interrogatories Nos. 1-11, and No. 13.

5. Wells Fargo is required to provide copies of all records pertaining to the accounts of

1 Plaintiff that are the subject of this action, except that Wells Fargo is not required to provide any
2 all documents pertaining to the reasons why Wells Fargo closed Plaintiff's accounts;

3 6. Upon receipt of a notarized consent signed by Michael Kaplan, Wells Fargo is
4 required to provide copies of all records pertaining to the accounts of Mr. Kaplan, except that Wells
5 Fargo is not required to provide any all documents pertaining to the reasons why Wells Fargo
6 closed Plaintiff's accounts;

7 7. Plaintiff's request to strike the affirmative defense of truth is denied, as this is a
8 substantive issue for the District Court Judge to hear; and
9

10 8. Plaintiff's request for an award of attorneys' fees and costs is denied. .
11

12 IT IS FURTHER RECOMMENDED that Wells Fargo's Countermotion for Protective order
13 is GRANTED in part, and DENIED in part, as follows:

14 1. Wells Fargo is not be required to disclose the reasons why is closed Plaintiff's
15 accounts, as this information is protected under the Bank Secrecy Act and other federal law
16 authorities;

17 2. Plaintiff is precluded from conducting discovery regarding the reasons why Wells
18 Fargo closed Plaintiff's accounts; and
19

20 [The remainder of this page is intentionally left blank.]
21
22
23
24
25
26
27
28

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
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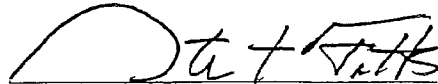
3. Wells Fargo's request for attorneys' fees and costs is denied.

DATED this 19 day of October, ~~May~~, 2012.

~~BONNIE A. DULLA~~
DISCOVERY COMMISSIONER

Submitted by:
SMITH LARSEN & WIXOM

Approved as to form/content:
HUTCHISON & STEFFEN, LLC



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.

Mark A. Hutchison, Esq.
Nevada Bar No. 4639
Timothy Koval, Esq.
Nevada Bar No. 12014
Peccole Professional Plaza
10080 West Alta, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

NOTICE

Pursuant to NRCP 16.1(d) (2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections. [Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. See E.D.C.R. 2.34(F)] A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2012.

X Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the 23 day of Oct, 2012.

STEVEN D. GRIERSON, Clerk of the
Court

By Jennifer Lott
Deputy Clerk

CASE NAME: Lisa Johnson v. Wells Fargo
Bank, National Association.

CASE NUMBER: A-12-655393-C

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

_____ No timely objection having been received in the office of the Discovery Commissioner
pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said
objections, and good cause appearing,

* * *

AND

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations
are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations
are affirmed and adopted as modified in the following manner. (attached hereto)

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set
for _____, 2012, at _____ a.m.

DATED this _____ day of _____, 2012.

DISTRICT JUDGE

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 6



MAC A0143-043
P.O. Box 7406
San Francisco, CA 94120-7406

August 18, 2011

MICHAEL KAPLAN-
LISA JOHNSON
9517 CANYON MESA DR
LAS VEGAS NV 89144-1523

Account Number(s): xxxxxx4164

Dear Customers:

Wells Fargo performs ongoing reviews of its account relationships in connection with the Bank's responsibilities to oversee and manage risks in its banking operations. We recently reviewed your account relationship and, as a result of this review, we have decided to close the above-referenced account(s). The account(s) will be closed at the end of business on September 22, 2011.

The 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. You may elect to close the account(s) before this date. Please note that the Bank reserves the right to close the subject account(s) sooner than September 22, 2011 if circumstances arise that warrant such an earlier closing.

Checks drawn against your account(s) that are presented to the Bank after September 22, 2011 will be returned unpaid. A cashier's check for the amount in your account(s) will be mailed to you within ten (10) days of the date your account(s) are closed.

If you have any payments directly deposited to your account(s), these payments will no longer be accepted after your account(s) are closed. You should, therefore, make other arrangements to receive any such payments. Similarly, any payments you make to others that are automatically withdrawn from your account(s) will be discontinued after your account(s) are closed. Therefore, if you presently have ~~any such automatic payments withdrawn from your account(s)~~, you also should make arrangements to ensure that these payments continue to be made on time.

For assistance or if you have questions, please call us at 1-888-231-0757 Monday through Friday from 6:00 a.m. to 6:30 p.m. or Saturday from 7:00 a.m. to 4:00 p.m., Pacific Time.

Prevention Contact Center

LP-FIU

Lisa J. 006

AA000417

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 7



Wells Fargo Bank, N.A.
Business Direct
P.O. Box 29482
Phoenix, AZ 85038-8650

8/15/2011

Guitarfile LLC
Lisa Johnson
9517 Canyon Mesa Dr
Las Vegas NV 89144

Subject: Closure Notification for your Visa Business Card account ending in – 2957

Dear Lisa Johnson:

Wells Fargo (the "Company") performs ongoing reviews of its account relationships in connection with the Company's responsibilities to oversee and manage risks in its business operations. We recently reviewed the Company's account relationship with Guitarfile LLC and, as a result of this review, we have decided to close the accounts referenced above, and terminate our relationship with Guitarfile LLC. The termination will be effective at the close of business on 9/16/2011.

M22 Bank policy excludes lending to certain types of businesses.

The Company's risk assessment process and the results of this process are confidential, and the Company's decision to close the subject accounts is final. Please note that you will not be able to make further purchases or advances on subject accounts after the account is closed.

If Lisa Johnson has any recurring scheduled transactions to the subject accounts, these transactions will no longer be accepted after the accounts are closed. Therefore, you should make other arrangements. This closure does not release you from any obligations owed nor does it impact our rights to collect on this debt, in accordance with all applicable laws.

If you have questions, please call the National Business Banking Center at 1-800-CALL-WELLS (1-800-225-5935), 24 hours a day, 7 days a week.

Sincerely,
Wells Fargo Bank N.A.
Business Direct

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning Wells Fargo Bank, N.A. is Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010-0905.

Lisa J. 007

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HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 8



MAC A0143-043
P.O. Box 7406
San Francisco, CA 94120-7406

August 18, 2011

GUITARFILE, LLC
OPERATING ACCOUNT
9517 CANYON MESA DR
LAS VEGAS NV 89144-1523

Account Number(s): xxxxxx7051

To Whom This Concerns:

Wells Fargo performs ongoing reviews of its account relationships in connection with the Bank's responsibilities to oversee and manage risks in its banking operations. We recently reviewed your account relationship and, as a result of this review, we have decided to close the above-referenced account(s). The account(s) will be closed at the end of business on September 22, 2011.

The 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. You may elect to close the account(s) before this date. Please note that the Bank reserves the right to close the subject account(s) sooner than September 22, 2011 if circumstances arise that warrant such an earlier closing.

Checks drawn against your account(s) that are presented to the Bank after September 22, 2011 will be returned unpaid. A cashier's check for the amount in your account(s) will be mailed to you within ten (10) days of the date your account(s) are closed.

If you have any payments directly deposited to your account(s), these payments will no longer be accepted after your account(s) are closed. You should, therefore, make other arrangements to receive any such payments. Similarly, any payments you make to others that are automatically withdrawn from your account(s) will be discontinued after your account(s) are closed. Therefore, if you presently have any such automatic payments withdrawn from your account(s), you also should make arrangements to ensure that these payments continue to be made on time.

For assistance or if you have questions, please call us at 1-888-231-0757 Monday through Friday from 6:00 a.m. to 6:30 p.m. or Saturday from 7:00 a.m. to 4:00 p.m., Pacific Time.

Prevention Contact Center

LP-FIU

Lisa J. 008

AA000421

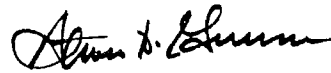
Details of filing titled:
Plaintiff's Motion for Reconsider
for Case Number A-12-655393-C

E-File ID:	3619760
Lead File Size:	2896848 bytes
Date Filed:	2012-11-09 16:34:48.0
Case Title:	A-12-655393-C
Case Name:	Lisa Johnson, Plaintiff(s) vs. Wells Fargo Bank National Association, Defendant(s)
Filing Title:	Plaintiff's Motion for Reconsider
Filing Type:	EFO
Filer's Name:	Janet Tolleson
Filer's Email:	jtolleson@hutchlegal.com
Account Name:	Hutchison & Steffen
Filing Code:	MRCN
Amount:	\$ 3.50
Court Fee:	\$ 0.00
Card Fee:	\$ 0.00
Payment:	Filing still processing. Payment not yet captured.
Comments:	
Courtesy Copies:	dchildress@hutchlegal.com
Firm Name:	Hutchison & Steffen, LLC
Your File Number:	1549.058
Status:	Submitted - (B)
Date Accepted:	
Review Comments:	
Reviewer:	
File Stamped Copy:	
Cover Document:	
Lead Document:	ljohnmtrecon.pdf2896848 bytes
Data Reference ID:	
Credit Card Response:	System Response: VXYCA1FF2BF7 Reference:

OPP

Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.
Nevada Bar No. 5635
SMITH LARSEN & WIXOM
Hills Center Business Park
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Email: kfl@slwlaw.com
scf@slwlaw.com
Attorneys for Defendants
Wells Fargo Bank, N.A.

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CLERK OF THE COURT

**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
OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION**

Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of record, Smith Larsen & Wixom, hereby opposes Plaintiff's Motion for Reconsideration, dated November 9, 2012. Although Wells Fargo does not necessarily dispute Plaintiff's argument (as set forth in its Motion for Reconsideration) that its Objection to the Discovery Commissioner's October 19, 2012 Report & Recommendation was timely, Wells Fargo submits that the Discovery Commissioner's Report & Recommendation correctly held that Wells Fargo's confidential investigative documents are

1 privileged under the Bank Secrecy Act (31 U.S.C. § 5311 *et seq.*). Accordingly, Plaintiff's motion
2 should be denied and the Discovery Commissioner's Report & Recommendation should remain as
3 being affirmed by the order of the District Court.

4 Further, Plaintiff's November 5, 2012 Objection to the Discovery Commissioner's Report
5 and Recommendation of October 19, 2012 violated the District Court rules because the objection
6 improperly included points and authorities. (*See*, Plaintiff's Objection, pp. 1-15.) EDCR 1.91(d)
7 specifically **prohibits** Plaintiff from including points and authorities in support of an objection:
8

9 ... Within 5 days after being served with a copy [of the Discovery Commissioner's
10 Report and Recommendation], and party may serve and file specific objections to the
11 recommendations with a courtesy copy delivered to the office of the
12 arbitration/alternative dispute resolution commissioner. **No points and authorities**
13 **from any party or oral argument are permitted** without leave of court.

14 (Emphasis added.)

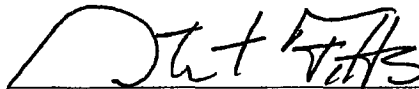
15 Thus, EDCR 1.91(d) is designed merely to allow an objecting party to identify the specific
16 portion of the Discovery Commissioners Report & Commendation to which its objects. The District
17 Court may then refer to legal briefs that were submitted to the Discovery Commissioner in order to
18 determine whether or not the Report & Recommendation is to be affirmed. *Id.*

19 Here, Plaintiff violated EDCR 1.91(d) by improperly including "points and authorities" with
20 its objection. Contrary to Plaintiff's Objection, EDCR 1.91(d) is **not** intended to provide Plaintiff
21 with an opportunity to re-emphasize points that have previously been presented to the Discovery
22 Commissioner, as this would result in providing Plaintiff with an advantage of providing additional
23 one-sided arguments. This matter was fully briefed before the Discovery Commissioner, and those
24 briefs are available for review by the District Court and Plaintiff's improper tactic should not be
25 tolerated. *Id.* Accordingly, the improper points and authorities that were attached to Plaintiff's
26 November 5, 2012 objection must be stricken. *Id.*
27
28

1 In sum, the Discovery Commissioner's Report & Recommendation was correct and
2 Plaintiff's Objection violated the District Court Rules. Accordingly, the Discovery Commissioner's
3 Report & Recommendation should be affirmed.

4 DATED this 4th day of December, 2012

5 SMITH LARSEN & WIXOM

6 

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

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

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17 Attorneys for Defendants

18 Wells Fargo Bank, N.A.

19 **CERTIFICATE OF SERVICE BY MAIL**

20 I HEREBY CERTIFY that on December 4, 2012 a true copy of the foregoing WELLS
21 FARGO BANK N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR
22 RECONSIDERATION was mailed, postage prepaid, to the following as noted:

23 Mark A. Hutchison, Esq.

24 Joseph S. Kistler, Esq.

25 Timothy R. Koval, Esq.

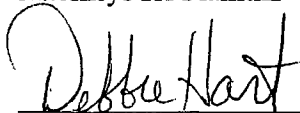
26 HUTCHISON & STEFFEN, LLC

27 Peccole Professional Park

28 10080 West Alta Drive, Suite 200

Las Vegas, NV 89145

Attorneys for Plaintiff



an employee of Smith Larsen & Wixom


CLERK OF THE COURT

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Attorneys for Lisa Johnson

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,
Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION; DOES I through X,
inclusive; and ROE CORPORATIONS, I
through X, inclusive,
Defendants.

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

) **PLAINTIFF'S REPLY IN SUPPORT**
) **OF HER: (1) MOTION FOR**
) **RECONSIDERATION; AND (2)**
) **OBJECTION TO THE DISCOVERY**
) **COMMISSIONER'S REPORT AND**
) **RECOMMENDATIONS**

Plaintiff Lisa Johnson ("Johnson" or "Plaintiff") submits her reply in support of her Motion for Reconsideration of this Court's decision to affirm the Discovery Commissioner's Report and Recommendations dated October 19, 2012 ("Motion for Reconsideration") and her Objection to Discovery Commissioner's October 19, 2012 Report and Recommendations ("Objection").¹ As a threshold matter, Johnson filed her Objection in a timely manner on November 5, 2012. Defendant Wells Fargo Bank, National Association ("Wells Fargo" or "Defendant") presents no evidence to the contrary and appears not to dispute the timeliness of

¹ For purposes of this reply brief, the Discovery Commissioner's Report and Recommendations dated October 19, 2012 will be referenced as the "Report and Recommendations."

1 the Objection.² Accordingly, the Court should grant Johnson's Motion for Reconsideration of
2 the Court's affirmance of the Report and Recommendations.

3 In conjunction therewith, the Court should not follow the Report and Recommendations
4 inasmuch as they seek to preclude Wells Fargo from producing any information pertaining to
5 the reasons why Wells Fargo closed Johnson's accounts. Further, this Court should order Wells
6 Fargo to produce documents and other information concerning the closure of Johnson's
7 accounts that were not prepared by Wells Fargo for the purpose of investigating or drafting a
8 potential suspicious activity report ("SAR") against Johnson or Michael Kaplan, her boyfriend.
9 All of this information is relevant to Johnson's claims concerning Wells Fargo's unlawful
10 actions surrounding the closure of her accounts. Moreover, this information is not subject to
11 any privilege governing the preparation of SARs. The Discovery Commissioner applied an
12 overly-broad extension of the SAR privilege and determined that these materials were not
13 discoverable.³ As the Discovery Commissioner's determination regarding the scope of SAR
14 privilege is erroneous, the Court should not follow the Discovery Commissioner's Report and
15 Recommendations in that regard.

16 In its opposition, Wells Fargo merely responds, in conclusory fashion, that "the
17 Discovery Commissioner's Report & Recommendation correctly held that Wells Fargo's
18 confidential investigative documents are privileged under the Bank Secrecy Act (31 U.S.C. §
19 5311 *et seq.*)."⁴ However, as stated above, the Report and Recommendations is overly-broad in
20 scope and improperly shelters information that should be discoverable in this action.

21 Further, Wells Fargo incorrectly claims that, pursuant to EDCR 1.91(d), Johnson
22 submitted allegedly improper "points and authorities" in her Objection.⁵ However, EDCR 1.91

24 ² See Wells Fargo's Opp'n to Pl.'s Mot. for Reconsideration at 1, on file with this
25 Court.

26 ³ See the Report and Recommendations, attached as Exhibit 5 to the Objection.

27 ⁴ See Wells Fargo's Opp'n to Pl.'s Mot. for Reconsideration at 2, on file.

28 ⁵ See *id.* at 2.

1 is only applicable to certain determinations from arbitration/alternative dispute resolution
2 commissioners.⁶ This does not include reports and recommendations from a discovery
3 commissioner, which are governed by EDCR 2.34.⁷ Accordingly, EDCR 1.91 is inapplicable to
4 the Discovery Commissioner's Report and Recommendations and the subsequent Objection.

5 Pursuant to EDCR 2.34(f), which governs the Discovery Commissioner's Report and
6 Recommendations and the Objection, "[w]ithin 5 days after being served with a copy [of the
7 Discovery Commissioner's Report and Recommendations], any party may serve and file
8 specific written objections to the recommendations with a courtesy copy delivered to the office
9 of the discovery commissioner. . . ."⁸ Importantly, **EDCR 2.34 does not preclude a party**
10 **from filing points and authorities in an objection to the Discovery Commissioner's report**
11 **and recommendations.**⁹ Accordingly, the Court should consider Johnson's Objection in its
12 entirety and should decline to follow the Discovery Commissioner's Report and
13 Recommendations to the extent that they preclude the disclosure of non-SAR materials.

14 DATED this 11th day of December, 2012.

15 HUTCHISON & STEFFEN, LLC

16
17 

18 Mark A. Hutchison (4639)
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22 *Attorneys for Lisa Johnson*

23
24 _____
25 ⁶ See EDCR 1.91.

26 ⁷ See EDCR 2.34(f).

27 ⁸ See *id.*

28 ⁹ See *id.*, *passim*.

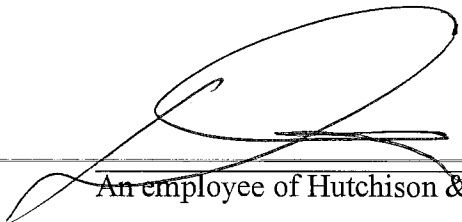
CERTIFICATE OF SERVICE

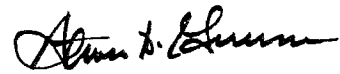
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 12th day of December, 2012, I caused the above and foregoing document entitled **PLAINTIFF'S REPLY IN SUPPORT OF HER: (1) MOTION FOR RECONSIDERATION; AND (2) OBJECTION TO THE DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS** 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

- ☐ 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
- ☐ 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:

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


An employee of Hutchison & Steffen, LLC



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LISA JOHNSON,)	
	)	CASE NO. A655393
Plaintiff,	)	DEPT NO. XXVI
vs.)	
)	
WELLS FARGO BANK NATIONAL)	
ASSOCIATION,)	
)	
Defendant.	)	TRANSCRIPT OF
	)	PROCEEDINGS

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

PLAINTIFF'S MOTION FOR RECONSIDER

FRIDAY, JANUARY 11, 2013

APPEARANCES:

For the Plaintiff: JOSEPH S. KISTLER, ESQ.

For the Defendant: STEWART C. FITTS, ESQ.

RECORDED BY ROSALYN NAVARA, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

AA000430

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 11, 2013, 10:49 A.M.

2 * * * * *

3 MR. FITTS: Good morning, Your Honor. Stewart Fitts
4 on behalf of Wells Fargo Bank.

5 THE COURT: Okay.

6 MR. KISTLER: Good morning, Your Honor. Joseph
7 Kistler of the law firm Hutchison Steffen on behalf of the
8 Plaintiff, Mrs. Johnson or Ms. Johnson.

9 THE COURT: Okay. This is case A-12-655393. And I
10 wasn't quite sure if, Counsel, if this is like just
11 preliminarily a question, are we going to hear an objection
12 there's -- that needs to be more fully briefed? Because it
13 seemed to me that one of the issues was that one of the
14 parties is objecting saying we haven't really had a chance to
15 fully brief that.

16 So, sorry, probably should have taken you before
17 those guys which we knew were going to take a long time. So
18 is this something where we've got everything we need and we
19 can -- if I say, okay, I'm going to consider this, would we do
20 the whole thing now, or is this something where we actually --
21 if -- if I -- if I said I'll consider it, it needs to be fully
22 briefed?

23 MR. KISTLER: Judge, I think that's really something
24 that Mr. Fitts should answer.

25 THE COURT: Okay.

1 MR. KISTLER: But procedurally what happened was we
2 filed a full-blown objection with the Court timely.

3 THE COURT: And I -- I understand that. I'm not real
4 sure Mr. Fitts challenges the timeliness and that it may have
5 been an error for the -- somehow a procedural clerical error
6 in the Discovery Commissioner's Office that it came to me
7 saying there's no opposition when, in fact -- no objection,
8 when, in fact, it had an objection applied.

9 MR. KISTLER: I think -- yes, Your Honor.

10 THE COURT: I think there's a question about that.

11 MR. KISTLER: I think the -- I think the bottom line,
12 I think Mr. Fitts' position is that the -- the -- while the
13 timeliness may not be in question, that the Court shouldn't
14 consider a full brief. It should just be you check the block
15 to say you object and the Court is limited to the record
16 below.

17 I think that the question becomes if Your Honor wants
18 to consider -- and should, in our view -- consider on this
19 important issue our full brief, then I guess in fairness to
20 Mr. Fitts, he should be permitted to file a responsive
21 pleading to that full brief because he substantively didn't
22 respond to the brief; rather he just said it's procedurally
23 improper.

24 THE COURT: Okay. Right, I -- because -- yeah, sorry
25 about that.

1 MR. KISTLER: Is that correct?

2 MR. FITTS: Yes.

3 THE COURT: Like I said, I probably should have
4 talked to you guys first before those other guys because I'm
5 -- I -- well, let's do two things first. First thing is, it's
6 my understanding, Mr. Fitts, you don't dispute that an
7 objection was filed and that somehow there was some clerical
8 error, it didn't register at the Discovery Commissioner's
9 Office. They sent it to us to sign and that was an error.

10 MR. FITTS: That's correct, Your Honor. I just have
11 no -- I mean, that's not my argument. I don't -- I can't
12 contest that. You know, I give deference to Counsel. I just
13 -- this was a clerical issue --

14 THE COURT: Right.

15 MR. FITTS: -- with the staff of the Discovery
16 Commissioner. I just don't have any personal knowledge to
17 that, and that's what I understood the motion to reconsider
18 was, was limited on the timing issue. And that's why I said,
19 well, nonetheless, we brief this before Commissioner Bulla,
20 but I did note that in the objection Plaintiffs did add, you
21 know, approximately ten pages of points and authority, some of
22 which kind of rehashes case law set forth before Commissioner
23 Bulla, but -- and I, you know, I'm prepared to argue today,
24 but if the Court has any -- you know, if the Court's read the
25 points and authorities and the objections and saying Wells

1 Fargo doesn't have the -- any opposition to that, that would
2 be an incorrect assumption because --

3 THE COURT: I assumed that, yeah.

4 MR. FITTS: Yes -- because we would -- we believe
5 there's very strong case law and the Department of Treasury,
6 the Office of the Comptroller of Currency, who promulgates the
7 regulations under the Bank Secrecy Act, they've actually --
8 they actually intervened in a case or filed a friend of the
9 court brief; and so there's a seminal case, and it's the
10 California Union Bank case --

11 THE COURT: Well, the --

12 MR. FITTS: -- and I'm happy to argue that orally or
13 if Your Honor would like us to brief it so there's a complete
14 record.

15 THE COURT: And then I -- I just didn't know -- this
16 is [inaudible], since we got this weird procedural problem
17 that we're in here, normally if Mr. Kistler had just said I
18 object to this report and recommendation, then it would have
19 come to the Court, and the Court could have said, Yes, I'll
20 take argument on this and you can brief it.

21 So if -- if we look at this as a procedural problem,
22 how do we fix our procedural problem if all we're here to do
23 is to say the Court will consider this as a -- as a timely
24 filed objection, now what do we do?

25 MR. FITTS: And -- and my response is if Your Honor

1 is inclined to consider the points and authorities that were
2 included in the objection, we would certainly -- I mean, I'm
3 prepared to argue it orally here, but if Your Honor would like
4 it on paper, I can argue that as well. I also have a --

5 THE COURT: And I guess the only thing there is you
6 may be prepared to argue orally, but then I guess the question
7 is would Mr. Kistler know --

8 MR. FITTS: In fairness --

9 THE COURT: -- anticipate what you're going to be
10 arguing?

11 MR. FITTS: In fairness, I think that's a good point
12 and so I can't dispute that. You know, as -- as one of the
13 procedural issues I would raise and which I raised with
14 Commissioner Bulla is this is a case where you have three
15 causes of action.

16 I don't know how familiar Your Honor is -- is with
17 the allegations, but it's -- this is where the Wells Fargo,
18 you know, exercised its right that it no longer wanted to
19 conduct business with a -- a customer, so it told the customer
20 that and closed the accounts; and out of all of that the --
21 the Plaintiff has now filed a claim for defamation, false
22 light, and then a third claim for declaratory relief which
23 asks the Court to enter an order compelling or directing Wells
24 Fargo to communicate or inform the Plaintiff as to why they
25 closed the account.

1 But rather than moving forward on that substantive
2 claim, it's our position that they really kind of
3 short-circuited procedurally that claim and they're trying to
4 essentially get summary judgment by filing a discovery motion
5 saying that we need to disclose that in discovery. And so it
6 was before the discovery commissioner as a discovery issue,
7 and we agree with the discovery commissioner's ruling as a
8 matter of law.

9 We would also point out it -- it really seems like
10 this is -- rather than a discovery issue, this should be
11 brought before the Court on some type of substantive motion
12 and there are different --

13 THE COURT: Well, because that was going to be a
14 question. I was kind of like, well --

15 MR. FITTS: Because there are different --

16 THE COURT: -- why are we even fighting over this
17 because it seems to me that all -- all Mr. Kistler is going to
18 do is help you with your defense. Right now if it's like --

19 MR. FITTS: And that's okay with me if --

20 MR. KISTLER: Judge, if --

21 THE COURT: It seems to me that --

22 MR. KISTLER: Time out.

23 THE COURT: Okay.

24 MR. KISTLER: We're talking about briefing or not
25 briefing, and if we're going to argue the motion, it is my

1 motion and I'd like to be able to argue the motion rather than
2 have Mr. Fitts take the motion. I would say, you know, this
3 is a defamation case, Your Honor.

4 THE COURT: Right.

5 MR. KISTLER: But on three different instances, three
6 different times in this litigation, the bank has put forth its
7 reason, rationale for closing accounts as -- has put forth
8 that concept three different times and one of those rationale,
9 the first rationale was we closed the account because of
10 criminal activity, so they interjected the rationale for
11 closing the account.

12 Then they wrote letters saying we closed the account
13 based upon our policies and procedures and we typically don't
14 -- we don't do -- we don't do lending business with -- with
15 certain types of clients. We cited that in the opposition.
16 That was the second time they gave a -- a reason for their
17 defamatory comment.

18 And then in the answer to the complaint they allege
19 the affirmative defense of truth to the defamation, so for the
20 third time they interjected the rationale for why the account
21 was closed and explaining -- and their explanation resulted in
22 a defamation and then an explanation of the defamation and
23 then an affirmative defense concerning the defamation.

24 Judge, the issue before the Court is a very important
25 issue, and that is what is the bank's responsibility to

1 disclose obviously relevant, material information given the
2 parameters of certain Federal acts. We draw a distinction
3 between a Suspicious Activity Report, which is a defined term
4 in the Federal acts.

5 We concede that Suspicious Activity Reports that are
6 required to be filed by a national banking institution,
7 nationally chartered banking institution, are not
8 discoverable; but the case law says that's not the end of the
9 analysis, that reports, investigations, data compilations that
10 are generated in the ordinary course of a bank's business are
11 discoverable if, in fact, that information is relevant to the
12 underlying litigation. This is an important issue.

13 There is no Nevada authority on the topic and cases
14 do go both ways. We would ask that the Court, you know, if
15 the Court wants to have a full record on this, if Mr. Fitts
16 wants to brief it, we would not object to that, and of course,
17 we'd like to reply to his brief as well.

18 THE COURT: And that was --

19 MR. KISTLER: But this -- but this is an important
20 issue and it is a very timely issue at this point. There is
21 no way for us to test the credibility at trial of Mr. Fitts'
22 clients' statements after the fact, after the defamation was
23 made, and his affirmative defense without this discovery.

24 I'm not trying to make his case for him. I'm trying
25 to discredit the positions that his client both before the

1 litigation as well as his client after the litigation was
2 filed has taken; that's what I'm trying to do.

3 THE COURT: It may be that as a banking attorney he's
4 well prepared to argue what he believes is the controlling
5 case. The Court's certainly not aware of it, and I don't
6 know, you may or may not be in a position to respond, and
7 that's why I -- I just didn't know because it does appear to
8 me that there was -- it was just a clerical error in the
9 commissioner's office.

10 She sent a -- a report and recommendation to me to be
11 signed believing it to be -- there to be no opposition when,
12 in fact, there was one; and it appears that there was a timely
13 opposition filed, and it's through no fault of anybody that it
14 didn't get caught and appropriately scheduled. But I -- I do
15 think that because the way the rules are that it -- normally
16 what I would do would be to set it for a hearing and say,
17 Let's go on ahead and have the parties fully brief this.

18 And it seemed to me that that's what Mr. Fitts was
19 saying, was that if you're just going to decide this, I want
20 the discovery commissioner we had before her, then that's one
21 thing; but if you're going to consider the other arguments of
22 Counsel, as Mr. Kistler has argued here today, then we'd like
23 to be heard and a chance to brief.

24 And then it only seemed fair that both -- and I --
25 that's why I said I apologize that we -- I should have

1 remembered that and taken you guys first because it just -- it
2 really does seem to me that this is one where it's an
3 important enough issue, and I appreciate the argument that it
4 really is a discovery issue. We shouldn't be treating this as
5 like a dispositive motion; it's not.

6 And I appreciate that we're limiting this just to
7 [inaudible], not to the merits of the legal theories.
8 Although, as I said, I did have a question, though, just
9 strategically, why are we -- why are we doing this? Doesn't
10 this just help the bank? But, I'm not looking at this as --
11 as the ultimate issues in the case, whether this is a good
12 definition case or not. Not what we're here for.

13 We're just here about this information that the
14 discovery commissioner said [inaudible] ordered that. But my
15 next question for you all, then, is, we don't want to
16 unnecessarily delay and stall this, so I don't know how much
17 time would be needed. The trial's not for another year, on
18 the January stack next year -- or I think it's -- is it a
19 bench trial or a jury trial?

20 THE CLERK: Bench.

21 THE COURT: Yeah, it's a bench trial. You have
22 discovery cut-offs in September, so I don't want to -- how
23 complete could we do this? I'm sorry, you know, if we figured
24 this out we could have arranged this earlier so you wouldn't
25 have to come down here and sit for two hours. I apologize.

1 MR. FITTS: That's okay. I enjoyed it.

2 THE COURT: You learned a lot about the Uniform Trade
3 Secret Act.

4 MR. FITTS: I -- I would just like the normal course
5 if, in fact, the Court is treating this --

6 THE COURT: Would you need -- would you need ten
7 days? I mean --

8 MR. FITTS: If -- if -- can I have two weeks just --
9 and then I'll file an opposition [inaudible] to the objection
10 is how I would phrase it. I'm certainly willing to work with
11 Counsel.

12 THE COURT: And then, Mr. Kistler, that's putting us
13 into February, so, I don't know. If Mr. Kistler had an
14 opportunity to reply, looks like we'd be going into the second
15 week of February. Is that going to be a problem with your
16 discovery? Because I don't want to stall your discovery for a
17 lengthy period of time, but it would be -- looks like we'd be
18 pushing this out almost -- pushing it out about a month.

19 MR. FITTS: This is pretty much a threshold issue, I
20 mean, a very important issue in the case, it might affect
21 discovery, so might as well get this issue resolved. So
22 that's fine with me to follow that briefing schedule if Mr.
23 Kistler is agreeable.

24 THE COURT: Well, if Mr. Fitts -- Mr. Fitts is asking
25 for two weeks, that puts his -- his brief would be due on the

1 25th. And, Mr. Kistler, could you get yours in by -- if we
2 had it by Monday, the 4th, so we, you know, could --

3 MR. KISTLER: Certainly, Your Honor, we can do that.

4 THE COURT: Be -- looks like we might be down to
5 Friday, the 9th. It would be -- I think the day would be --
6 is that -- 8th, I beg your pardon, 8th.

7 MR. FITTS: February 8th.

8 THE COURT: I was going to have you come down here on
9 a Saturday and I wouldn't be here. So the 8th, it doesn't
10 look too bad of a day. I think -- we've got a jury trial that
11 day, but at 10:30, but -- yeah, we could put them on the 8th.
12 I don't -- yeah, like I said, I don't want to delay this
13 because I know this has been since October already that --

14 MR. FITTS: Yeah.

15 THE COURT: And with the holidays and everything, it
16 just didn't get heard until now.

17 MR. FITTS: That's fine with me if Mr. Kistler is
18 agreeable.

19 THE COURT: I do think, Mr. Kistler, it's important
20 enough that we want to make a good record and make sure we
21 have an appropriate finding because it's kind of key to the
22 case, so.

23 MR. KISTLER: I agree, Your Honor. We think it is a
24 very important issue. There's -- you know, one of the cases
25 we cited just for kind of -- for the Court's background that

1 kind of sets forth the competing legal authority is the
2 Freeman case at 210 Westlaw 5139874, which kind of says some
3 courts go this way, some courts go this way, some courts say
4 everything up until the SAR is discoverable.

5 THE COURT: Right.

6 MR. KISTLER: So that -- other courts take a -- a
7 more -- a broader approach, but it really is kind of a
8 question of, you know, is there a privilege that the -- is
9 there a privilege by the Federal statute and how extensive
10 that privilege is.

11 THE COURT: I seem to think --

12 MR. KISTLER: We think it is an important issue
13 worthy of full briefing.

14 THE COURT: I assume this is the very thing that Mr.
15 Fitts said that, you know, he -- he believes there's just one
16 controlling case. I sure wouldn't know what that case is and
17 I don't know if you would have good enough research to be able
18 to respond to it, so that's why I'm kind of concerned about
19 going forward today.

20 MR. KISTLER: And the case he's talking about is a
21 California appellate court case, and so it's not a controlling
22 case, but -- and we take issue, we think it's distinguishable,
23 but we think this issue certainly is worthy of full briefing
24 for the Court's attention.

25 MR. FITTS: Fair enough, Your Honor.

1 THE COURT: But you know, as I said, I -- I really
2 feel bad about bringing you guys down here, having you sit
3 here for two hours and then delaying this for another three
4 weeks and -- because I don't want you to -- to hold up your --
5 your case this long since this is something the commissioner
6 decided back at the end of October, but I kind of think that
7 we need to make a ruling on this and make sure it's --
8 everybody's fulling informed and it's fully briefed because it
9 is kind of [inaudible] to the case, so.

10 MR. FITTS: And I suspect, Your Honor, either way
11 that the, you know -- and I don't want to speak for Mr.
12 Kistler, but it is an important enough issue that either way
13 it may go on up to the --

14 THE COURT: I was going to say.

15 MR. FITTS: -- Supreme Court, and so, to me, I guess
16 it's important to get a complete record.

17 THE COURT: To make sure there's a complete record.

18 MR. FITTS: And I do want to just state for the
19 record, I don't want to get on a slippery slope and start
20 argument here.

21 THE COURT: Right.

22 MR. FITTS: But we do contest the allegations that
23 were just discussed as if they were fact. We certainly
24 dispute those.

25 MR. KISTLER: There's no factual dispute as to

1 whether a defamatory statement was made.

2 MR. FITTS: Yeah, I don't want to get into the --

3 MR. KISTLER: We understand that.

4 MR. FITTS: -- in that argument today.

5 THE COURT: Right. That -- that was why I assumed I
6 wasn't going to -- I wasn't going to invite it, but that was
7 what I kind of assumed was that it was important enough on
8 both sides that no matter what we do, it won't end here and
9 because it -- there is nothing controlling in this state as
10 far as I can tell and --

11 MR. KISTLER: Now --

12 THE COURT: -- we need to make a -- we need to make
13 sure that it's fully briefed, and it really wouldn't have been
14 under our kind of odd procedure that we have here, so we might
15 as well take the opportunity.

16 MR. KISTLER: Judge, if I could -- if I could suggest
17 one additional point, a parallel course. That we have the
18 briefing schedule, I think 14 days, and then we'll reply and
19 then --

20 THE COURT: Correct.

21 MR. KISTLER: -- and then the Court set for hearing I
22 believe February the 8th, I think, at nine o'clock.

23 THE COURT: Correct.

24 MR. KISTLER: Is there the possibility for one of the
25 non-assigned judges to act as a neutral to see if this can get

1 resolved within that same time frame? I'm not interested in
2 going before and going with the neutral and putting these
3 briefing deadlines off, but while this issue is hanging over
4 both sides' heads, would it be possible to have a neutral get
5 involved and see if we can get the case resolved?

6 THE COURT: An overall --

7 MR. KISTLER: An overall resolution, Judge.

8 THE COURT: -- resolution. You can.

9 MR. FITTS: And, Your Honor, just for the record, I'm
10 agreeable to that. I know my client would be.

11 THE COURT: Can I just -- but I just got a -- I just
12 got an email from Judge Weise, our settlement judge. Do you
13 recall we have been provided with staffing for a settlement
14 conference marathon from February 19th through March 1, seeing
15 if a judge is available. It's not within our time frame, but
16 that might be a fabulous opportunity, because otherwise you're
17 about 60 days out if you're going to go through Judge Weise.

18 He's got this -- if you would like to take advantage
19 of the additional manpower, suggest Weise, send only cases in
20 which both parties have agreed or at least both parties
21 believe settlement conference to be beneficial and are willing
22 to work to negotiate [inaudible] recent settlements. So, I
23 mean, he -- literally he just sent us this this morning.

24 It's a -- I know it's not within that schedule, Mr.
25 Kistler, but it's your best chance to get in faster and this

1 might be a case that, Mr. Fitts, if you see that as
2 attractive.

3 MR. FITTS: Just so I understand, I believe as I'm
4 interpreting Mr. Kistler's comment or proposals that we just
5 basically participate in a settlement conference with the
6 Judge.

7 MR. KISTLER: Yes.

8 MR. FITTS: Is that correct?

9 MR. KISTLER: That is correct.

10 MR. FITTS: We're certainly open to that.

11 THE COURT: This would be apparently a signed --
12 they're going to have senior judges. It's going to be staffed
13 with senior judges.

14 MR. KISTLER: Great.

15 THE COURT: Anything that other judges are unable to
16 handle -- okay, yeah. A large number of settlement
17 conferences during a two-week time frame. I mean, it's not
18 within the schedule that we had already proposed and I don't
19 know if it's valuable to delay it any further, but I can ask
20 that Judge Weise put this case on that February 19th through
21 March 1st [inaudible].

22 MR. KISTLER: What I would ask, Your Honor, is that
23 if we could continue with the briefing schedule and the
24 hearing February the 9th, Your Honor may or may not take the
25 motion under submission.

1 THE COURT: Right.

2 MR. KISTLER: And instead of you may or may not take
3 it under submission pending the mediation or you may rule from
4 the bench, whatever, but if we can go ahead and get one of the
5 earlier dates on the 19th through -- 19th of February through
6 whatever of March.

7 THE COURT: Right. And another opportunity is just
8 if you call around and ask judges if they've got time, you may
9 find somebody on your own, but Judge Weise has a unique, you
10 know, staffing. He's going to have some senior judges
11 available for a special opportunity.

12 MR. KISTLER: Great.

13 MR. FITTS: This is my only concern I would have. I
14 anticipate my client may come back and say, Well, let's do
15 this settlement conference first to see if we can resolve it
16 before we get into briefing, which could be very extensive and
17 we've already spent ---

18 THE COURT: And like I said, the only thing, if you
19 want to call around and see if you can find somebody who can
20 get you in sooner. The -- the normal course, just a normal
21 district court settlement program is 60 days.

22 MR. FITTS: I understand.

23 THE COURT: And, you know, we wouldn't be able --
24 Judge Weise -- so unless you can call, you know a judge that
25 you like to use for settlement conferences, you call over. I

1 mean, who knows, the senior judge program sometimes has judges
2 who come to sit and who end up not having much to do during
3 the period of time that they're down here covering for
4 somebody on vacation.

5 MR. FITTS: May I propose this? That perhaps Mr.
6 Kistler and I -- I know it's a Friday -- could take maybe
7 today or a couple days early next week to explore whether a
8 judge might be available with -- fairly soon.

9 THE COURT: You know, what -- what we should probably
10 do before Judge Weise fills up his thing is just say we're
11 referring this case to you.

12 MR. FITTS: Okay. All right.

13 THE COURT: In the event that they find somebody who
14 can hear it, who can assist them sooner, they'll let us know
15 and we'll take them off your schedule.

16 MR. KISTLER: I agree wholeheartedly, Your Honor.

17 THE COURT: And then you and Mr. Kistler, if you can
18 find somebody who could help you sooner.

19 MR. FITTS: And then perhaps, you know, I don't know,
20 Mr. Kistler, if you would agree, if we could get someone, you
21 know, maybe this is impractical or naive of me to suggest, but
22 maybe if we were to find someone before the 25th of January
23 that maybe Mr. Kistler and I could stipulate to extend the
24 briefing out so we don't have to --

25 THE COURT: Sure.

1 MR. FITTS: I just want to be --
2 THE COURT: Whatever you --
3 MR. FITTS: -- economical for my client.
4 THE COURT: Sure. Whatever you can work out makes
5 sense to me.
6 MR. FITTS: Okay.
7 THE COURT: But we're going to assume that you want
8 to be on this stack as your last resort. We'll go ahead and
9 put you --
10 MR. FITTS: Okay.
11 THE COURT: -- request that you be included at --
12 with the caveat to Judge Weise that the parties may be able to
13 find somebody to assist them in the interim; if so, they'll
14 advise us and we can take them off your calendar, but we're
15 going to put you on Judge Weise's calendar.
16 MR. KISTLER: Perfect. And again, I -- deadlines
17 tend to drive action, so --
18 THE COURT: Right.
19 MR. KISTLER: So I would say we --
20 MR. FITTS: Yeah.
21 THE COURT: If we keep them --
22 MR. KISTLER: -- if we stick with the February 9th
23 hearing date with the briefing schedule --
24 THE COURT: Okay.
25 MR. KISTLER: -- we get on Judge Weise's mediation --

1 THE COURT: I appreciate that. I don't know --

2 MR. KISTLER: -- list and then we --

3 THE COURT: -- if there -- like I said, I just hate
4 delaying this since you already are on kind of a short time
5 frame, I -- I hate causing a further delay.

6 MR. FITTS: Is there -- is the hearing February 9th
7 or?

8 THE COURT: February --

9 THE CLERK: 8th.

10 MR. FITTS: Is 9th the Saturday?

11 THE COURT: 9th is a Saturday.

12 MR. FITTS: We're happy to come Saturday.

13 THE COURT: No, no, please don't.

14 MR. FITTS: Okay.

15 THE COURT: Please don't. I beg your pardon. I keep
16 saying the 9th. The 8th.

17 MR. KISTLER: I apologize too.

18 MR. FITTS: Okay. Then I suspect that Judge Weise
19 will give us a notice as to when he specifically would require
20 our time and then --

21 THE COURT: Right, and --

22 MR. FITTS: -- somehow work with you and we'll see
23 what we can do.

24 THE COURT: Yeah. What's confusing is his marathon
25 is the 19th through the 1st, so that's, you know, after that

1 holiday Monday, President's day, it's Tuesday. It's that
2 Tuesday through the following Friday that he's going to have
3 senior judges, and that's unique that they have given him the
4 funding to staff two full weeks of -- I'm sure he's going to
5 have a full panel of them, and you can always call Eileen who
6 runs the -- who's -- the administrative assistant for the
7 senior judges and see if she's got somebody sooner who just
8 happens to be available and she may, but let's -- let's stick
9 to our schedule.

10 MR. FITTS: Okay.

11 THE COURT: And with the understanding that you'll
12 let us know if you can -- if you can get something sooner,
13 fine.

14 MR. FITTS: This was well worth the time. Thank you.

15 MR. KISTLER: Great.

16 THE COURT: Thank you. Once again, I apologize. I
17 should have thought to bring you guys up before you had to
18 listen to all that about airlines.

19 MR. FITTS: No, this is a good plan. I appreciate
20 the Court and Mr. Kistler.

21 MR. KISTLER: Thank you, Judge.

22 MR. FITTS: Thank you.

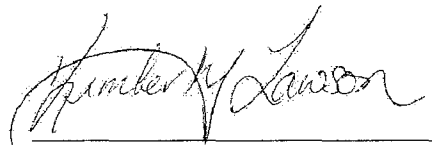
CERTIFICATION

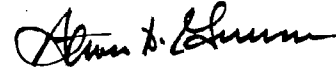
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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KIMBERLY LAWSON



CLERK OF THE COURT

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16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 LISA JOHNSON, a Nevada resident,)

19 Plaintiff,)

20 v.)

21 WELLS FARGO BANK, NATIONAL)
22 ASSOCIATION; DOES 1 through X,)
23 inclusive; and ROE CORPORATIONS,)
24 1 through X, inclusive)

25 Defendants.)

CASE NO: A-12-655393-C

DEPT: XXVI

**WELLS FARGO BANK'S
OPPOSITION TO PLAINTIFF'S
OBJECTION TO DISCOVERY
COMMISSIONER'S OCTOBER 19,
2012 REPORT AND
RECOMMENDATION**

Hearing Date: February 8, 2013

Time: 9:00 a.m.

26 Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of record,
27 Smith Larsen & Wixom, hereby files its opposition to Plaintiff's Objection to the Discovery
28 Commissioner's October 19, 2012 Report and Recommendation which precludes Plaintiff from
conducting discovery regarding the reason why Wells Fargo exercised its legal right to no longer
maintain a banking relationship with Plaintiff.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Objection should be denied, and the Discovery Commissioner's ruling should be affirmed, because Plaintiff improperly seeks to obtain confidential information regarding Wells Fargo's decision to no longer maintain a banking relationship with Plaintiff. Plaintiff is not entitled to this private information because a bank has the legal right to terminate a banking relationship with a depositor for reasons of its own. *See, e.g., 5(A) Michie on Banks & Banking*, Ch. 9, § 9 at 55 (1994). Further, information regarding Well's Fargo's decision to end the banking relationship is privileged and confidential under the **Bank Secrecy Act** (31 U.S.C. 5318(g)) and other federal authorities. *See, Union Bank of California, N.A. v. Superior Court*, 130 Cal. App. 4th 378, 391, 398, (Cal. App. 2005); *Cotton v. PrivateBank and Trust Company*, 235 F.Supp. 2d 809, 815 (2002).

In sum, Plaintiff's Objection must be denied because the Discovery Commissioner's ruling was in accordance with governing law. *Id.*

II. BACKGROUND

A. Wells Fargo Bank's Anti-Money Laundering Program
Under The Bank Secrecy Act

1. As a result of tragic events like those of September 11, 2001, and the subsequent financial crisis of 2008-2009, there has been heightened scrutiny of financial markets by the federal government and federally-regulated financial institutions. (*See, e.g., 31 U.S.C. 5311; Federal Register*, Vol. 75, No. 232, pp. 75593-94, dated December 3, 2010.)
2. As a result of these concerns, Congress has mandated that financial institutions (like Wells Fargo) establish anti-money laundering programs, including internal policies, procedures, and control. (*Id.*)
3. This congressional mandate is set forth in the provisions of the Bank Secrecy Act, and the amendments thereto under the Annunzio-Wylie Anti-Money Laundering Act of 1992 and the

1 Patriot Act of 2001. (31 U.S.C. 5311 *et seq.*; 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e))
2 (herein, the "Bank Secrecy Act.")¹

- 3 4. Pursuant to the requirements of the Bank Secrecy Act, Wells Fargo has established an Anti-
4 Money Laundering ("AML") program which includes various internal policies, procedures,
5 investigative tools, and controls. (Stockman affidavit, ¶ 3, attached hereto as Exhibit A.)
6 5. Wells Fargo's AML program is part of a cooperative effort between Wells Fargo and federal
7 authorities to combat money laundering, identity theft, embezzlement, and fraud pursuant
8 to the requirements of the Bank Secrecy Act and the related Code of Federal Regulations.
9 (*Id.*)
10 6. Wells Fargo has also created an Anti-Money Laundering ("AML") investigative division as
11 part of its AML program. The purpose of this investigative division is to ensure compliance
12 with suspicious activity reporting (sometimes referred to as "SAR") requirements under the
13 Bank Secrecy Act. (*Id.*, ¶ 4.)
14 7. Wells Fargo's AML investigative division would not exist but for the suspicious activity
15 reporting requirements of the Bank Secrecy Act and related federal regulations. (*Id.*)
16 8. Consistent with the purposes of the Bank Secrecy Act and related federal regulations,
17 Wells Fargo's AML and/or SAR policies, procedures, controls, and related documents are
18 kept confidential. (*Id.*, ¶ 5.)
19
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24

1

25 The Bank Secrecy Act was enacted in 1970 and has been amended several times, most notably by
26 the Annunzio-Wylie Anti-Money Laundering Act of 1992 and the U.S. Patriot Act of 2001. Consequently,
27 the provisions of 31 U.S.C. 5311 *et seq.* are sometimes alternatively referenced under the different names
28 of these three Congressional Acts. For simplicity purposes, Wells Fargo collectively refers to these
federal statutes as the "Bank Secrecy Act."

**B. Wells Fargo's Decision To Exercise Its Legal Right
To No Longer Maintain A Banking Relationship With Plaintiff**

9. Prior to August of 2011, Plaintiff and her boyfriend maintained a joint bank account at Wells Fargo. Plaintiff also maintained other accounts at Wells Fargo in the name of Guitarfile, LLC., a business of which she was and/or is the managing member. (Plaintiff's Complaint, ¶¶ 4-5, attached hereto as Exhibit B.)
10. In August of 2011, Wells Fargo provided written notice to Plaintiff that it decided to exercise its legal right to no longer maintain a banking relationship with Plaintiff regarding the aforementioned accounts. (*Id.*, ¶¶ 7-8.)
11. Wells Fargo's written notification informed Plaintiff that its decision was "final" and that the information leading to this decision was "confidential." (*Id.*, ¶¶ 8, 18.)
12. Wells Fargo also provided Plaintiff with a telephone number if she had questions regarding the notification of Wells Fargo's decision. (Notification Letters, labeled Lisa J. 006-008, attached hereto as Exhibit C.)
13. Despite being informed that the reason for Wells Fargo's decision was confidential, and despite being provided a specific telephone number with which to contact Wells Fargo regarding questions pertaining written notification, Plaintiff instead contacted numerous other employees of Wells Fargo in an attempt to ascertain the confidential reason for the decision. In response, Wells Fargo's employees informed Plaintiff that they could not tell her why the accounts were closed. (Plaintiff's Answer to Interrogatory No. 1, attached hereto as Exhibit D.)
14. Plaintiff then asked her boyfriend to contact Wells Fargo in order to find out why Wells Fargo made its decision. (*Id.*). Plaintiff's boyfriend subsequently went into a Wells Fargo branch and asked a bank employee if he knew why Wells Fargo made its decision. (Plaintiff's Complaint, ¶ 10, Exhibit B; Plaintiff's Answer to Interrogatory No. 1, Exhibit D.)

15. The Wells Fargo employee informed Plaintiff's boyfriend that he did not know the reason for the decision, although he generally stated that he believed the decision was made in connection with an investigation conducted by the bank. In this regard, due to the privileged nature of the investigation, the reason for Wells Fargo's decision was also kept confidential from this employee as well as other employees with similar duties. (Plaintiff's Complaint, ¶ 11, Exhibit B; Dounel depo., pp.43-45, Exhibit E.)

C. Plaintiff Has Improperly Sought To Compel Wells Fargo To Disclose The Confidential Reason Why It Decided To No Longer Maintain A Banking Relationship With Her

16. Plaintiff then filed the instant complaint seeking declaratory relief in the form of an order which would require Wells Fargo to disclose the reason why it exercised its right to no longer maintain a banking relationship with Plaintiff. (Plaintiff's Complaint, pp. 5-6, Exhibit B.)

17. Plaintiff's complaint also alleged claims of defamation and false light. Specifically, Plaintiff alleged that the aforementioned employee (who interacted with her boyfriend) made comments suggesting that Plaintiff must have some type of criminal background and that the boyfriend should investigate this matter. (*Id.*, ¶¶, 12-14.)

18. At a deposition in this action, this same bank employee reiterated under oath that he does not know why Wells Fargo made its decision to no longer maintain a banking relationship with Plaintiff. (Dounel depo., pp. 43-45, Exhibit E.) The employee further testified that he provided Plaintiff's boyfriend with a 1-800 telephone number at Wells Fargo if he had further questions. (*Id.*, p. 50.)

19. The employee also testified that he did not make the alleged comments and, further, testified that he would never make any comments regarding whether or not a customer had a criminal background. (*Id.*, pp. 51-52.)

20. The employee further testified that he informed Plaintiff's boyfriend that he was apologetic for not being able to provide information regarding Wells Fargo's decision and for any

1 inconvenience regarding the account closures. (*Id.*, pp. 56-59.) Since Plaintiff's boyfriend
2 had become very upset that the account closures were generally related to a bank
3 investigation, the employee was also apologetic for any misunderstanding that may have
4 arisen in connection with the use of that general term. (*Id.*) Nevertheless, the employee
5 denied making any of the comments alleged by Plaintiff – particularly since the employee
6 does not know the reason for Wells Fargo's decision. (*Id.*, pp. 43-45.)

7
8 **D. Plaintiff's Improper Attempt To Circumvent The Declaratory Relief Claim**

- 9 21. Despite acknowledging that she is not entitled to know the reason for Wells Fargo's decision
10 in the absence of a declaratory judgment, Plaintiff nevertheless attempted to circumvent this
11 court procedure by requesting that Wells Fargo to disclose its reason in response to discovery
12 requests and a NRCP 30(b)(6) deposition. (*See*, Plaintiff's Notice of Taking NRCP 30(b)(6)
13 Deposition, Exhibit F; Wells Fargo's Answers to Plaintiff's First Set of Interrogatories,
14 Exhibit G; Wells Fargo's Supplemental Answers to Plaintiff's First Set of Interrogatories,
15 Exhibit H; Wells Fargo's Responses to Plaintiff's First Set of Request for Production of
16 Documents, Exhibit I; Wells Fargo's Supplemental Responses to Plaintiff's First Set of
17 Request for Production of Documents, Exhibit J.) Plaintiff then filed a motion to compel the
18 disclosure of the reason why Wells Fargo made its decision.

19
20 **E. The Discovery Commissioner Grants Wells Fargo's Motion For Protective Order**

- 21 22. On September 26, 2012, Wells Fargo filed a counter-motion seeking a protective order
22 regarding Plaintiff's improper discovery requests. (Wells Fargo Bank's Opposition to
23 Plaintiff's Motion to Compel and Counter-Motion for Protective Order, filed September 26,
24 2012.)
25 23. At a hearing on October 5, 2012, the Discovery Commissioner granted Wells Fargo's
26 Counter-Motion for a protective order, but denied Wells Fargo's request for attorneys fees.
27
28

(Discovery Commissioner's Report and Recommendations, filed November 13, 2012, Exhibit K.)²

III. LEGAL ARGUMENT

The Discovery Commissioner's ruling should be affirmed and adopted because: (1) Plaintiff has no legal right to information regarding why Wells Fargo exercised its legal right to no longer maintain a banking relationship with Plaintiff; (2) the reason why Wells Fargo made its decision is confidential under the **Bank Secrecy Act** (31 U.S.C. 5318(g)) and related federal regulations; (3) the requested information contains confidential proprietary information regarding an ongoing investigation; and (4) the broad scope of the requested information encompasses confidential banking information of non-party bank customers.

1. Plaintiff Has No Legal Right To Information Regarding Why Wells Fargo Exercised Its Right To No Longer Maintain A Banking Relationship With Plaintiff

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

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

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

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

²

The Discovery Commissioner also required Wells Fargo to submit supplemental responses to Plaintiff's Interrogatory No. 12 and Plaintiff's Requests for Admissions Nos. 2-9. (*Id.*) These discovery requests pertained the Wells Fargo employee who alleged interacted with Plaintiff's boyfriend. Wells Fargo previously had not been able to respond to these requests because its employee had been on medical leave.

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

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

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

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

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

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

12 Thus, Wells Fargo had the right to terminate the "at will" banking relationship "at any time."
13 *Id.* In this regard, Wells Fargo had the legal right to "decline" to do business with Plaintiff "for
14 reasons of its own." *Id.* Accordingly, Plaintiff has no legal right to know the reason why Wells
15 Fargo exercised this well-established right. *Id.*

16 In an attempt to avoid this well-established law, Plaintiff has incorrectly argued that she is
17 entitled to know the reason why Wells Fargo terminated the banking relationship under the guise that
18 it is related to her defamation claim. (Plaintiff's Complaint, pp. 4-5.) Plaintiff is incorrect.

19 Specifically, Wells Fargo's employee does not know the confidential reason why Wells
20 Fargo decided to end the banking relationship with Plaintiff. Thus, the alleged comments (if any)
21 of the employee were not based on the reason why Wells Fargo decided to end the banking
22 relationship. Accordingly, the confidential reason why Wells Fargo decided to end the banking
23 relationship is not discoverable because it is not related to any purported comments by the
24 employee. NRCP 26(c). Thus, any attempt by Plaintiff to concoct, or use, a defamation claim as
25 part of an improper attempt to obtain confidential bank information is without legal merit. *Id.*

26 In sum, the Discovery Commissioner's ruling should be affirmed. *Id.*

27 / / /

28 / / /

/ / /

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

The Discovery Commissioner's ruling should also be affirmed because Wells Fargo's decision to end the banking relationship is confidential under the Bank Secrecy Act. (31 U.S.C. 5311 *et seq.*).

As previously mentioned, tragic events like those which occurred on September 11, 2001, and the subsequent financial crisis of 2008-2009, have led to heightened scrutiny of financial markets by the federal government and federally-regulated financial institutions. In the United States, law enforcement and regulatory agencies have confidential tools at their disposal to identify and protect the public against financial crimes and international terrorism. These tools are critical to obtaining information from banks concerning unusual and/or suspicious activities. *See, e.g.*, 31 U.S.C. 5311; *Federal Register*, Vol. 75, No. 232, pp. 75593-94, December 3, 2010.

These confidential investigative tools are protected under the Bank Secrecy Act and the related regulations promulgated by the Office of the Comptroller of the Currency ("OCC") and the Financial Crimes Enforcement Network ("FinCEN"). *See*, 31 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e). Both the OCC and FinCEN are agencies within the United States Department of Treasury. *Id.*

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

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

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

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

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

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

13 31 U.S.C. 5318(g)(2)(A)(I). (Emphasis added.)

14 Obviously, part of the purpose of the Bank Secrecy Act is to prevent persons who may be
15 involved in suspicious activity from being apprised of any report or related investigation. *Id.*
16 Accordingly, the Department of Treasury has set forth the following prohibition:

17 No national bank ... shall disclose a SAR or any information that
18 would reveal the existence of a SAR. Any national bank ... that is
19 subpoenaed or otherwise requested to disclose a SAR or any
20 information that would reveal the existence of a SAR, shall decline
21 to produce the SAR or such information, citing this section and
22 U.S.C. 5318(g)(2)(A)(I)

23 12 C.F.R. 21.11(k)(1)(I); *see also*, 31 C.F.R. 1020.320(e)(1)(I). (Emphasis added.)

24 This confidentiality encompasses all drafts, internal memorandum, and other processes
25 prepared and/or implemented by a bank in connection with fulfilling the requirements of the Bank
26 Secrecy Act. *In re Mezvinsky*, 2000 WL 33950697 (Bkrtcy. E.D.Pa. 2000) (discovery of suspicious
27 activity reports and related documents prohibited by federal regulations promulgated under the Bank
28 Secrecy Act). This is because such drafts, internal memorandum, and policies and procedures
prepared and/or implemented by a bank "may reveal the contents" of a suspicious activity report

1 and/or disclose whether such a report "has been prepared or filed." *Union Bank of California, N.A.*
2 *v. Superior Court*, 130 Cal. App. 4th 378, 391, 398, (Cal. App. 2005).

3 Here, all of the information pertaining to Wells Fargo's decision to end its banking
4 relationship was generated as part of its process of complying with the reporting requirements of the
5 Bank Secrecy Act. (Stockman Affidavit, Exhibit A.) This includes, without limitation, all drafts,
6 written memoranda, and other materials that were generated by Wells Fargo's AML investigative
7 unit as part of its efforts to comply with the requirements of the Bank Secrecy Act. (*Id.*).
8 Accordingly, this information is confidential under the Bank Secrecy Act. *Id.*

9
10 In sum, Discovery Commissioner properly held that the information and documents
11 generated by Wells Fargo are confidential under the Bank Secrecy Act.. *Id.*

12 **a. Plaintiff's Improper Attempt To Avoid The Bank Secrecy Act Is Defeated By**
13 **The United States Treasury Department's Binding Interpretation**
14 **Of The Applicable Code Of Federal Regulations**

15 Plaintiff attempts to avoid the confidentiality provisions of the Bank Secrecy Act by making
16 arguments which are contrary to the purposes of the Bank Secrecy Act. (Plaintiff's Objection, pp.
17 8,-14.) Specifically, Plaintiff incorrectly suggests that only a SAR (if one exists) is privileged and
18 that all other internal documents (prepared by a bank in compliance with the Bank Secrecy Act) are
19 discoverable. (*Id.*). Plaintiff is wrong. Indeed, as set forth below, Plaintiff's argument is contrary
20 to the applicable Code of Federal Regulations.

21 The United States Department of Treasury, including the OCC, is authorized by Congress
22 to promulgate federal regulations in order to implement the Bank Secrecy Act. *See, e.g.*, 31 U.S.C.
23 § 5318; *Union Bank of California, N.A. v. Superior Court*, 130 Cal. App. 4th at 390. These **federal**
24 **regulations** are **legally controlling**. *See, U.S. v. Morton*, 467 U.S. 822, 834 (1984) (congressionally
25 authorized regulations are legally controlling). Additionally, the **OCC's interpretation** of its **own**
26 **regulations** are also **legally controlling**. *See, Auer v. Robbins*, 519 U.S. 452, 461 (1997) (an
27 agency's interpretation of its own regulations is controlling.)
28

As previously mentioned, the OCC promulgated federal regulations in order to enforce the confidentiality provisions of the Bank Secrecy Act. (*Supra*, p. 9, citing 12 C.F.R. 21.11(k)(1)(I).). These legally binding federal regulations provide that "a SAR or any information that would reveal the existence of a SAR" are confidential. (*Id.*)

In the seminal case of *Union Bank of California, N.A. v. Superior Court*, the OCC filed an *amicus curiae* brief in which it interpreted its regulations (*i.e.*, 12 C.F.R. 12.11(k)(1)) as providing for the confidentiality of all "documents generated by a financial institution as part of its internal process" of complying with the requirements of the Bank Secrecy Act. *Id.* 130 Cal.App. 4th at 387-88. The appellate court properly adopted the OCC's legally controlling interpretation. Specifically, court stated:

[W]e . . . hold that the SAR privilege extends to documents prepared by the bank "for the purpose of investigating or drafting a possible SAR."

Id. 130 Cal App. 4th at 394 (Emphasis added.)

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.)

Thus, internal documents and other "internal memoranda or forms" 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 (if one exists) 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 SAR was actually filed. *Id.* 130 Cal. App. 4th at 397-98.

This broad privilege is intended to preserve the purpose of the Bank Secrecy Act. Indeed, disclosure of this confidential information would "undermine" the very purpose of the Bank