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Respondent.

Tracie K. Lindeman  
Clerk of Supreme Court

## Docket 66094 Document 2015-15968

**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

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

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32	Wells Fargo Bank, N.A.'s EDCR 7.27 Civil Trial Memorandum, filed 02/04/14	V	AA001082-001095
33	Joint Pre-Trial Memorandum, filed 02/04/14	V	AA001096-001105
34	Transcript of Proceedings, Bench Trial, Day 1, held on February 5, 2014, filed 10/28/14	V-VI	AA001106-001252
35	Transcript of Proceedings, Bench Trial Day 2, held on February 6, 2014, filed 10/28/14	VI	AA001253-001458
36	Partial Transcript of Proceedings, Bench Trial Day 3, Closing Arguments held on February 7, 2014, filed 02/18/15	VII	AA001459-001518
37	Recorder's Transcript of Proceedings, Bench Trial Day 3, Judge's Verdict held on February 7, 2014, filed 02/13/14	VII	AA001519-001530
	Pages Intentionally left blank to correct error	VII	AA001531-001532
38	Joint Trial Exhibits	VII	AA001533-001666
39	Notice of Entry of Order on The Order of Findings of Fact and Conclusions of Law, filed 06/13/14	VII	AA001667-001677
40	Notice of Appeal	VII	AA001678-001679
	<b>Alphabetical Index</b>		
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**CERTIFICATE OF SERVICE**

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

Kent F. Larsen (3463)  
Paul Haire, Esq. (5656)  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, NV 89134  
kfl@slwlaw.com  
pmh@slwlaw.com  
Facsimile 702-252-5006

*Attorneys for Defendants*

DATED this 26<sup>th</sup> day May, 2014.

  
An employee of Hutchison & Steffen, LLC



1 Secrecy Act. Specifically, disclosure of a bank's internal documents and investigative methods  
2 "through civil discovery" would:

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

11 *Id.* 130 Cal. App. 4<sup>th</sup> at 392-93. (Emphasis added.)

12 Despite the broad scope of the privilege as clearly articulated by the Department of Treasury  
13 and by the court in the seminal case of *Union Bank of California, N.A. v. Superior Court*, Plaintiff  
14 makes the incorrect proposition that the SAR privilege only pertains to a SAR. (Plaintiff's  
15 Objection, pp. 8-14.) Yet, Plaintiff's assertion, and the minority cases referenced in her Objection,  
16 totally ignore the "controlling" regulations and interpretations of the Department of Treasury which  
17 state that all internal documents (and not just a SAR) are confidential under the Bank Secrecy  
18 Act. (*Id.*) Accordingly, Plaintiff's misplaced proposition is contrary to controlling law. *Id.*

19 In sum, the Discovery Commissioner's ruling was not only in accordance with the Bank  
20 Secrecy Act and the Code of Federal Regulations, but it was also consistent with the Department of  
21 Treasury's legally controlling interpretation of those federal regulations. (Discovery Commissioner's  
22 Report and Recommendation, Exhibit K.) Indeed, the Discovery Commissioner correctly stated  
23 that:

24 ... the Patriot Act [*i.e.*, the Bank Secrecy Act], which is very far  
25 reaching, it looks to me, plaintiff's counsel, that this information is  
26 protected.

27 ... [T]he Bank Secrecy Act suggests that the banks are not to give  
28 up any information where there's an investigation. Why?  
Because you don't want to tip off a terrorist, for example, that their  
bank accounts are being investigated. So that makes perfect sense to  
me.

... I am really confident that they cannot give over the documents  
showing the rationale for them closing the account.

(October 5, 2012 Hearing Transcript, pp. 2-3, 7, attached as Exhibit M) (Emphasis added.)

Accordingly, Plaintiff's objection must be denied because the Discovery Commissioner's ruling was consistent with the "controlling" provisions of the Bank Secrecy Act and the applicable Code of Federal Regulations. *Id.*

**b. Wells Fargo Has Disclosed The Non-Privileged Bank Documents**

The court should be aware that Wells Fargo has disclosed the non-privileged bank account documents (such as monthly account statements) to Plaintiff in this action. (*See*, Wells Fargo's First Supplemental Rule 16.1 Disclosures, attached as Exhibit L.) Plaintiff was previously provided with copies of these account documents on a monthly basis prior to this litigation, but agreed to provide another copy to Plaintiff in response to her discovery request. (*Id.*) These monthly account documents are not confidential because they are documents created in the ordinary course of business and would have been generated regardless of Wells Fargo's efforts to comply with the Bank Secrecy Act. *See, Union Bank of California, N.A. v. Superior Court*, 130 Cal. App. 4<sup>th</sup> at 390-92. Thus, any assertion by Plaintiff that Wells Fargo has not disclosed appropriate account documents is incorrect. (*Id.*)

**3. Plaintiff's Objection Must Also Be Denied Because It Improperly Seeks Confidential and Proprietary Information Regarding an Ongoing Investigation**

The Discovery Commissioner's ruling should also be affirmed because disclosure of Wells Fargo's investigative materials, AML policies and procedures, and written risk analysis constitute Wells Fargo's secret and confidential techniques, plans, tools and methods pertaining the investigation of suspicious activities – including the ongoing investigation by Wells Fargo's AML investigative division. *See*, NRCP 26(c)(7); (*Stockman aff*, Exhibit A.) Disclosure of this information would frustrate and compromise Wells Fargo's attempt to protect its customers against fraudulent activity. *Id.*

Under Nevada law, a corporation's confidential plans, techniques, and methods are entitled to protection from disclosure. *See, Clark v. Bunker*, 453 F.2d 1006, 1009 (9<sup>th</sup> Cir. 1972). This is

1 especially true where those confidential plans, methods, and techniques are necessary to protect the  
2 economic value of the corporation's enterprise. *See, Finkel v. Cashman Professional, Inc.* 270 P.3d  
3 1259, 1263-64 (Nev. 2012.) This also applies to situations where the disclosure of this information  
4 would frustrate and jeopardize the very purpose of the investigation. *Cf. Times Mirror Co., United*  
5 *States*, 873 F.2d 1210, 1214 (9<sup>th</sup> Cir. 1989) (disclosure of investigative materials frustrate and  
6 jeopardize the underlying purpose of the investigation.)

7 Accordingly, Plaintiff's Objection should be denied. *Id.*

8 **4. Plaintiff's Objection Should Be Denied Because It Improperly Seeks**  
9 **Confidential Non-Party Customer Information**

10 Plaintiff's Objection should also be denied because it improperly seeks documentation which  
11 encompasses confidential information pertaining to the identity of other bank customers and/or their  
12 account information. *See, e.g., Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652, 542 P.2d  
13 977 (1975); 10 Am. Jur. 2d, *Banks and Financial Institutions*, § 642 (2007).

14 In *Valley Bank of Nevada v. Superior Court*, a state supreme court issued a writ of mandamus  
15 prohibiting a district court from requiring the disclosure of non-party bank customer information on  
16 grounds that the customer's information was private under the state constitution. 15 Cal. 3d at 555,  
17 542 P.2d at 979 ("the bank customer's right of privacy ... is constitutionally founded."). Further, it  
18 is well-established that a bank has an implied contractual duty to keep customer information  
19 confidential. *See, e.g., 10 Am. Jur. 2d, Banks and Financial Institutions*, § 642 (2007); *Peterson v.*  
20 *Idaho First National Bank*, 83 Idaho 578, 588, 367 P.2d 284, 290 (1961); *Suburban Trust Company*  
21 *v. Waller*, 44 Md. App. 335, 408 A.2d 758 (1979). Specifically:

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

25 5 A. Michie, *Banks and Banking*, § 1 (1973) (Emphasis added.).

26 Federal law also requires a bank to protect the privacy of the personal financial information  
27 of their customers except where the customer consents or where a court orders the disclosure. *See,*  
28

Gramm-Leach-Bliley Act, § 501 *et seq.*, 15 U.S.C. § 6801 *et seq.*. This privacy protection applies even if the customer's information is otherwise available. *Id.*; *Individual Reference Services Group, Inc. v. F.T.C.*, 145 F.Supp.2d 6 (D.D.C. 2001). In enacting this federal law, Congress stated:

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

15 U.S.C. § 6801. (Emphasis added.)

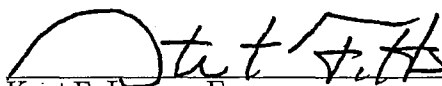
Thus, the Discovery Commissioner's ruling should also be affirmed in order to prohibit discovery of the confidential banking information of non-party customers. *Id.*

#### IV. CONCLUSION

Based on the foregoing, Wells Fargo respectfully submits that the Discovery Commissioner's ruling should be affirmed and that Plaintiff's Objection must be denied. *Id.*

DATED this 28 day of January, 2013.


SMITH LARSEN & WIXOM



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

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing WELLS FARGO BANK'S OPPOSITION TO  
PLAINTIFF'S OBJECTION TO DISCOVERY COMMISSIONER'S OCTOBER 19, 2012  
REPORT AND RECOMMENDATION is hereby acknowledged this 28 day of January, 2013.

  
Mark A. Hutchison, Esq. 1-28-13  
Joseph S. Kistler, Esq. 4:17PM  
Timothy R. Koval, Esq.  
Peccole Professional Park  
10080 West Alta Dr., Suite 200  
Las Vegas, NV 89145  
Attorneys for Plaintiff

# EXHIBIT A

AFFIDAVIT OF RAELYNN STOCKMAN

STATE OF NEVADA       )  
                                  ) ss  
COUNTY OF CLARK     )

Raelynn Stockman, being first duly sworn, deposes and says:

1. I am a Vice President and Regional Services Manager with Wells Fargo Bank, N.A. ("Wells Fargo").

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

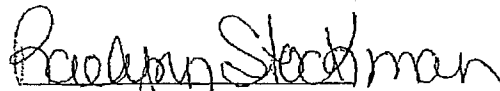
3. Pursuant to the requirements of the Bank Secrecy Act, and the amendments thereto under the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. 5311 *et seq.*), Wells Fargo has established an anti-money laundering program, including various internal policies, procedures, and controls. This program is part of a cooperative effort between Wells Fargo and federal authorities to combat money laundering, identity theft, embezzlement, and fraud.

4. Consistent with the reporting requirements of the Bank Secrecy Act (31 U.S.C. 5318), Wells Fargo has created an Anti-Money Laundering ("AML") investigative division. The purpose of this investigative division is to ensure compliance with suspicious activity reporting (sometimes referred to as "SAR") requirements under the Bank Secrecy Act. The AML investigative division would not exist but for the suspicious activity reporting requirements of the Bank Secrecy Act and the related federal regulations.

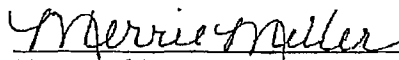
5. Consistent with the purposes of the Bank Secrecy Act and related federal regulations, Wells Fargo's AML and/or SAR policies, procedures, controls, and related documents are kept confidential.

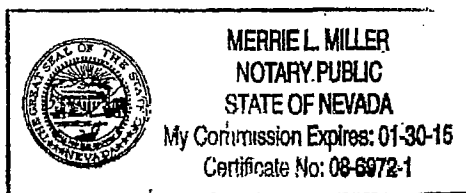
6. In this legal action, Plaintiff has served interrogatories and requests for production of documents which seek the disclosure of information generated by the ALM investigative division,

including policies, procedures, internal memorandum, and other written materials. This information was generated as a direct result of Wells Fargo's purpose of fulfilling its reporting obligations under the Bank Secrecy Act. Consistent with the purposes and provisions of the Bank Secrecy Act, Wells Fargo considers this requested information to be confidential. This information also pertains to an ongoing investigation and Wells Fargo believes that disclosure would compromise its investigative efforts, its cooperative efforts with law enforcement officials, and the purposes of the reporting requirements under the Bank Secrecy Act.

  
Raelynn Stockman

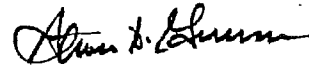
SUBSCRIBED and SWORN to before me  
this 26<sup>th</sup> day of September, 2012.

  
Notary Public  
My Commission Expires: 1-30-2015





# EXHIBIT B



CLERK OF THE COURT

1 **COMP**

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

COMPLAINT

Arbitration Exemption:  
Action in Equity

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

25 1. **Jurisdiction.**

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

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

3 **2. Factual Background.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28     ///

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

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

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

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

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

### 3. Legal Claims.

**FIRST CLAIM**  
**(Defamation)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **THIRD CLAIM**  
26 **(Declaratory Relief)**

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

///

1           43.    NRS 30.030 provides:

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

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

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

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

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

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

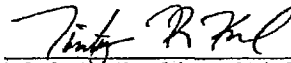
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5. For such further relief as the Court deems appropriate.

DATED this 26 day of January, 2012.

HUTCHISON & STEFFEN, LLC



---

Mark A. Hutchison (4639)  
Timothy R. Koval (12014)  
HUTCHISON & STEFFEN, LLC  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
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Email: tkoval@hutchlegal.com

*Attorneys for Plaintiff Lisa Johnson*



# EXHIBIT C



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

AA000483



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

AA000484



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

AA000485

# EXHIBIT D

1 **RSPN**

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

14 *Attorneys for Lisa Johnson*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 LISA JOHNSON, a Nevada resident,  
18 Plaintiff,  
19

20 vs.

21 WELLS FARGO BANK, NATIONAL  
22 ASSOCIATION; DOES I through X,  
23 inclusive; and ROE CORPORATIONS, I  
24 through X, inclusive,  
25 Defendants.  
26

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

LISA JOHNSON'S RESPONSES TO  
WELLS FARGO BANK, N.A. FIRST  
SET OF INTERROGATORIES

27 TO: WELLS FARGO BANK, N.A., Defendant; and

28 TO: STEWART FITTS, ESQ., its attorney:

Pursuant to NRCP 36, Plaintiff LISA JOHNSON ("Plaintiff") responds to Defendant

WELLS FARGO BANK, N.A., First Set of Interrogatories as follows:

**DEFINITIONS**

The following definitions apply to Plaintiff's objections:

A. "Nondiscoverable/Irrelevant" - The interrogatory in question concerns a matter that is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

B. "Unduly burdensome" - The interrogatory in question seeks discovery which is unduly burdensome or expensive, taking into account the needs of the case, limitations on the

1 parties' resources, and the importance of the issues at stake in the litigation.

2 C. "Vague" - The interrogatory in question contains a word or phrase which is not  
3 adequately defined, or the overall interrogatory is confusing or ambiguous, and Plaintiff is  
4 unable to reasonably ascertain what information or documents Plaintiff seeks in the  
5 interrogatory.

6 D. "Overly-broad" - The interrogatory seeks information or documents beyond the  
7 scope of, or beyond the time period relevant to, the subject matter of this litigation and,  
8 accordingly, seeks information or documents which are nondiscoverable/irrelevant and is  
9 unduly burdensome.

#### 10 GENERAL OBJECTIONS

11 1. Plaintiff objects to Defendant's interrogatories to the extent that they seek any  
12 information that is protected by any absolute or qualified privilege or exemption, including, but  
13 not limited to, the attorney-client privilege, the attorney work-product exemption, and the  
14 consulting-expert exemption.

15 2. Plaintiff objects to Defendant's interrogatories on the grounds that they are  
16 excessively burdensome and that much of the information requested may be obtained by  
17 Plaintiff from other sources more conveniently, less expensively, and with less burden.

18 3. Answers will be made on the basis of information and writings available to and  
19 located by Plaintiff upon reasonable investigation of their records and inquiry of any present  
20 officers and employees. There may be other and further information respecting the  
21 interrogatories propounded by Plaintiff of which Plaintiff, despite its reasonable investigation  
22 and inquiry, is presently unaware. Plaintiff reserves the right to modify or enlarge any answer  
23 with such pertinent additional information as it may subsequently discover.

24 4. No incidental or implied admissions will be made by the answers. The fact that  
25 Plaintiff may respond or object to any interrogatory, or part thereof, shall not be deemed an  
26 admission that Plaintiff accepts or admit the existence of any fact set forth or assumed by such  
27 interrogatory, or that such answer constitutes admissible evidence. The fact that Plaintiff

1 responds to part of any interrogatory is not to be deemed a waiver by it of its objections,  
2 including privilege, to other parts to such interrogatory.

3 5. Plaintiff objects to any request for production of documents to the extent that it  
4 would impose upon Plaintiff greater duties than are set forth under the Nevada Rules of Civil  
5 Procedure. Plaintiff will supplement its answers to certain interrogatories as required by Rule  
6 26(e) of the Nevada Rules of Civil Procedure.

7 6. Each answer will be subject to all objections as to competence, relevance,  
8 materiality, propriety and admissibility, and to any and all other objections on any ground  
9 which would require the exclusion from evidence of any statement herein if any such  
10 statements were made by a witness present and testifying at trial, all of which objections and  
11 grounds are expressly reserved and may be interposed at such hearings.

12 7. Subject to its objections and to the extent they are within Plaintiff's possession,  
13 custody or control, Plaintiff will make documents available for inspection and copying during  
14 normal business hours by someone acting on their behalf at the offices of HUTCHISON &  
15 STEFFEN, or another place that is mutually agreeable to counsel for all parties. Please notify  
16 the offices of HUTCHISON & STEFFEN of the time and date you intend to inspect and/or  
17 copy those documents.

18 8. Plaintiff adopts by reference the above objections and incorporates each  
19 objection as if it was fully set forth in each of Plaintiff's answers.

20 **ANSWERS TO INTERROGATORIES**

21 **INTERROGATORY NO. 1:**

22 Describe with specificity all facts that tend to support or in any way relate to Plaintiff's First  
23 Claim for Relief alleging Defamation against Wells Fargo.

24 **ANSWER TO INTERROGATORY NO. 1:**

25 In August 2011, Plaintiff received a letter from Wells Fargo stating that Defendant  
26 was closing a joint account that Plaintiff had with Michael Kaplan. The letter had no  
27



1 explanation for the sudden and abrupt closing. Also in August of 2011, Plaintiff received a  
2 letter from Wells Fargo stating that it was closing her Visa Business Account with her  
3 company, Guitarfile, LLC. The letter states: "M22 Bank policy excludes lending to certain  
4 types of businesses." That same month, Plaintiff also received a letter from Wells Fargo  
5 stating that it was closing the operating account of Guitarfile, LLC. Thereafter, Plaintiff  
6 contacted Ramy Zaki (an employee of Wells Fargo from the Beverly Hills branch) and other  
7 employees at Wells Fargo numerous times to ascertain why Wells Fargo closed these  
8 accounts. However, Wells Fargo refused to tell her why it closed her accounts.

9 Plaintiff then asked Mr. Kaplan to contact Wells Fargo to find out why Wells Fargo  
10 closed the joint account. Thereafter, on October 6, 2011, upon information and belief, Mr.  
11 Kaplan went into the Wells Fargo Bank Branch at Crosscreek Center in Malibu, California  
12 to cash a check. While Mr. Kaplan was cashing the check, the teller stated to him that he was  
13 leaving too much money in his account and that he should open a separate savings account.  
14 At that point, Mr. Kaplan told the teller that was strange since Wells Fargo had recently  
15 closed his other account at Wells Fargo. The teller then brought Arash Dounel over and  
16 introduced him to Mr. Kaplan, telling him that Mr. Dounel could help him. Mr. Dounel  
17 brought Mr. Kaplan to his desk to speak. Mr. Kaplan advised Mr. Dounel of Wells Fargo's  
18 closure of the joint account with Plaintiff. Mr. Kaplan asked Mr. Dounel to communicate  
19 with Plaintiff so that she could e-mail him the closure letters. Following a phone discussion  
20 between Mr. Dounel and Plaintiff, the letters were emailed to Mr. Dounel. Thereafter, Mr.  
21 Dounel told Mr. Kaplan that Plaintiff must have some type of criminal background or have  
22 arrest warrants out for her, implying that Wells Fargo closed the accounts due to Plaintiff's  
23 alleged criminal activity. Mr. Dounel also advised Mr. Kaplan that Mr. Kaplan should hire  
24 a private investigator to investigate Plaintiff, as Plaintiff must be in trouble with the law for  
25 the accounts to have been closed.

26 Thereafter, on or about October 11, 2011, upon information and belief, Mr. Kaplan  
27  
28

1 spoke with Cheryl Taylor (assistant to Kirk Clausen President of Wells Fargo) and Kate  
2 Wright (District Manager and Vice President of Wells Fargo) concerning the closure of  
3 Plaintiff's and Mr. Kaplan's accounts at Wells Fargo. Ms. Wright advised Mr. Kaplan that  
4 she said she could not tell why Wells Fargo closed the accounts but that she was sure its risk  
5 management department had a good reason. That same day, Mr. Kaplan spoke with Andrew  
6 Noll (Vice President of Wells Fargo) concerning the closure of Plaintiff's and Mr. Kaplan's  
7 accounts at Wells Fargo. Mr. Kaplan also spoke with his personal banker Robert Martin  
8 (President of BNY Mellon). Mr. Martin spoke with Kirk Clausen, who is the President of  
9 Wells Fargo Bank. Mr. Clausen told Mr. Martin he did not know why the accounts had been  
10 closed, but that it must be a serious national security issue for the accounts to have been  
11 closed in that manner.

12       Upon information and belief, on November 8, 2011, following additional  
13 communications with Wells Fargo, Mr. Kaplan went to the Wells Fargo Branch at Rainbow  
14 and Sahara in Las Vegas, Nevada. The bank representative advised Mr. Kaplan that  
15 Plaintiff was not allowed to open any accounts at Wells Fargo. The representative let Mr.  
16 Kaplan view her computer screen, which stated that the account(s) was closed for "improper  
17 activity."

18       On November 30, Mr Kaplan wrote to Chad Maze Vice President of Private Wealth  
19 at Wells Fargo as follows: "So if I want to set up a multi million dollar account with Lisa at  
20 Wells Fargo--they would refuse that?" Mr Maze wrote back to Mr. Kaplan: "Unfortunately,  
21 yes the account would not be accepted if Lisa was associated with it. Of course you could  
22 open an account in your name, or the name of your trust, but including Lisa could not be one  
23 of the options." As discovery is continuing, Plaintiff reserves the right to supplement her  
24 answer to this interrogatory.

25 **INTERROGATORY NO. 2:**

26       Describe with specificity all facts that tend to support or in any way relate to Plaintiff's  
27 Second Claim for Relief alleging False Light against Wells Fargo.

28 ///

1 **ANSWER TO INTERROGATORY NO. 2:**

2 Please see Plaintiff's Answer to Interrogatory No. 1, which contains the factual bases  
3 for Plaintiff's claim of false light against Wells Fargo. As discovery is continuing, Plaintiff  
4 reserves the right to supplement her answer to this interrogatory.

5 **INTERROGATORY NO. 3:**

6 Describe with specificity all facts that tend to support or in any way relate to Plaintiff's  
7 Third Claim for Relief alleging Declaratory Relief against Wells Fargo.

8 **ANSWER TO INTERROGATORY NO. 3:**

9 Please see Plaintiff's Answer to Interrogatory No. 1, which contains the factual bases  
10 for Plaintiff's claim of declaratory relief against Wells Fargo. As discovery is continuing,  
11 Plaintiff reserves the right to supplement her answer to this interrogatory.

12 **INTERROGATORY NO. 4:**

13 For each type or category of damages that you are alleging, please state all facts in specific  
14 detail which you contend support or which in any way relate to that type or category of damages.

15 **ANSWER TO INTERROGATORY NO. 4:**

16 A Wells Fargo representative made false and otherwise wrongful statements against  
17 Plaintiff to one or more third-parties concerning, among other things, allegations that  
18 Plaintiff must have some type of criminal background or have arrest warrants out for her.  
19 Further, a Wells Fargo representative advised the third-party that he should hire a private  
20 investigator to investigate Plaintiff, as Plaintiff allegedly must be in trouble with the law for  
21 the Wells Fargo accounts at issue in this litigation to have been closed. As discovery is  
22 continuing, Plaintiff reserves the right to supplement her answer to this interrogatory.

23 **INTERROGATORY NO. 5:**

24 For each type or category of damages that you have identified in answer to Interrogatory  
25 No. 4, please provide the following regarding the measure of the alleged damages:

- 26 (a) state the amount or range of damages claimed;  
27 (b) describe in specific detail how the amount or range of damages is calculated or  
28 determined;

1 (c) . . . describe what information and documents were used, referred to, or relied upon in  
2 calculating or determining the amount or range of damages;

3 (d) describe in specific detail what assumptions were made, including the basis thereof,  
4 in calculating the amount or range of damages; and

5 (e) identify each person who participated in the calculation or determination of the  
6 damages.

7  
8 **ANSWER TO INTERROGATORY NO. 5:**

9 Plaintiff has suffered injury to her reputation and character in an amount to be  
10 determined by the fact-finder at trial. As discovery is continuing, Plaintiff reserves the  
11 right to supplement her answer to this interrogatory.

12 **INTERROGATORY NO.6:**

13 Identify each person Plaintiff intends or reasonably anticipates calling as a witness in  
14 this matter, and describe the substance of the knowledge and testimony of each such witness.

15  
16 **ANSWER TO INTERROGATORY NO. 6:**

17 Objection, this interrogatory asks Plaintiff to marshal all her evidence at this early  
18 stage of the litigation to identify all witnesses that she may call at trial and the substance  
19 of each witness' testimony. Choice of witness at trial at this stage of litigation is also  
20 subject to attorney work-product privilege. Subject to, and without waiving this  
21 objection, please see Plaintiff's early case conference disclosure and all supplements  
22 thereto for a list of persons that Plaintiff may call as witnesses in this case and a  
23 description of their anticipated testimonies. As discovery is continuing, Plaintiff reserves  
24 the right to supplement her answer to this interrogatory.  
25

26  
27 ///

1  
2 **INTERROGATORY NO. 7:**

3 Describe all conversations of which Plaintiff is aware that Plaintiff, Plaintiff's agents  
4 or representatives, or third parties, including Michael Kaplan, have had with any person that  
5 Plaintiff believes was employed by, or an agent of, Wells Fargo regarding the subject matter of  
6 this action, making sure to include the identity of each person involved in each communication,  
7 the substance of each communication, and the date and time of each communication.  
8

9 **ANSWER TO INTERROGATORY NO. 7:**

10  
11 Please see Plaintiff's Answer to Interrogatory No. 1 for a description of the Wells  
12 Fargo representatives with whom Plaintiff and/or Michael Kaplan discussed the subject  
13 matter of this action as well as the substance and dates of each communication. As  
14 discovery is continuing, Plaintiff reserves the right to supplement her answer to this  
15 interrogatory. Also, for additional information concerning communications with Wells  
16 Fargo representatives, please see Lisa J. 0001 to Lisa J. 0057 and Lisa J. 0080 to Lisa J.  
17 0084. As discovery is continuing, Plaintiff reserves the right to supplement her answer to  
18 this interrogatory.  
19

20 **INTERROGATORY NO. 8:**

21  
22 State whether you are aware of any recordings (of any type) pertaining to  
23 communications (including, but not limited to those communications alleged in your  
24 complaint) between Michael Kaplan and Wells Fargo employees. For each such recording,  
25 please identify the date of the recording; identify the form of the recording; describe the  
26 substance of the communications contained on the recording; and identify the person who is in  
27  
28

1 possession of the recording.  
2

3 **ANSWER TO INTERROGATORY NO. 8:**

4       Objection, this request is overly-broad as to time and subject matter. Subject to,  
5 and without waiving these objections, Plaintiff states that she is unaware of any recording  
6 between Michael Kaplan and any Wells Fargo representatives. As discovery is  
7 continuing, Plaintiff reserves the right to supplement her answer to this interrogatory.  
8

9 **INTERROGATORY NO. 9:**

10       Identify all of the "third parties" who you believe that Wells Fargo disclosed false  
11 information to as alleged in paragraph 24 of your complaint.  
12

13 **ANSWER TO INTERROGATORY NO. 9:**

14       Michael Kaplan. As discovery is continuing, Plaintiff reserves the right to  
15 supplement her answer to this interrogatory.  
16

17 **INTERROGATORY NO. 10:**

18       State all facts that support the allegation in paragraph 25 of your complaint that you  
19 have "been required to disclose [your] involuntary account closures to [your] publicist."  
20

21 **ANSWER TO INTERROGATORY NO. 10:**

22       Wells Fargo closed the subject account, and a check had been issued from that  
23 account to Plaintiff's publicist. Because of the outstanding check from the closed account,  
24 Plaintiff was required to advise her publicist of the closure. Plaintiff then re-issued her  
25 publicist a check drawn on a different bank.  
26  
27  
28

1 **INTERROGATORY NO. 11:**

2  
3 State the name, address, and telephone number of the publicist referenced in  
4 paragraph 25 of your complaint.  
5

6 **ANSWER TO INTERROGATORY NO. 11:**

7 Jeff Albright: The Albright Entertainment Group, 3070 Windward Plaza, Suite  
8 F-770, Alpharetta, GA 30005. Mr. Albright's telephone number is (770)664-5977.  
9

10 **INTERROGATORY NO. 12:**

11 State all facts that support the allegation in paragraph 25 of your complaint that "This  
12 disclosure has harmed Johnson's status and reputation in the business community."--  
13

14 **ANSWER TO INTERROGATORY NO. 12 :**

15  
16 Plaintiff was required to disclose to her publicist that her accounts with Wells  
17 Fargo were involuntarily closed due to allegedly suspicious activity. This disclosure  
18 harmed Plaintiff's status and reputation in the business community, especially as Plaintiff  
19 was required to disclose Wells Fargo's closures of her accounts to a business associate. As  
20 discovery is continuing, Plaintiff reserves the right to supplement her answer to this  
21 interrogatory.  
22

23 **INTERROGATORY NO. 13:**

24 State all facts that support the allegation in paragraph 26 of your complaint that  
25 "Wells Fargo's actions have affected Johnson's ability to obtain bank accounts, lines of credit,  
26 and loans from other financial institutions."  
27  
28

1 **ANSWER TO INTERROGATORY NO. 13:**

2  
3 **Plaintiff has an obligation to disclose that Wells Fargo closed her bank accounts**  
4 **when she seeks credit lines for her new business venture. As discovery is continuing,**  
5 **Plaintiff reserves the right to supplement her answer to this interrogatory.**  
6

7 **INTERROGATORY NO. 14:**

8 State all facts that support the allegation in paragraph 26 of your complaint that you  
9  
10 have and/or will be "required to disclose [your] former relationship with Wells Fargo to such  
11 entities and the fact that Wells Fargo closed [your] account."  
12

13 **ANSWER TO INTERROGATORY NO. 14 :**

14 **Plaintiff has an obligation to disclose that Wells Fargo closed her bank accounts**  
15 **when she seeks credit lines for her new business venture. As discovery is continuing,**  
16 **Plaintiff reserves the right to supplement her answer to this interrogatory.**  
17

18 **INTERROGATORY NO. 15:**

19 State all facts that support the allegation in paragraph 26 of your complaint that: "this  
20 disclosure subjects Johnson to harmful financial scrutiny, which damages her business  
21 prospects and creates financial uncertainty. This is especially true, as Johnson plans to publish a  
22 book in the near future and to release a line of products in association with this book."  
23

24 **ANSWER TO INTERROGATORY NO. 15:**

25  
26 **Plaintiff has an obligation to disclose that Wells Fargo closed her bank accounts**  
27 **when she seeks credit lines for her new business venture. This will harm Plaintiff as she**  
28



1 seeks credit and financing concerning her new book publication and the sales of ancillary  
2 merchandise. As discovery is continuing, Plaintiff reserves the right to supplement her  
3 answer to this interrogatory.  
4

5 **INTERROGATORY NO. 16:**  
6

7 State all facts that support the allegation of your complaint that you are entitled to  
8 punitive damages against Wells Fargo.  
9

10 **ANSWER TO INTERROGATORY NO. 16:**

11 A Wells Fargo representative made false and otherwise wrongful statements  
12 against Plaintiff to one or more third-parties concerning, among other things, allegations  
13 that Plaintiff must have some type of criminal background or have arrest warrants out  
14 for her. Further, a Wells Fargo representative advised the third-party that he should hire  
15 a private investigator to investigate Plaintiff, as Plaintiff allegedly must be in trouble with  
16 the law for the Wells Fargo accounts at issue in this litigation to have been closed. As  
17 discovery is continuing, Plaintiff reserves the right to supplement her answer to this  
18 interrogatory.  
19

20  
21 **INTERROGATORY NO. 17:**

22 Identify all businesses of which you have had an ownership interest, making sure to  
23 state the name of each business, the addresses of each business; your percentage of ownership;  
24 the names of other owners; the nature of the businesses operations; and the period in which you  
25 held the ownership interest.  
26

27 ///  
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1  
2 **ANSWER TO INTERROGATORY NO. 17:**

3 Plaintiff possesses a 100% ownership interest in Guitarfile, LLC, which is located  
4 at 9517 Canyon Mesa Drive Las Vegas, Nevada 89144. Guitarfile, LLC is in the business  
5 of guitar photography. Plaintiff has had an ownership interest in Guitarfile, LLC for  
6 three years. Plaintiff also possesses a 100% ownership interest in Bikram Yoga, Las  
7 Vegas, which is located at 6787 West Tropicana Avenue, Las Vegas, NV 89103. Bikram  
8 Yoga, Las Vegas is a yoga studio. Plaintiff has had an ownership interest in Bikram  
9 Yoga, Las Vegas for two years. Plaintiff also possesses a 100% interest in Bikram Yoga  
10 The Strip, which is located at 1037 S. Highland Drive #1037, Las Vegas, NV 89109.  
11 Bikram Yoga The Strip is a yoga studio. Plaintiff has had an ownership interest in  
12 Bikram Yoga The Strip for 1 ½ years. Plaintiff also possessed a 25% ownership interest  
13 in Quad Digital, LLC, which was located at 9517 Canyon Mesa Drive, Las Vegas, NV  
14 89144. This entity never began operating business. The other owners of Quad Digital,  
15 LLC were Geri Ellman, Suzanna Melendez, and Debi Baer. As discovery is continuing,  
16 Plaintiff reserves the right to supplement her answer to this interrogatory.  
17  
18  
19

20 **INTERROGATORY NO. 18:**

21 State all addresses that you have used during the past twenty years.


22  
23 ///

1 ANSWER TO INTERROGATORY NO. 18:

2  
3 9517 Canyon Mesa Drive, Las Vegas, Nevada, 9999 W. Katie Ave. Las Vegas,  
4 Nevada. 121 Madison Ave, PHC, New York, NY.

5 DATED this 21<sup>st</sup> day of November, 2012.  
6

7 HUTCHISON & STEFFEN, LLC  
8

9   
10

11 Mark A. Hutchison (4639)  
12 Joseph S. Kistler (3458)  
13 Timothy R. Koval (12014)  
14 Peccole Professional Park  
15 10080 West Alta Drive, Suite 200  
16 Las Vegas, NV 89145

17 *Attorneys for Plaintiff Lisa Johnson*  
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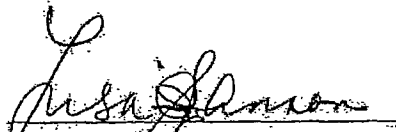
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**VERIFICATION**

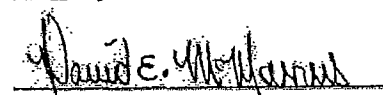
I, LISA JOHNSON, declare as follows:

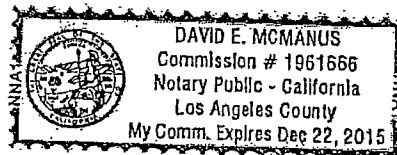
I have read the foregoing **RESPONSES TO WELLS FARGO BANK, N.A. FIRST SET OF INTERROGATORIES** and know the contents thereof. I know the same to be true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 21<sup>st</sup> day of November, 2012.

  
Lisa Johnson

SUBSCRIBED and SWORN before me this  
21<sup>st</sup> day of November, 2012.

  
NOTARY PUBLIC in and for said  
County and State



# EXHIBIT E

CONDENSED TRANSCRIPT

IN THE MATTER OF:

LISA JOHNSON

VS.

WELLS FARGO BANK, NATIONAL ASSOCIATION, ET AL.

---

ARASH DOUNEL

THURSDAY, OCTOBER 25, 2012

---

Manning, Hall & Salisbury, LLC

Certified Court Reporters

617 South Eighth Street

Suite A

Las Vegas, Nevada 89101

(702) 382-2898 FAX: (702) 382-2898

WORD INDEX INCLUDED

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DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada  
resident,

Plaintiff,

vs.

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

Defendants.

Case No.  
A-12-655393-C

DEPOSITION OF ARASH DOUNEL

Taken on Thursday, October 25, 2012

At 9:19 o'clock a.m.

At 10080 West Alta Drive, Suite 200

Las Vegas, Nevada

Reported by: Pamela A. Manning, RMR, CCR 226

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EXHIBITS

NumberDescriptionPage

Plf's 1Notice of Taking the Deposition of  
Arash Dounel13

Plf's 2Correspondence, Wells Fargo to  
Michael Kaplan-Lisa Johnson,  
8-18-11; Correspondence, Wells Fargo  
to Guitarfile LLC, 8-15-11;  
Correspondence, Wells Fargo to  
Guitarfile LLC, 8-18-11; E-Mail25

Plf's 3E-Mail Series, Six Pages,  
Bates No. Lisa J. 0011, Lisa J. 0014  
through 001854

Plf's 4E-Mail Series, Two Pages,  
Bates No. Lisa J. 0045 and 004675

Plf's 5E-Mail Series, Six Pages,  
Bates No. Lisa J. 0048 through 005383

Plf's 6Defendant Wells Fargo Bank N.A.'s  
Supplemental Answer to Plaintiff's  
Interrogatory No. 1291

Plf's 7Wells Fargo Bank, N.A.'s Supplemental  
Responses to Plaintiff's Request for  
Admissions Nos. 2-995

(Original exhibits attached to original transcript.)

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APPEARANCES:

For the Plaintiff: JOSEPH S. KISTLER, ESQ.  
Hutchison & Steffen  
10080 West Alta Drive  
Suite 200  
Las Vegas, Nevada 89145

For Defendant: STEWART C. FITTS, ESQ.  
Smith Larsen & Wixom  
National Association: 1935 Village Center Circle  
Las Vegas, Nevada 89134

Also Present: LISA JOHNSON  
  
RAELYNN STOCKMAN, Vice President,  
Regional Services Manager of  
Nevada, Wells Fargo Bank, N.A.

INDEX

WitnessDirectCrossRedRec.

ARASH DOUNEL

(By Mr. Kistler)4

(By Mr. Fitts)107

1

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4

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(NRCP Rule 30(b)(4) waived by the parties prior to the commencement of the deposition.)

Thereupon--

ARASH DOUNEL

was called as a witness by the Plaintiff, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KISTLER:

Q. Sir, would you please state your full name for the record.

A. Arash Dounel.

Q. Okay. And can you spell your first and last names, please.

A. Arash, A-r-a-s-h, last name is D-o-u-n-e-l.

Q. Mr. Dounel, could you state your county and state of residence.

A. Los Angeles, California.

Q. My name is Joseph Kistler. I'm an attorney here with the firm of Hutchinson & Steffen. I represent plaintiff, Lisa Johnson, who is also present here in the -- in the conference room for your deposition.

At this point in time I'd ask for the other two people here other than yourself to state who they are and in what capacity they are present here at the

5

1 deposition.

2 MR. FITTS: My name is Stewart Fitts, legal  
3 counsel for Wells Fargo Bank.

4 MS. STOCKMAN: And I'm Raelynn Stockman and  
5 I work for Wells Fargo Bank.

6 MR. KISTLER: Ms. Stockman, are you the  
7 designated corporate representative for Wells Fargo  
8 Bank --

9 MS. STOCKMAN: Yes, I am.

10 MR. KISTLER: -- in this case?

11 MS. STOCKMAN: Yes.

12 MR. KISTLER: Can you tell us what your  
13 position with Wells Fargo Bank is?

14 MS. STOCKMAN: I'm the regional services  
15 manager for the State of Nevada.

16 MR. KISTLER: All right. And where are you --  
17 where is your office located?

18 MS. STOCKMAN: At Howard Hughes Parkway here  
19 in Las Vegas.

20 Q. BY MR. KISTLER: Mr. Dounel, I understand from  
21 your counsel, Mr. Fitts, that you have never been  
22 deposed before?

23 A. That's correct.

24 Q. Okay. Based upon that I want to go through  
25 a few ground rules and a few advices to you concerning

6

1 your deposition.

2 I take it that you had an opportunity to sit  
3 down with Mr. Fitts prior to today's date to discuss the  
4 deposition process, is that right?

5 A. Correct.

6 Q. I'm sure Mr. Fitts told you that a deposition  
7 is -- it's not a conversation. It's a very formal  
8 setting with a court reporter, who has placed you under  
9 the same oath that you would be placed under if you were  
10 testifying in a court of law.

11 Did you understand that?

12 A. Yes.

13 Q. And you understand that the oath that the  
14 court reporter administered to you has the same  
15 penalties of perjury that an oath in a court of law  
16 would have?

17 Do you understand that?

18 A. Correct.

19 Q. Typically we don't have court reporters who  
20 sit in and record everything in conversations that  
21 occur. Perhaps for certain conversations, including  
22 conversations in this particular case, if we had a  
23 court reporter that had been present in an earlier  
24 conversation then perhaps we wouldn't be here today.

25 The fact is that this is not a conversation.

7

1 This is a very precise question/answer format where my  
2 questions and your answers will be transcribed by the  
3 court reporter in verbatim form.

4 So you understand that this is not a  
5 conversation, this is a formal legal process that you're  
6 going through?

7 A. Correct.

8 Q. Okay. As a result of that, it's important  
9 for both of us to be precise in our questions and our  
10 answers. I'll try to be as precise as I possibly can be  
11 so that you can understand my questions, and I would ask  
12 for that same degree of precision in your answers back  
13 to me.

14 Do you agree to do that?

15 A. I'll do the best I can.

16 Q. Okay. Mr. Dounel, it's important that I not  
17 get your guesses at my questions here today. So if you  
18 hear my question, if you don't understand the question  
19 I'd ask that you ask me to repeat the question so that  
20 hopefully you can understand it.

21 Will you agree to do that?

22 A. Yes.

23 Q. Okay. And as I said, I'm not interested in  
24 your guesses, so if you don't know the answer, if you're  
25 not sure of the answer, if your recollection fails you

8

1 in some way, or it's just a matter that you have no  
2 knowledge of, I'd ask that you not try to figure things  
3 out and guess at an answer. I would prefer that you  
4 just simply say "I don't know" or "I can't recall."

5 Will you agree to do that?

6 A. Absolutely.

7 Q. Okay. Now, I understand, Mr. Dounel, that  
8 you've been on medical leave for some period of time  
9 leading up to today's date, is that right?

10 A. No.

11 Q. Are you presently taking any medications  
12 that would get in the way of your understanding of my  
13 questions or your recollection abilities to be able to  
14 answer my questions truthfully?

15 A. No.

16 Q. Do you feel well rested?

17 A. Yes.

18 Q. Okay. Is there anything bothering you that  
19 would prevent you from devoting your full time and  
20 attention to being here in a deposition setting here  
21 today?

22 A. No.

23 Q. All right. Mr. Dounel, are you presently  
24 employed?

25 A. Yes.



<p style="text-align: right;">9</p> <p>1 Q. And by whom?</p> <p>2 A. Wells Fargo Bank.</p> <p>3 Q. Where -- what's the place of your employment?</p> <p>4 A. Beverly Hills, California.</p> <p>5 Q. How long have you been employed by Wells Fargo</p> <p>6 Bank?</p> <p>7 A. Roughly five and a half years.</p> <p>8 Q. What was your first job with Wells Fargo Bank?</p> <p>9 A. Banker.</p> <p>10 Q. Okay, banker.</p> <p>11 And as a banker what did you do?</p> <p>12 A. I assisted customers with their day-to-day</p> <p>13 banking needs.</p> <p>14 Q. All right. Most of us think of banks and</p> <p>15 bankers, particularly branches, we think of the person</p> <p>16 that is there at the window that assists people in</p> <p>17 transactions, a teller.</p> <p>18 Is that what you did?</p> <p>19 A. No.</p> <p>20 Q. Okay. What was the difference between what</p> <p>21 you did and what we all know tellers do?</p> <p>22 A. I didn't handle cash. I simply handled</p> <p>23 service and new accounts and account maintenance and</p> <p>24 things of that sort --</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">11</p> <p>1 where the general public is met?</p> <p>2 The private bank, for example?</p> <p>3 A. I don't understand your question.</p> <p>4 Q. Okay. As I understand your answer, you as</p> <p>5 a personal banker were -- as you were licensed with</p> <p>6 securities, that it was your job to -- to market to and</p> <p>7 service high-net-worth individuals for their personal</p> <p>8 banking needs, is that a fair statement?</p> <p>9 A. It doesn't stop at just high-net-worth</p> <p>10 individuals. We do a lot of different need -- we work</p> <p>11 with a lot of different needs of clients. So we might</p> <p>12 have a client who, for example, would be an heir to an</p> <p>13 estate or a trust, successor trustee to some sort of</p> <p>14 business or an estate, so that person necessarily</p> <p>15 doesn't have to be an affluent client, however, there's</p> <p>16 a future possibility of that. So we look at all</p> <p>17 clients, top down, from their relationship with Wells</p> <p>18 Fargo to where they could be, and see how we can add to</p> <p>19 their financial needs.</p> <p>20 Q. How long were you a personal banker?</p> <p>21 A. I've been ever since I've been promoted.</p> <p>22 I'm still.</p> <p>23 Q. So the times -- the time that you worked for</p> <p>24 Wells Fargo you've held these two positions as a banker</p> <p>25 for two years and then subsequent to that you've been</p>
<p style="text-align: right;">10</p> <p>1 A. -- other than cash.</p> <p>2 Q. Now, you said that you've worked for Wells</p> <p>3 Fargo about five years or so, so is that in 2007 or so</p> <p>4 that you started working for them?</p> <p>5 A. Yeah, right around there.</p> <p>6 Q. Okay. How long did you work as a banker?</p> <p>7 A. About a couple years. I'm not sure exactly</p> <p>8 how long.</p> <p>9 Q. Okay. When you stopped working as a banker,</p> <p>10 what was your job at Wells Fargo?</p> <p>11 A. It's a -- it's still a banker. It's a</p> <p>12 different kind of banker. It's a specialty banker that</p> <p>13 I -- it's a brokerage associate pretty much.</p> <p>14 Q. Okay. And what's a brokerage associate?</p> <p>15 A. As I'm licensed with -- with the two security</p> <p>16 licenses that I achieved by going to training at Wells</p> <p>17 Fargo, I got a promotion to a -- the title is</p> <p>18 specifically personal banker 2, and my role in the bank</p> <p>19 became to find clients that are affluent and bring them</p> <p>20 to the attention of Wells Fargo advisors, as well as</p> <p>21 increased goals for lending and other aspects that are,</p> <p>22 you know, segmented for that part of the branch.</p> <p>23 Q. Okay. When you say "personal banker 2," is</p> <p>24 there such a thing as a personal banking operation</p> <p>25 within Wells Fargo versus general banking activities</p>	<p style="text-align: right;">12</p> <p>1 personal banker -- you've been a personal banker 2 for</p> <p>2 the remainder of the five-year period of time that you</p> <p>3 worked for Wells Fargo?</p> <p>4 A. Right.</p> <p>5 Q. And you still work for Wells Fargo?</p> <p>6 A. Correct.</p> <p>7 Q. And you're still a personal banker?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. What's your educational background?</p> <p>10 A. Earlier this year I got -- I graduated from</p> <p>11 Pepperdine University with an MBA.</p> <p>12 Q. Okay. So you received a master of business</p> <p>13 administration --</p> <p>14 A. Yes, sir.</p> <p>15 Q. -- from Pepperdine?</p> <p>16 A. Yes, sir.</p> <p>17 Q. This past year, you said?</p> <p>18 A. Earlier this year.</p> <p>19 Q. Earlier this year?</p> <p>20 A. Right.</p> <p>21 Q. All right. Your undergraduate degree was in</p> <p>22 what?</p> <p>23 A. I got an undergraduate degree from Cal State</p> <p>24 University in Northridge in management information</p> <p>25 systems with an emphasis in information technology.</p>

<p style="text-align: right;">13</p> <p>1 Q. When were you awarded that decree?</p> <p>2 A. That was --</p> <p>3 Q. Or degree, I'm sorry.</p> <p>4 A. The degree, 2006 I want to say.</p> <p>5 Q. Okay.</p> <p>6 A. Yeah.</p> <p>7 Q. In what part of the country were you born and</p> <p>8 attended high school?</p> <p>9 A. Well, I was born in Orange County, attended</p> <p>10 high school in Los Angeles.</p> <p>11 Q. Okay. Mr. Dounel, I'm going to show you</p> <p>12 what's going to be marked as Exhibit 1 to your</p> <p>13 deposition.</p> <p>14 (Plaintiff's Exhibit 1 marked for</p> <p>15 identification.)</p> <p>16 Q. BY MR. KISTLER: Exhibit 1 is the notice of</p> <p>17 the taking of your deposition. The notice is actually</p> <p>18 dated for a deposition dated October the 24th, and</p> <p>19 you're appearing here this morning by the agreement of</p> <p>20 counsel on October 25th.</p> <p>21 Have you seen this document previously?</p> <p>22 A. You know, all of these look the same. I've</p> <p>23 seen some documents. I guess, yeah, I believe I have</p> <p>24 seen this one.</p> <p>25 Q. Okay. And when you say you've "seen some</p>	<p style="text-align: right;">15</p> <p>1 Q. And did those discussions and those documents</p> <p>2 help refresh your recollection concerning the events</p> <p>3 giving rise to this lawsuit?</p> <p>4 MR. FITTS: Same -- same objection.</p> <p>5 You can answer to the extent that you don't</p> <p>6 disclose attorney/client communications.</p> <p>7 THE WITNESS: I would not answer that.</p> <p>8 Q. BY MR. KISTLER: Okay. What, you don't know</p> <p>9 the answer?</p> <p>10 A. I wouldn't know how to answer that. I can't</p> <p>11 gauge my recollection any more or less than what it was</p> <p>12 or is now.</p> <p>13 Q. Okay. So is your testimony, then, that by</p> <p>14 reviewing documents with Mr. Fitts yesterday that did</p> <p>15 not refresh your recollection concerning the events</p> <p>16 giving rise -- rise to this lawsuit?</p> <p>17 A. I'm not sure. That's --</p> <p>18 Q. Okay. How long did you spend with Mr. Fitts</p> <p>19 yesterday?</p> <p>20 A. About a few hours. I didn't know exactly.</p> <p>21 It could be like about three hours or so.</p> <p>22 Q. Okay. Three hours?</p> <p>23 A. Three or four hours.</p> <p>24 Q. Okay. And was anyone else present when you</p> <p>25 spent these three hours with Mr. Fitts?</p>
<p style="text-align: right;">14</p> <p>1 documents," were those documents provided to you by</p> <p>2 Mr. Fitts, the bank's counsel?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. When was the last time Mr. Fitts</p> <p>5 provided documents to you for your review?</p> <p>6 A. Yesterday.</p> <p>7 Q. Okay. Did you meet with Mr. Fitts face to</p> <p>8 face yesterday?</p> <p>9 A. Yes.</p> <p>10 Q. And for about what period of time?</p> <p>11 How long did you guys meet?</p> <p>12 A. About a few hours.</p> <p>13 Q. Okay. During that meeting I take it Mr. Fitts</p> <p>14 discussed certain things with you and also showed you</p> <p>15 documents?</p> <p>16 MR. FITTS: I'm going to object to the extent</p> <p>17 that it calls for attorney/client communications between</p> <p>18 Mr. Dounel and myself.</p> <p>19 But aside from communications between the two</p> <p>20 of us, you may answer.</p> <p>21 THE WITNESS: Can you repeat the question?</p> <p>22 Q. BY MR. KISTLER: At the meeting yesterday that</p> <p>23 you had with Mr. Fitts, did you discuss certain things</p> <p>24 and did he show you certain documents?</p> <p>25 A. We did discuss certain things at the meeting.</p>	<p style="text-align: right;">16</p> <p>1 A. We were in his office so there were many</p> <p>2 people that I didn't know just coming in and out, going.</p> <p>3 Q. Okay. How many documents did Mr. Fitts show</p> <p>4 you?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Well, was it one or two?</p> <p>7 Was it more than ten?</p> <p>8 Was it more than 50?</p> <p>9 A. It was definitely more than one or two.</p> <p>10 Q. Okay. Can you give me your best well-reasoned</p> <p>11 estimate of how many documents Mr. Fitts showed you</p> <p>12 during this three-hour period of time?</p> <p>13 A. I can't.</p> <p>14 Q. Okay. Was it more than ten, do you think?</p> <p>15 A. I'm not sure.</p> <p>16 Q. Okay.</p> <p>17 A. It could be right around there. It could have</p> <p>18 been more or less. More or less ten. That's a good</p> <p>19 guess actually.</p> <p>20 Q. Okay. Were these documents primarily e-mails?</p> <p>21 A. There were e-mails.</p> <p>22 Q. Okay. And so you saw e-mails as well as some</p> <p>23 other documents?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And those e-mails and the other</p>

<p style="text-align: right;">17</p> <p>1 documents, did it help refresh your recollection  2 concerning the matters in dispute in this lawsuit?  3 <b>A. You know, I don't really understand what that</b>  4 <b>means. My recollection is something I don't know if</b>  5 <b>I can gauge from before yesterday or now. I feel like</b>  6 <b>the same person.</b>  7 <b>Q. Okay. Did you provide any documents to</b>  8 <b>Mr. Fitts yesterday?</b>  9 <b>A. No.</b>  10 <b>Q. Okay.</b>  11 <b>A. No.</b>  12 <b>Q. Okay. Prior to yesterday's three-hour meeting</b>  13 <b>with Mr. Fitts, when was the -- had you spoken with</b>  14 <b>Mr. Fitts prior?</b>  15 <b>A. Had I -- excuse me?</b>  16 <b>Q. Spoken with Mr. Fitts prior to the three-hour</b>  17 <b>meeting yesterday.</b>  18 <b>A. Oh, yeah, yes.</b>  19 <b>Q. Okay. And when was the -- the next most</b>  20 <b>recent time that you spoke with Mr. Fitts?</b>  21 <b>A. You mean before yesterday?</b>  22 <b>Q. Yes.</b>  23 <b>A. Sometime within the week. I'm not exactly</b>  24 <b>sure of the exact time of day.</b>  25 <b>Q. Okay. When you say "within the week," are you</b></p>	<p style="text-align: right;">19</p> <p>1 <b>I picked up the phone on him, so I really don't</b>  2 <b>understand the nature of the question either.</b>  3 <b>What is that?</b>  4 <b>Q. The nature of the question is very, very</b>  5 <b>simple. I'm trying to determine how many times you</b>  6 <b>spoke with Mr. Fitts over the last seven days above and</b>  7 <b>in addition to this three-hour meeting that you had</b>  8 <b>yesterday.</b>  9 <b>A. It was a question where I was when I picked up</b>  10 <b>the phone?</b>  11 <b>Q. Was it a cell phone?</b>  12 <b>Was it an office phone?</b>  13 <b>What do you recall about that?</b>  14 <b>A. It could have been one of either because</b>  15 <b>I have spoken to him in the past with -- on both</b>  16 <b>mediums.</b>  17 <b>Q. Okay. And that's within the last seven days?</b>  18 <b>A. Yes, sir.</b>  19 <b>Q. Okay. Prior to those instances, that instance</b>  20 <b>or those instances where you spoke with Mr. Fitts over</b>  21 <b>the last seven days in addition to this three-hour</b>  22 <b>meeting that you had, have you had any other meetings or</b>  23 <b>conversations with Mr. Fitts?</b>  24 <b>A. Most likely. I'm going to say yes.</b>  25 <b>Q. Okay. And when did that occur?</b></p>
<p style="text-align: right;">18</p> <p>1 talking about this week or within the preceding seven  2 days?  3 <b>A. Within the preceding seven days.</b>  4 <b>Q. Okay.</b>  5 <b>A. Yeah.</b>  6 <b>Q. Within the preceding seven days, was that a --</b>  7 <b>tell me about that conversation. For example, was it</b>  8 <b>over the phone?</b>  9 <b>A. We did have a phone conversation.</b>  10 <b>Q. Okay. But when you say that you -- that you</b>  11 <b>had a meeting with or conversed with Mr. Fitts sometime</b>  12 <b>over the last seven days, was that by phone or by a</b>  13 <b>face-to-face?</b>  14 <b>A. No, they were by phone.</b>  15 <b>Q. Okay. Over the last seven days how many phone</b>  16 <b>calls do you think that you've had with Mr. Fitts?</b>  17 <b>A. I'm not sure.</b>  18 <b>Q. Okay. Was it more than one?</b>  19 <b>A. I'm not sure.</b>  20 <b>Q. Was it more than five?</b>  21 <b>A. Like I said, I'm not sure.</b>  22 <b>Q. Okay. Did those phone calls take place from</b>  23 <b>your office?</b>  24 <b>A. I, you know, can't say for sure if I was in</b>  25 <b>the office or whether I was out of the office when</b></p>	<p style="text-align: right;">20</p> <p>1 <b>A. I'm not sure of the exact date.</b>  2 <b>Q. Okay. Can you give me your best well-reasoned</b>  3 <b>estimate of when that occurred?</b>  4 <b>A. I believe in and around October is when, you</b>  5 <b>know, my conversation with Mr. Fitts have been, in that</b>  6 <b>time period.</b>  7 <b>Q. Okay. When you say "October," are you</b>  8 <b>referring to October 2012?</b>  9 <b>A. Yes, sir.</b>  10 <b>Q. Okay. Do you recall having any conversations</b>  11 <b>or communications with Mr. Fitts prior to October 2012?</b>  12 <b>A. Like I said, in or around October. I'm not</b>  13 <b>exactly sure if it was maybe before October just by</b>  14 <b>a little bit or more.</b>  15 <b>Q. Okay, fair enough.</b>  16 <b>So but you believe that -- that the first time</b>  17 <b>you spoke with Mr. Fitts either in person or by phone</b>  18 <b>occurred on or about the 1st of October 2012?</b>  19 <b>MR. FITTS: Objection, misconstrues the answer</b>  20 <b>of the witness.</b>  21 <b>Q. BY MR. KISTLER: Around the 1st of October</b>  22 <b>time frame, plus or minus say a week?</b>  23 <b>A. The first time I spoke with him. I'm --</b>  24 <b>that's a good question. I would have to go and look</b>  25 <b>back at my --</b></p>

21

1 Q. What's your best well-reasoned recollection of  
2 the first time you spoke to Mr. Fitts about this case?

3 A. I'm not sure. I'd say -- I'm going to stick  
4 with in or around October as my interactions with  
5 Mr. Fitts so far, so.

6 Q. Okay. And when you say "in or around  
7 October," you're referring to October 2012 --

8 A. Yes, sir.

9 Q. -- Is that right?

10 And when you say "in or around October," can  
11 you give me a range that we can say, okay, well, that  
12 first communication probably occurred, you know, within  
13 a week, two weeks, a month of October?

14 A. Yeah, it could --

15 Q. Can you give me your best -- your best  
16 estimate of narrowing down that time frame?

17 A. Yeah, I can't recall that specific -- that  
18 type of specific detail right now.

19 Q. And did you speak with Mr. Fitts before Labor  
20 Day?

21 A. I can't recall.

22 Q. Did you speak with Mr. Fitts before the  
23 4th of July of this year?

24 A. I can't recall.

25 Q. You can't recall if you spoke with him --

22

1 A. The 4th of July?

2 Q. The 4th of July of this year.

3 A. No.

4 Q. I'm just trying to determine when the first  
5 time approximately it was that you spoke with Mr. Fitts.

6 MR. FITTS: I'm going to object, asked and  
7 answered.

8 If you have --

9 Q. BY MR. KISTLER: When was the first time that  
10 you best recall that you spoke to Mr. Fitts --

11 A. I don't know.

12 Q. -- concerning this case?

13 A. I don't know.

14 Q. Okay. But you believe it was not before  
15 July the 4th, do you?

16 A. I -- I don't know at all.

17 Q. Could it have been before New Year's of 2012?

18 A. No.

19 Q. Okay. What's the -- what's the -- other than  
20 it wasn't before New Year's 2012 and it could have been  
21 on or before July the 4th, 2012, you can't be any more  
22 specific about when you first spoke with Mr. Fitts  
23 concerning this case?

24 MR. FITTS: I'm going to object, misconstrues  
25 the testimony.

23

1 I believe he said the first time was on or  
2 about October 2012.

3 Q. BY MR. KISTLER: Okay. Is that your  
4 testimony, that the first time you spoke with Mr. Fitts  
5 was on or about October 2012?

6 A. Right.

7 Q. Okay. And on or about October 2012, can you  
8 be more specific insofar as what that time period would  
9 be?

10 A. No.

11 Q. Within a few weeks, within a couple of months,  
12 within what?

13 Can you tell me?

14 A. I can't.

15 Q. Okay. Over the last six months have you  
16 worked on a daily basis for Wells Fargo, i.e., have  
17 you taken any leave, have you been away, did you take  
18 a vacation, been on any kind of leave whatsoever?

19 A. I have.

20 Q. Okay. And during what period of time were you  
21 on leave?

22 A. What kind of answer are you looking for?  
23 Like exact dates or something?

24 Q. Yeah, approximate dates.

25 A. You know, it was a number of months. I'm not

24

1 sure exactly, but it was many months.

2 Q. Okay. And can you generally tell me what the  
3 nature of that -- the purpose of that leave was?

4 A. No, I'd rather not.

5 Q. Okay. Was it family related?

6 A. I'd rather not.

7 Q. Was it job related?

8 A. I'd rather not.

9 Q. Okay. Have you been disciplined for any  
10 activity regarding the actions that gave rise to this  
11 lawsuit, disciplined by Wells Fargo?

12 A. Not that I know of.

13 Q. Have you been counseled?

14 A. Not that I know of.

15 Q. Okay. Do you receive a performance report on  
16 a periodic basis by Wells Fargo?

17 A. I'm supposed to but I haven't been  
18 consistently within a -- I haven't had a manager, so  
19 I'm going to say no, because there was some manager  
20 turnaround going on that I didn't receive it.

21 Q. And when did those management turnarounds  
22 occur?

23 A. You know, the branch I was -- in Malibu, the  
24 branch that I was in, it was -- they constantly had  
25 occurred. It was just -- within a year there would be

<p style="text-align: right;">25</p> <p>1 another one or a couple years there would be another</p> <p>2 one, so.</p> <p>3 Q. Who is your present supervisor at the branch</p> <p>4 that you work at?</p> <p>5 A. Currently?</p> <p>6 Q. Yes.</p> <p>7 A. I'm trying to remember. I think her name is</p> <p>8 Mehren. She's new.</p> <p>9 Q. Do you know what her last name is?</p> <p>10 A. No.</p> <p>11 Q. In October of 2011 who was your manager --</p> <p>12 who was supervisor, I'm sorry?</p> <p>13 A. In October of 2011?</p> <p>14 Q. Yes.</p> <p>15 A. I can't say for sure. I -- wait, hold on.</p> <p>16 I believe it was Jerry Galloway.</p> <p>17 Q. Can you spell the last name, please?</p> <p>18 A. G-a-l-l-o-w-a-y.</p> <p>19 MR. KISTLER: If you can mark this as</p> <p>20 Exhibit 2, please.</p> <p>21 (Plaintiff's Exhibit 2 marked for</p> <p>22 identification.)</p> <p>23 Q. BY MR. KISTLER: Mr. Dounel, before you we</p> <p>24 have Exhibit 2, which consists of three letters and an</p> <p>25 e-mail. The three letters are -- actually the e-mail</p>	<p style="text-align: right;">27</p> <p>1 and I didn't -- I didn't -- maybe I didn't look through</p> <p>2 it but I did remember seeing something like this.</p> <p>3 Q. And your testimony is that yesterday was the</p> <p>4 first day that you've seen -- that you saw that letter?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And do you know a gentleman by the name of</p> <p>7 Michael Kaplan?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And how do you know Michael Kaplan?</p> <p>10 A. Michael Kaplan worked with me on, you know,</p> <p>11 some of his accounts in the bank. He was just in this</p> <p>12 room a moment ago.</p> <p>13 Q. Okay. Do you recall when you first met</p> <p>14 Mr. Kaplan?</p> <p>15 A. Do I recall when I first met Mike Kaplan?</p> <p>16 Q. Yes.</p> <p>17 A. I can't say for sure exactly.</p> <p>18 Q. Okay. Can you give me your best approximation</p> <p>19 of when you first met Mr. Kaplan?</p> <p>20 A. I wouldn't be able to tell you exactly.</p> <p>21 Q. Was it this year?</p> <p>22 A. No.</p> <p>23 Q. Was it last year?</p> <p>24 A. Yeah, it would probably be. It would sound</p> <p>25 right, probably around a year ago, last.</p>
<p style="text-align: right;">26</p> <p>1 should not be part of this exhibit so I won't be asking</p> <p>2 you any questions about the e-mail, the last page,</p> <p>3 Lisa J. 009. I'm referring to Lisa J. 006, 007, 008 in</p> <p>4 the lower right-hand corner.</p> <p>5 A. Right.</p> <p>6 Q. Do you see these numbers?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Have you seen these letters before?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And when did you see these letters?</p> <p>11 A. Yesterday.</p> <p>12 Q. Okay. Were these letters, these three --</p> <p>13 these three letters documents that Mr. Fitts showed to</p> <p>14 you yesterday?</p> <p>15 A. I'm -- that -- excuse me?</p> <p>16 Q. Were these documents, were these three letters</p> <p>17 documents Mr. Fitts showed you yesterday?</p> <p>18 A. No. Just one. I think -- I remember this</p> <p>19 one. I don't remember seeing the others.</p> <p>20 Q. Okay. The witness was referring to</p> <p>21 Lisa J. 006 of Exhibit 2 when he said "I remember this</p> <p>22 one."</p> <p>23 But you believe the first page of Exhibit 2</p> <p>24 was something that Mr. Fitts showed you yesterday?</p> <p>25 A. Yeah, I believe he handed me the exhibit</p>	<p style="text-align: right;">28</p> <p>1 Q. Was it probably last year or was it last year?</p> <p>2 A. Last year would probably be more closer.</p> <p>3 Yeah, of course, it was in last year.</p> <p>4 Q. Okay. Was it in October of last year?</p> <p>5 A. Most likely, yes.</p> <p>6 Q. You have no recollection of whether it was</p> <p>7 in October of last year or not when you first met</p> <p>8 Mr. Kaplan?</p> <p>9 A. I can't specify exact dates. I would say,</p> <p>10 you know, any time last year would probably be good.</p> <p>11 But October seems just as well.</p> <p>12 I mean these -- right now looking at this</p> <p>13 letter, I'd say, you know, it would be -- you know,</p> <p>14 I know what this letter is in looking at it. It would</p> <p>15 be probably around October, yeah.</p> <p>16 Q. Okay. Tell me the circumstances by which you</p> <p>17 first met Mr. Kaplan as you recall them.</p> <p>18 A. It was in the bank in Malibu.</p> <p>19 Q. Okay. You were at the bank in Malibu?</p> <p>20 A. I was working at my desk.</p> <p>21 Q. And how did it come to be that you met</p> <p>22 Mr. Kaplan on that date, whenever it was, in 2011?</p> <p>23 Do you know?</p> <p>24 A. How did it come to be?</p> <p>25 Q. Right.</p>

29

1 How did you come to meet him?  
 2 **A. I was working, he was a customer at the bank,**  
 3 **and our lives were aligned.**  
 4 **Q. Did someone introduce you to him?**  
 5 **A. I'm not sure.**  
 6 **Q. Did you introduce yourself to him?**  
 7 **A. That I'm not sure either.**  
 8 **Q. Did he ask for your assistance on something?**  
 9 **A. I'm not sure.**  
 10 **Q. How did it come about that you and Mr. Kaplan**  
 11 **came to meet on that day, if you know?**  
 12 **A. I don't recall the specifics of that.**  
 13 **Q. Do you recall the generalities?**  
 14 **A. Generalities?**  
 15 **Q. Uh-huh, yes.**  
 16 **A. Generally I was working and he was a customer**  
 17 **and I remember helping him.**  
 18 **Q. What was the -- did you have an understanding**  
 19 **of what the purpose of him meeting you was?**  
 20 **A. No.**  
 21 **Q. Did he need assistance?**  
 22 **A. I'm not sure. I --**  
 23 **Q. Did you walk up and introduce yourself to him?**  
 24 **I'm trying to understand how it came about**  
 25 **that you and Mr. Kaplan came together to meet on that**

30

1 first occasion, whenever it was, in October 2011.  
 2 **A. No, honestly, it was, you know, like you**  
 3 **said, it was about a year ago, like I said also, and**  
 4 **I wouldn't be able to remember that sort of detail, how**  
 5 **it came about.**  
 6 **Q. Okay. So you don't have any recollection**  
 7 **concerning how you and Mr. Kaplan came to meet in**  
 8 **October of 2011?**  
 9 **A. Yeah, you're asking me about whether I went up**  
 10 **to him or he came in and introduced himself or, you**  
 11 **know, what the nature initially of our interaction was.**  
 12 **I can't remember at all what that --**  
 13 **Q. Did one of the officers --**  
 14 **A. It was a long time ago.**  
 15 **Q. Did one of the other bank employees introduce**  
 16 **you to him?**  
 17 **A. Like I said, I can't recall.**  
 18 **Q. You don't have that recollection?**  
 19 **A. No, sir.**  
 20 **Q. Okay. The conversa -- did you have a**  
 21 **conversation with Mr. Kaplan on that day, i.e., the**  
 22 **first day that you met him?**  
 23 **A. Yes.**  
 24 **Q. Okay. Where did that conversation occur?**  
 25 **A. Within the bank in Malibu.**

31

1 **Q. Okay. What part of the bank in Malibu?**  
 2 **A. I'm not sure.**  
 3 **Q. You don't recall where that conversation**  
 4 **occurred?**  
 5 **A. No.**  
 6 **Q. Do you have an office at the bank in Malibu?**  
 7 **A. I have a desk in the -- in what they call the**  
 8 **platform. It's the -- you know, the space in the bank**  
 9 **where desks are.**  
 10 **Q. Okay. Do you have a computer on your desk?**  
 11 **A. Yes, sir.**  
 12 **Q. Back in October 2011 did you use your**  
 13 **computer?**  
 14 **A. Yes.**  
 15 **Q. Okay. Did you receive e-mails on your**  
 16 **computer?**  
 17 **A. Yes.**  
 18 **Q. And did you send e-mails from your computer?**  
 19 **A. Yes.**  
 20 **Q. Did you prepare documents on your computer?**  
 21 **A. Prepare documents?**  
 22 **Q. Yeah.**  
 23 **A. What does that mean?**  
 24 **Q. Write letters, prepare letters, say, using**  
 25 **Word or WordPerfect or some other word processing**

32

1 program using your computer?  
 2 **A. Occasionally we would prepare documents, for**  
 3 **example, a fax cover sheet or, you know, it would be a**  
 4 **letter if you want to, you know, reach out to a customer**  
 5 **with the letter.**  
 6 **Q. Okay. And was that true back in October 2011,**  
 7 **that you had those uses for your computer?**  
 8 **A. That a computer could write letters or --**  
 9 **Q. No, no, that you were still -- you were using**  
 10 **the computer on your desk for those tasks that we just**  
 11 **described during approximately October 2011.**  
 12 **A. What tasks in specific?**  
 13 **Q. Sending and receiving e-mails, preparing**  
 14 **documents from time to time, preparing fax cover sheets,**  
 15 **the -- the uses of the computer that you described for**  
 16 **us just now.**  
 17 **A. I was given a computer to do the day-to-day**  
 18 **uses that the bank would want me to do.**  
 19 **Q. Right.**  
 20 **And you believe that you used your computer**  
 21 **during the October 2011 time frame for those uses, is**  
 22 **that right?**  
 23 **A. Yes.**  
 24 **Q. Okay. Do you still have the same computer?**  
 25 **A. No.**

<p style="text-align: right;">33</p> <p>1 Q. When did your computer change?</p> <p>2 A. I'm not sure.</p> <p>3 Q. Can you give me your best well-reasoned</p> <p>4 estimate of when your computer changed?</p> <p>5 A. The best answer is I don't work in that branch</p> <p>6 so I'm at a whole other desk.</p> <p>7 Q. When did you leave that branch?</p> <p>8 A. I would say in or around this month.</p> <p>9 Q. I beg your pardon?</p> <p>10 A. In or around this month or last month. Let me</p> <p>11 see, the exact switchover -- I don't remember the exact</p> <p>12 switchover but it was recently, it was a few weeks ago</p> <p>13 or something like that.</p> <p>14 Q. Okay. So you stopped working at the Malibu</p> <p>15 office of Wells Fargo and started working where?</p> <p>16 A. Beverly Hills.</p> <p>17 Q. So you start working -- you stopped working at</p> <p>18 the Malibu -- one of the Malibu branches of Wells Fargo</p> <p>19 and you started working at -- I'm sorry, what did you</p> <p>20 say?</p> <p>21 A. It's Beverly Hills.</p> <p>22 Q. Beverly Hills.</p> <p>23 A. It's a branch in, yeah.</p> <p>24 Q. Within the last -- within the last few</p> <p>25 weeks --</p>	<p style="text-align: right;">35</p> <p>1 Q. Yes.</p> <p>2 A. I can't answer what --</p> <p>3 Q. Did you have the same computer from</p> <p>4 October 2011 at the Malibu offices until you recently</p> <p>5 left the Malibu office a few weeks ago?</p> <p>6 A. Did I have the same computer -- can you</p> <p>7 rephrase the question?</p> <p>8 Q. Okay. I'm just asking you if -- if you got a</p> <p>9 new computer after October 2011 at the Malibu office.</p> <p>10 Do you recall that?</p> <p>11 A. After October 2011?</p> <p>12 No, I -- you mean after the interaction with</p> <p>13 Mr. Kaplan?</p> <p>14 Q. Yes.</p> <p>15 A. I had the same computer.</p> <p>16 Q. So you had the same computer from October 2011</p> <p>17 up until the time that you left Malibu -- the Malibu</p> <p>18 office a few weeks ago?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 All right. Back to this first meeting that</p> <p>22 you had with Mr. Kaplan that I think you said you</p> <p>23 believe occurred in October of 2011 --</p> <p>24 A. Yes.</p> <p>25 Q. -- Is that right?</p>
<p style="text-align: right;">34</p> <p>1 A. Yeah.</p> <p>2 Q. -- Is that right?</p> <p>3 A. Within the month.</p> <p>4 Q. Had you left your old computer at Malibu, with</p> <p>5 the Malibu office?</p> <p>6 A. You know, we don't take our computers with us,</p> <p>7 so.</p> <p>8 Q. The question is: Did you leave your Malibu</p> <p>9 computer that you used in October 2011, did you leave</p> <p>10 that at the Malibu office --</p> <p>11 A. Yes.</p> <p>12 Q. -- that you vacated?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 All right. Did you ever do a search on</p> <p>16 that computer for any documents pertaining to any</p> <p>17 conversations you had with Mr. Kaplan?</p> <p>18 A. No.</p> <p>19 Q. Were you ever asked to do that?</p> <p>20 A. No.</p> <p>21 Q. Okay. Was it your routine to delete e-mails</p> <p>22 from your computer subsequent to October 2011?</p> <p>23 A. I don't understand the meaning of that</p> <p>24 question at all.</p> <p>25 Was it routine to delete e-mails?</p>	<p style="text-align: right;">36</p> <p>1 A. Yes.</p> <p>2 Q. Okay. You don't recall where that meeting</p> <p>3 occurred other than being in the office at Wells Fargo</p> <p>4 at the Malibu office?</p> <p>5 A. Right.</p> <p>6 Q. You don't recall going into a private area</p> <p>7 with Mr. Kaplan?</p> <p>8 A. No.</p> <p>9 Q. You don't recall whether or not you went back</p> <p>10 to your desk with Mr. Kaplan?</p> <p>11 A. I don't -- what did you say? I didn't</p> <p>12 understand.</p> <p>13 Q. Do you recall going back to your desk with</p> <p>14 Mr. Kaplan?</p> <p>15 A. I recall being at my desk, so.</p> <p>16 Q. Okay. So you recall this first meeting with</p> <p>17 Mr. Kaplan occurring at your desk?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Is there a chair there that -- that</p> <p>20 guests can sit down and face you across from your desk?</p> <p>21 A. Yeah. I would be here. You would be -- like</p> <p>22 he would be just about the same distance me and you are</p> <p>23 right now.</p> <p>24 Q. Okay. And that's about three and a half to</p> <p>25 four feet, is that right?</p>

37

1 **A. I would say a little more.**  
 2 **Q.** Say five feet?  
 3 **A. About this desk to here. Yeah, five feet,**  
 4 **four or five feet.**  
 5 **Q.** So about five feet across there's a chair and  
 6 the person sits there and faces you, is that right?  
 7 **A. Yes, sir.**  
 8 **Q.** And that's what it was in October of 2011?  
 9 **A. Yes, sir.**  
 10 **Q.** And is that the way you recall the meeting  
 11 with Mr. Kaplan?  
 12 **A. Yeah.**  
 13 **Q.** Okay. What else do you recall about the  
 14 meeting with Mr. Kaplan?  
 15 Tell me what you recall about that meeting.  
 16 **A. I had a conversation with Mr. Kaplan and --**  
 17 **Q.** What did he say?  
 18 Tell me how that conversation went as best you  
 19 recall.  
 20 What did he say and what did you say?  
 21 **A. In the beginning I remember it was pretty**  
 22 **pleasant, and I don't remember what it was about at this**  
 23 **point.**  
 24 **What stands out is the conversation about**  
 25 **a closed account. So I remember he was asking me --**

38

1 **he introduced it. He asked me about a closed account.**  
 2 **Q.** Okay. What do you recall Mr. Kaplan saying to  
 3 you about a closed account?  
 4 **A. Some -- something about, hey, I have a closed**  
 5 **account, I want to know more, and asked me to find out**  
 6 **why it's closed.**  
 7 **Q.** And what was your response?  
 8 **A. I don't recall my response.**  
 9 **So I do generally get a lot of clients who**  
 10 **have closed accounts, and generally I have a process**  
 11 **where I work with them on -- on that issue.**  
 12 **Q.** Okay. But you don't recall what you said to  
 13 Mr. Kaplan in response to his questions concerning a  
 14 closed account --  
 15 **A. No.**  
 16 **Q.** -- Is that your testimony?  
 17 **A. Yes.**  
 18 **Q.** Do you recall saying anything to Mr. Kaplan  
 19 during that meeting, i.e., the first time you met him  
 20 when you're at your desk and you're discussing a closed  
 21 account, do you recall anything that you said?  
 22 **A. Not verbatim but I get the general**  
 23 **conversation. I would know -- I would say to my best**  
 24 **ability I can tell you.**  
 25 **Q.** Okay. Now, and I'll ask you that question,

39

1 but what I would ask for you to consider is I'm asking  
 2 you to tell me what you remember about what you said to  
 3 Mr. Kaplan.  
 4 **A. Specifically?**  
 5 **Q.** Yes.  
 6 **A. I --**  
 7 **Q.** That's what I'm asking for. I'm not asking  
 8 for, well, this is the way I normally tell people about  
 9 closed accounts.  
 10 Do you understand the difference?  
 11 **A. Correct.**  
 12 **Q.** Okay. So I don't want you to guess at what  
 13 you said or may not have said.  
 14 **A. I'm sorry.**  
 15 **Q.** Do you understand that?  
 16 **A. Yes.**  
 17 **Q.** All right. I don't want you to say, well,  
 18 I'm sure that I must have probably said something like  
 19 this. That's a guess.  
 20 **A. Correct, you're right.**  
 21 **Q.** Okay. What do you recall saying to Mr. Kaplan  
 22 about the closed account that you and he were  
 23 discussing?  
 24 **A. I don't recall.**  
 25 **Q.** Do you recall anything that you said to

40

1 Mr. Kaplan concerning the closed account that he was  
 2 there at your desk discussing with you in October 2011?  
 3 **A. You'd have to be more specific 'cause there**  
 4 **were a lot of possibilities, so I wouldn't recall how**  
 5 **to answer -- I -- I just don't know how to answer that**  
 6 **question.**  
 7 **Q.** What possibilities are you referring to?  
 8 **A. You know, I -- like I think I'm going back to,**  
 9 **you know, the general way I would handle it again, so**  
 10 **I'm trying not to guess. So I would say I don't**  
 11 **recall --**  
 12 **Q.** Okay. We'll come to that in a second.  
 13 **A. -- the answer.**  
 14 **Q.** And I'll ask you how you think you may  
 15 generally have handled the situation.  
 16 What I'm specifically asking you now is:  
 17 Do you have -- you have a recollection of meeting with  
 18 Mr. Kaplan at your desk at some time in October 2011,  
 19 you had that meeting, you have that specific  
 20 recollection, is that correct?  
 21 **A. Correct.**  
 22 **Q.** And you have a specific recollection that  
 23 Mr. Kaplan had questions about a closed account.  
 24 Do you have a specific recollection of that?  
 25 **A. No.**



<p style="text-align: right;">41</p> <p>1 <b>Q.</b> Okay. Do you have a recollection at all as</p> <p>2 to what Mr. Kaplan and you were talking about?</p> <p>3 <b>A.</b> I remember that Mr. Kaplan's account was</p> <p>4 closed. I had -- his complaint was that he had a closed</p> <p>5 account, and I had checked it up on the computer,</p> <p>6 I looked his account up, and there it said it was</p> <p>7 closed, so.</p> <p>8 <b>Q.</b> Okay.</p> <p>9 <b>A.</b> It was a joint account.</p> <p>10 <b>Q.</b> Okay. Do you have a specific recollection of</p> <p>11 doing those things or is -- is that a recollection that</p> <p>12 you are figuring out as we talk about it here today?</p> <p>13 <b>A.</b> I have a specific recollection of looking up</p> <p>14 the account on the computer and --</p> <p>15 <b>Q.</b> Okay. So you looked up the account that --</p> <p>16 did Mr. Kaplan give you the account information?</p> <p>17 <b>A.</b> Well, I -- I identified Mr. Kaplan and I had</p> <p>18 his account profile screen up for me to see all the</p> <p>19 accounts he's on, and he told me generally his closed</p> <p>20 account, it's a joint account with Lisa Johnson.</p> <p>21 And I looked for a joint account with</p> <p>22 Lisa Johnson and noticed that it was closed.</p> <p>23 <b>Q.</b> And you did that on your computer?</p> <p>24 <b>A.</b> Yes, sir.</p> <p>25 <b>Q.</b> At your desk?</p>	<p style="text-align: right;">43</p> <p>1 with Ms. Johnson and you saw the status of the account,</p> <p>2 the names on the account, who opened it, et cetera,</p> <p>3 et cetera.</p> <p>4 Okay. What other information do you recall</p> <p>5 seeing on that computer screen regarding that account?</p> <p>6 <b>A.</b> I believe that's about it. The things I told</p> <p>7 you that you can see are what you can -- what I would be</p> <p>8 able to see.</p> <p>9 <b>Q.</b> Okay. Following your review of that screen,</p> <p>10 what did you tell Mr. Kaplan?</p> <p>11 <b>A.</b> I told him I'm not sure why the accounts are</p> <p>12 closed or -- so afterwards I needed to find out more,</p> <p>13 so I called our support team, it's called the Banker</p> <p>14 Connection.</p> <p>15 <b>Q.</b> Banking Connection?</p> <p>16 <b>A.</b> Banker Connection.</p> <p>17 <b>Q.</b> Okay. And who did you talk -- did you talk</p> <p>18 with a person at Banker Connection?</p> <p>19 <b>A.</b> Yes, sir.</p> <p>20 <b>Q.</b> Okay. Who was that?</p> <p>21 <b>A.</b> I'm not sure.</p> <p>22 <b>Q.</b> Was it a man or a woman?</p> <p>23 <b>A.</b> I'm not sure.</p> <p>24 <b>Q.</b> What did you tell the person at Banker</p> <p>25 Connection?</p>
<p style="text-align: right;">42</p> <p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> Okay. The screen that you accessed for this</p> <p>3 joint account with Lisa Johnson and Mr. Kaplan that told</p> <p>4 you the account was closed, what -- what information is</p> <p>5 given on that screen generally?</p> <p>6 <b>A.</b> The status of the account. There's a lot of</p> <p>7 information. The names on the account, where it was</p> <p>8 opened, who opened it, the balance, ledger and</p> <p>9 available. I mean things -- and a lot more, et cetera,</p> <p>10 so.</p> <p>11 <b>Q.</b> Is that a specific report that you would ask</p> <p>12 for in calling up -- is there a specific report name</p> <p>13 that you would ask for in calling up that information?</p> <p>14 <b>A.</b> No.</p> <p>15 <b>Q.</b> Better question. Let's say I work at the</p> <p>16 bank alongside you and you want me to access that</p> <p>17 information.</p> <p>18 What instructions would you give me in order</p> <p>19 for me to access that information on my computer?</p> <p>20 <b>A.</b> If you work at the bank?</p> <p>21 <b>Q.</b> Yes.</p> <p>22 <b>A.</b> Look up this account.</p> <p>23 <b>Q.</b> Okay. What do you recall about -- strike</p> <p>24 that.</p> <p>25 So you looked up Mr. Kaplan's joint account</p>	<p style="text-align: right;">44</p> <p>1 <b>A.</b> I'm not sure exactly what we spoke of</p> <p>2 specifically, but I remember the general nature of what</p> <p>3 we spoke of was this account and why it was closed.</p> <p>4 <b>Q.</b> And did the Banker Connection, did they tell</p> <p>5 you why the -- why the account was closed?</p> <p>6 <b>A.</b> No.</p> <p>7 <b>Q.</b> What do you recall them saying?</p> <p>8 <b>A.</b> I recall that the account was closed due to an</p> <p>9 investigation.</p> <p>10 <b>Q.</b> That's what you recall the Banker</p> <p>11 Connection --</p> <p>12 <b>A.</b> Yes.</p> <p>13 <b>Q.</b> -- telling you over the telephone?</p> <p>14 <b>A.</b> Yes.</p> <p>15 <b>Q.</b> Okay. And Mr. Kaplan was present while that</p> <p>16 occurred?</p> <p>17 <b>A.</b> Yes.</p> <p>18 <b>Q.</b> Okay. And did you -- do you recall telling</p> <p>19 Mr. Kaplan anything as a result of your call with Banker</p> <p>20 Connection?</p> <p>21 <b>A.</b> I relayed that information to him.</p> <p>22 <b>Q.</b> What did you tell him?</p> <p>23 <b>A.</b> That account was closed due to investigation.</p> <p>24 <b>Q.</b> Did Mr. Kaplan respond to that?</p> <p>25 <b>A.</b> I'm sure he did but I can't recall it --</p>

45

1 Q. You don't recall what he said?  
 2 A. -- specifically.  
 3 Q. Do you recall telling Mr. Kaplan anything else  
 4 concerning the account?  
 5 A. I recall being -- you know, having to explain  
 6 about what that meant and --  
 7 Q. What explanation did you give?  
 8 A. You know, that I don't have any other  
 9 information. That I wasn't provided any more  
 10 information. In the capacity that I have at the  
 11 company I wasn't able to have that information.  
 12 Q. Okay. Did your meeting with Mr. Kaplan end at  
 13 that point, this first meeting?  
 14 A. At that point?  
 15 Q. Yes.  
 16 A. I'm not sure.  
 17 Q. Do you recall saying anything else to  
 18 Mr. Kaplan?  
 19 A. Yeah.  
 20 Q. Okay. And what else do you recall saying  
 21 in addition to the account was closed due to an  
 22 investigation and I don't have any other further  
 23 information?  
 24 What else did you tell him?  
 25 A. Well, normally we want to make sure clients at

46

1 the bank are happy at all times and that they have a --  
 2 you know, they leave the bank smiling or something, that  
 3 we can change around whatever emotional thing is going  
 4 on.  
 5 So I was noticing, I remember noticing that  
 6 he was very unhappy about not getting information and  
 7 was pressing me for that information.  
 8 Q. When you say he was pressing you for that  
 9 information, what do you mean?  
 10 A. You know, finding -- I don't exactly -- how he  
 11 was asking me, but just trying to find different ways to  
 12 ask me, you know, to get the reasons why it was closed.  
 13 Q. Did he raise his voice?  
 14 A. No.  
 15 Q. Did he threaten you?  
 16 A. No.  
 17 Q. But you -- you believe he was unhappy?  
 18 A. Yeah, just frustrated or, you know, getting  
 19 a little bit anxious, worried, annoyed definitely is  
 20 a good word. You know, probably a variant of other  
 21 things that I don't remember.  
 22 Q. Okay. And as a result of that, did you tell  
 23 him anything else?  
 24 A. I tried to calm him down, to --  
 25 Q. Do you recall telling him anything else?

47

1 A. No.  
 2 Q. Do you recall anything else that you told  
 3 Mr. Kaplan during that first meeting in October 2011  
 4 than what you've told us here today?  
 5 A. Do I recall anything? I don't understand your  
 6 question.  
 7 Q. Do you recall saying anything else to  
 8 Mr. Kaplan during this first meeting other than what  
 9 you've told us here today that you said?  
 10 A. Do I recall saying anything else? I'm not  
 11 sure how to answer that.  
 12 Q. All right, okay.  
 13 You told us that you recall telling Mr. Kaplan  
 14 that the account was closed.  
 15 A. Yes.  
 16 Q. That you recall telling Mr. Kaplan that you  
 17 didn't have any other information regarding the account  
 18 being closed.  
 19 A. Correct.  
 20 Q. My question to you is: Do you recall  
 21 telling Mr. Kaplan anything else during that meeting  
 22 in October 2011 the first time you met him?  
 23 A. I don't recall the specifics. I can't --  
 24 I don't know.  
 25 Q. You have no other specific recollection of you

48

1 telling Mr. Kaplan anything else in that meeting?  
 2 A. Not the specifics, no.  
 3 Q. Okay. And, see, what I'm trying to guard  
 4 against, Mr. Dounel, is I don't want you to a month from  
 5 now, six months from now to come forward as a witness in  
 6 this case and say, oh, I have -- I remember now, I said  
 7 specifically blah-blah-blah, blah-blah-blah,  
 8 blah-blah-blah, something that you're not telling me  
 9 about here today.  
 10 A. Trust me, I don't want that either.  
 11 Q. Okay. So what I'm trying to do is exhaust  
 12 your memory concerning everything you said to Mr. Kaplan  
 13 the first time you met him there at your desk in  
 14 October 2011. I want to exhaust your memory concerning  
 15 what you said.  
 16 A. Thank you.  
 17 Q. Okay. That's the import of my questions.  
 18 Do you understand that?  
 19 A. The import of your questions?  
 20 Q. Yeah. That's what I'm trying to get at.  
 21 A. Okay.  
 22 Q. Okay. For you to tell us everything you  
 23 recall saying to Mr. Kaplan at that meeting.  
 24 A. Do you mean -- do you want anything specific?  
 25 Are there any specific questions about --

49

1 **Q.** Do you recall telling him --  
 2 **A.** -- the meeting?  
 3 **Q.** Do you recall telling him anything else in  
 4 that meeting other than what you've told us?  
 5 **A.** No. I had a conversation with him about the  
 6 accounts being closed, like I said, I didn't know  
 7 where -- why, I'm sorry, where -- the accounts were  
 8 closed. I spoke to Banker Connection to give me the --  
 9 the gist of it was that it was an investigation.  
 10 Is it okay to get a coffee?  
 11 **Q.** Sure.  
 12 **A.** And --  
 13 **Q.** And you told Mr. Kaplan that?  
 14 **A.** I told him that. He started getting a little  
 15 worried and all the things I said he was before.  
 16 **Q.** All right. And so did you tell him anything  
 17 else?  
 18 **A.** I'm thinking. Hold on a second.  
 19 MR. FITTS: Just for the record, Mr. Dounel  
 20 got up to get a cup of coffee. That's why he said just  
 21 a minute.  
 22 THE WITNESS: Yeah.  
 23 That I was -- I was kind of just being like  
 24 there for him. I -- I was telling him like how I regret  
 25 I can't get that information for him that he wanted,

50

1 that he's trying to find, you know, and I gave him our  
 2 customer service number, that I remember.  
 3 I told him he should -- that I can't get that  
 4 information and maybe he can if he calls this number,  
 5 which is -- I normally give out to clients a lot, it's  
 6 the 800 number, 800-869-3557, in hopes -- in hopes that  
 7 maybe he can get more information from there.  
 8 **Q.** BY MR. KISTLER: So you recall -- in addition  
 9 to the things you told us, you recall saying to  
 10 Mr. Kaplan, you now recall that you gave him a 1-800  
 11 number?  
 12 **A.** I remember I gave him that -- the number,  
 13 I believe. I do it consistently with other clients.  
 14 I generally do it for clients I can't -- that fall into  
 15 a place where, you know, this happens. We see a lot of  
 16 clients.  
 17 **Q.** Do you recall telling Mr. Kaplan anything else  
 18 at that meeting?  
 19 **A.** No.  
 20 **Q.** Do you recall telling Mr. Kaplan that  
 21 Ms. Johnson must have some type of criminal background?  
 22 **A.** No.  
 23 **Q.** You don't recall saying that?  
 24 **A.** I don't believe I would say that about any  
 25 customer.

51

1 **Q.** Okay. So it's your -- Is it your testimony  
 2 that you deny saying that at this meeting?  
 3 **A.** I -- I believe I would not say that about any  
 4 client.  
 5 **Q.** Okay. Can you tell me as you sit here today  
 6 that you are certain that you did not say that in the  
 7 meeting, "that" being that Ms. Johnson must have some  
 8 type of criminal background?  
 9 **A.** Sitting here today I can tell you I believe  
 10 that I would not say that about any client.  
 11 **Q.** Do you recall telling Mr. Kaplan in this  
 12 first meeting that Mr. Kaplan should hire a private  
 13 investigator to check up on Ms. Johnson?  
 14 **A.** I, again, believe I would not say that about  
 15 any client.  
 16 **Q.** Okay. So are you denying here today that you  
 17 said those things to Mr. Kaplan in October 2011 at this  
 18 first meeting?  
 19 **A.** I'm saying that I don't believe I would speak  
 20 like that to any client, to tell them something like  
 21 that about hiring an investigator.  
 22 **Q.** Do you recall saying any -- any words to that  
 23 effect to Mr. Kaplan?  
 24 **A.** I don't recall.  
 25 **Q.** Okay. Are you denying that you said those

52

1 things?  
 2 **A.** I'm saying I don't recall.  
 3 **Q.** Did you tell Mr. Kaplan that Ms. Johnson must  
 4 have arrest warrants outstanding?  
 5 **A.** I don't recall.  
 6 **Q.** Okay. Are you denying that you said that to  
 7 Mr. Kaplan at this first meeting in October 2011?  
 8 **A.** You know, that one, I would also say that  
 9 I believe I wouldn't talk like that about any client.  
 10 Especially Ms. Johnson wasn't even there, so I would --  
 11 you know, even that -- even more so I wouldn't talk in  
 12 any way about someone that's not there even positively  
 13 like -- about their accounts, you know, just even about  
 14 like their -- something else that I shouldn't say or  
 15 whatever, for security purposes.  
 16 But I would also want to say that I would  
 17 never talk like this with clients. I engender a certain  
 18 level of trust for my clients and it's not in my  
 19 character.  
 20 **Q.** Okay. Do you recall anything else about  
 21 that conversation that you had with Mr. Kaplan, the  
 22 first conversation that you had with Mr. Kaplan in  
 23 October 2011 other than what you've told us?  
 24 **A.** Can you be more specific?  
 25 The conversation -- about the first

53

1 conversation?

2 Q. The first conversation that you had, the first  
3 time you met Mr. Kaplan.

4 A. Can I recall anything?

5 Q. You went back to your desk with your computer,  
6 Mr. Kaplan sitting across from you, you checked the  
7 account information, you had a discussion with  
8 Mr. Kaplan, that discussion, do you recall anything else  
9 about that discussion other than what you've told us  
10 here today?

11 A. No.

12 Q. And what I'm trying to guard against is  
13 six months from now you say, oh, yeah, I remember that  
14 discussion, we said this, this, this, this, this, this,  
15 and this.

16 A. Yeah. And thank for you for doing that.  
17 I mean I can't --

18 Q. I'm trying to -- I'm trying to -- to explore  
19 and to gain everything that you recall about that  
20 discussion, the first discussion with Mr. Kaplan in  
21 October 2011, I'm trying to determine everything that  
22 you recall concerning that discussion.

23 A. I understand.

24 Q. Is there anything else about that discussion,  
25 that first discussion, that you recall now that you.

54

1 haven't told us about here in your deposition here  
2 today?

3 A. No.

4 Q. How did the discussion end?

5 A. I don't recall.

6 MR. KISTLER: Ma'am, if you can mark this as  
7 exhibit next in line, it's Exhibit 3.

8 (Plaintiff's Exhibit 3 marked for  
9 identification.)

10 Q. BY MR. KISTLER: Mr. Dounel, Exhibit 3 is  
11 a six-page e-mail chain. The first page is marked  
12 Lisa J. 0011, the second page is 0014, the third page  
13 is 0015, followed by 0016, 0017, and 0018.

14 Do you see that?

15 A. Yes.

16 Q. Okay. And this is -- this document is --  
17 basically is in reverse chronological order. In other  
18 words, the earliest e-mail is at the later pages and it  
19 continues on up through the present.

20 A. Right.

21 Q. All right. If you could refer your attention,  
22 sir, to not the last page but the next-to-the-last page,  
23 which is 0017. Right above that it says page 5 of 6.

24 Do you see that?

25 A. Yes, sir.

55

1 Q. Okay. And in the lower half of that page  
2 where it says "Begin forwarded message:", do you see  
3 that?

4 A. In the middle of the page?

5 Q. In the bottom middle -- the bottom half of the  
6 page.

7 A. Yes, sir.

8 Q. Okay. And it appears that there's an e-mail  
9 from Mr. Kaplan to arash.dounel@wellsfargo.com.

10 A. That's correct.

11 Q. Okay. And it looks like that's dated  
12 October the 31st, 2011.

13 A. That's correct.

14 Q. Is that a-r-a-s-h, dot,  
15 d-o-u-n-e-l@wellsfargo.com, is that your e-mail address  
16 at Wells Fargo?

17 A. Yes, sir.

18 Q. Do you recall receiving this e-mail from  
19 Mr. Kaplan on or about October 31, 2011?

20 A. I do.

21 Q. Now, the body of that e-mail from Mr. Kaplan  
22 says, quote -- Mr. Kaplan to you says: "A week ago, you  
23 had called me to offer your apology for your comments  
24 regarding Lisa. I had asked you to send me a written  
25 apology--I have not heard back from you."

56

1 "In our phone call, you had told me that we  
2 could re-open the accounts that Wells Fargo had closed,  
3 under you at your branch. I am at my home in Nevada,  
4 and wanted to make sure that as you represented, we  
5 could have Wells Fargo re-open the accounts that they  
6 had closed--please advise."

7 Did I read that correctly?

8 A. Yes, sir.

9 Q. Mr. Dounel, the first phraseology, the first  
10 phrase in this, "A week ago, you had called me to offer  
11 your apology for your comments regarding Lisa. I had  
12 asked you to send me a written apology--I have not heard  
13 back from you", had you called -- or did you call  
14 Mr. Kaplan approximately a week before October 31 to  
15 apologize to him for your comments regarding Lisa?

16 A. We had many -- we had many interactions in  
17 person and in the phone -- well, on the phone. I do  
18 believe that I had apologized to him for --

19 Q. Okay.

20 A. You know, for things, but --

21 Q. What exactly did you -- did you apologize to  
22 him for?

23 A. You know, like I did in person, I told him  
24 I'm sorry, you know, I apologized for not being able to  
25 gather more information for him regarding the closure of

57

1 the accounts.

2 I was, you know, re -- I was really just like

3 trying to make him understand I didn't have that

4 possibility.

5 I told him I was sorry about the inconvenience

6 he was getting, you know, and also about the

7 misunderstanding of investigation, you know, what --

8 Q. Did you apologize to Mr. Kaplan regarding

9 comments you had made regarding Lisa?

10 A. No.

11 Q. And so Mr. Kaplan in his e-mail where he

12 references "your apology for your comments regarding

13 Lisa," Mr. Kaplan is incorrect in that reference?

14 A. I believe what he meant was the comments --

15 Q. No, I'm not asking what you believe he may

16 have meant.

17 My question is: When he says you called to

18 offer your apology for your comments regarding Lisa, was

19 Mr. Kaplan wrong in interpreting your conversation as

20 being an apology about your comments about Lisa?

21 A. I can't say for sure what --

22 Q. You don't recall apologizing to Mr. Kaplan

23 regarding anything about Lisa Johnson, is that right?

24 A. About, well, her accounts and, you know,

25 the accounts are hers, so if that means the comments

58

1 regarding Lisa, her accounts are regarding Lisa.

2 Q. What specifically do you recall apologizing

3 for?

4 A. Like I said --

5 MR. FITTS: Asked and answered.

6 Q. BY MR. KISTLER: What specifically do you

7 recall apologizing for?

8 A. I specifically recall apologizing for the

9 inconvenience that Mr. Kaplan and Ms. Johnson have had

10 to endure with regards to the account closure.

11 Also, apologizing for not having the ability

12 to get more information.

13 I like Mr. Kaplan. He was -- I wanted to help

14 him and I couldn't get that information for him, so I

15 was apologizing I can't -- I wasn't able to get that.

16 Also apologizing for his misunderstanding of

17 what investigation -- of what an investigation -- of the

18 investigation, of what it meant.

19 Q. What was the misunderstanding?

20 A. That he was getting like very emotional and

21 upset about it, so -- and I couldn't help him. He was

22 thinking like it was -- there was something wrong or

23 something drastically wrong. So I was trying to get him

24 to calm down, you know, but apologizing for, you know,

25 the investigation.

59

1 Q. When you say you were apologizing for the

2 misunderstanding, what was the misunderstanding?

3 A. You know, just -- you know, it's an

4 investigation that closed his account. I don't know

5 where he was going with that. It's pretty simple.

6 The account was closed and Wells Fargo decided to end

7 the relationship with that -- with that account being

8 closed and other accounts, I guess.

9 So, you know, I told him what they told me

10 from Banker Connection. And I don't know where he was

11 going with getting all the other emotions involved, and

12 so I wanted him to feel calm and just apologized for

13 misunderstanding about what the investigation meant.

14 Because simply the accounts were to be closed due to the

15 relationship wanting to be closed.

16 Q. Did you tell him anything else about the

17 investigation other than what you've told us here today?

18 A. No, I don't recall.

19 Q. Did you promise Mr. Kaplan you would send him

20 a written apology?

21 A. I told him that I would, yes.

22 Q. Okay. And when did you tell him that?

23 A. I'm not sure.

24 Q. Do you recall whether or not you told him

25 that prior to the date of this e-mail, October the 31st,

60

1 2011?

2 A. He asked me -- I remember he asked me for a

3 written apology, and I told him I'll do it.

4 So he said, I want it in writing.

5 I'm like, okay.

6 Q. And you think that occurred prior to

7 October the 31st, 2011?

8 A. I'm not sure. But this would be him

9 mentioning it here, so most likely. I'm not sure.

10 Q. All right. The next document up from that is

11 Lisa J. 0016, same exhibit.

12 A. Okay. So we're going to the next page?

13 Q. Yes.

14 A. Okay.

15 Q. Again, the bottom half of the page, it looks

16 like to be an e-mail from you addressed to Mr. Kaplan.

17 Do you see that?

18 A. Yes.

19 Q. And it says: "Mr. Kaplan, I would like to

20 mail out your letter priority mail, I can send it to

21 your Las Vegas address if you would like. Also, as

22 per your request, I can also reopen Lisa's accounts."

23 Did I read that correctly?

24 A. Yes.

25 Q. Was this an e-mail from you to Mr. Kaplan?

61

1 A. Yes.

2 Q. All right. In this e-mail the date is, it  
3 says November the 2nd, 2011.

4 Do you believe that's about when you sent  
5 this e-mail?

6 A. Yeah, I do believe.

7 Q. Okay. And in this e-mail you were trying to  
8 inform Mr. Kaplan that, yes, in fact, you were going to  
9 send out a letter to him?

10 A. Yes.

11 Q. You also state that you were able to reopen  
12 Lisa's accounts, is that correct?

13 A. Yes.

14 Q. Okay. Upon what did you base that statement  
15 to Mr. Kaplan upon?

16 A. Mr. Kaplan wanted the accounts reopened that  
17 were closed, the ones that were closed. He wanted --

18 Q. Okay. And you responded and said I can reopen  
19 Lisa's accounts?

20 A. I responded with I can reopen accounts for  
21 him.

22 Q. Well, it says "I can also reopen Lisa's  
23 accounts." That's what this e-mail says.

24 A. I meant the joint accounts, the ones that were  
25 closed, the same -- the relationship he had.

62

1 Q. Now, did you have -- had you discussed these  
2 accounts with anyone at Wells Fargo prior to sending  
3 this e-mail to Mr. Kaplan?

4 A. I can't recall.

5 Q. Okay. Well, when you say you believe that  
6 you could reopen Lisa's accounts under different  
7 numbers, upon what did you base that statement?

8 A. Upon reopening new accounts, mean -- meaning  
9 getting new numbers.

10 Q. Okay. But you thought that -- did you consult  
11 with anyone concerning -- the difficulty I'm having is  
12 these accounts were closed for some reason --

13 A. Correct.

14 Q. -- in your view.

15 A. Yes.

16 Q. In the bank's view?

17 A. Correct.

18 Q. Okay. And yet here on October -- or on  
19 November the 2nd, 2011, you're telling Mr. Kaplan you  
20 can reopen those accounts.

21 A. Correct.

22 Q. Okay. My question to you is: Had you  
23 discussed reopening these accounts with anyone at  
24 Wells Fargo prior to informing Mr. Kaplan that you  
25 could do so --

63

1 A. Yes.

2 Q. -- on November the 2nd, 2011?

3 A. Not with anyone. What happened is that  
4 Mr. Kaplan wanted me to reopen the accounts. We went  
5 through a process of trying to reopen accounts. And the  
6 initial risk screening of reopening new accounts stated  
7 that he was -- him and Lisa Johnson were approved to  
8 open new accounts.

9 So based on that information, I was able to  
10 tell Mr. Kaplan in this e-mail that I was able to reopen  
11 these accounts under my branch so Lisa can be -- the  
12 only problem that is keeping the same account numbers,  
13 you know.

14 So I remember that that was the reason why  
15 this e-mail was written.

16 Q. Explain to me this risk screening process that  
17 you referred to.

18 A. Customers' profiles with us with their  
19 information that we gather. A lot of them are existing.  
20 Or new customers, we would have to input that  
21 information. We use that information in our system to  
22 go through a process that allows us to open accounts.

23 Within the process, after the profiling  
24 process, there's a screen -- there is a part that allows  
25 us to know initially if the client is approved to

64

1 continue with opening accounts or declined for opening  
2 a new account. That will let the branch -- the banker  
3 or manager or whoever is handling it to continue with  
4 opening the account, where at that point you go to  
5 picking the accounts and services and products that the  
6 client would desire.

7 Q. And your testimony here is today -- here today  
8 is that prior to November the 2nd you went through that  
9 process for and on behalf of Mr. Kaplan and Ms. Johnson?

10 A. Yes.

11 Q. And you were told by the bank that, yes, new  
12 accounts can be opened?

13 MR. FITTS: I object. Misconstrues the prior  
14 testimony.

15 MR. KISTLER: Yeah. That's a speaking  
16 objection. You can make an objection based on form.

17 Q. BY MR. KISTLER: My question to you,  
18 Mr. Dounel, is: Prior to November the 2nd, 2011,  
19 you talked about this risk screening process that you  
20 went -- that you can go through, is that right?

21 A. Initial risk screening process.

22 Q. Initial risk screening process.

23 And it's your testimony that you went through  
24 that initial risk screening process for and on behalf of  
25 Mr. Kaplan and Ms. Johnson --

<p style="text-align: right;">65</p> <p>1 <b>A. Correct.</b></p> <p>2 <b>Q. -- prior to November the 2nd, 2011 --</b></p> <p>3 <b>A. Correct.</b></p> <p>4 <b>Q. -- is that right?</b></p> <p>5 <b>A. Correct.</b></p> <p>6 <b>Q. And that you had obviously gotten an approved</b></p> <p>7 <b>for new accounts based on that initial risk screening --</b></p> <p>8 <b>A. Yeah.</b></p> <p>9 <b>Q. -- is that correct?</b></p> <p>10 <b>A. Correct. The disposition was that they were</b></p> <p>11 <b>approved for new accounts.</b></p> <p>12 <b>Q. Okay. Is there any documentation that's</b></p> <p>13 <b>generated as a result of that internally with the bank?</b></p> <p>14 <b>A. No. That's confidential. We're not even</b></p> <p>15 <b>allowed to really disclose that screen. You know, if</b></p> <p>16 <b>there was a decline, for example, we're not allowed to</b></p> <p>17 <b>disclose or print out that screen.</b></p> <p>18 <b>Q. Are credit reporting agencies consulted as</b></p> <p>19 <b>part of this initial screening process?</b></p> <p>20 <b>A. I'm not sure.</b></p> <p>21 <b>Q. Are these client profiles or initial screening</b></p> <p>22 <b>client profiles, are those maintained by Bank of</b></p> <p>23 <b>America -- or, excuse me, by Wells Fargo or are they</b></p> <p>24 <b>destroyed?</b></p> <p>25 <b>A. Are the client -- I don't understand, are the</b></p>	<p style="text-align: right;">67</p> <p>1 for account opening for Mr. Kaplan and Ms. Johnson with</p> <p>2 positive results?</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 <b>Q. Okay. Sir, if you could refer your</b></p> <p>5 <b>attention to the second page in this exhibit, and</b></p> <p>6 <b>that's Lisa J. 0014.</b></p> <p>7 <b>A. I'm sorry, I didn't hear you.</b></p> <p>8 <b>0014?</b></p> <p>9 <b>Q. Yes.</b></p> <p>10 <b>A. Okay.</b></p> <p>11 <b>Q. About mid page on 0014, Exhibit 3, we have</b></p> <p>12 <b>another apparently later e-mail of yours on the same</b></p> <p>13 <b>date of November the 2nd, 2011 --</b></p> <p>14 <b>A. Correct.</b></p> <p>15 <b>Q. -- where again you wrote -- and you wrote this</b></p> <p>16 <b>to Mr. Kaplan, didn't you?</b></p> <p>17 <b>A. Correct.</b></p> <p>18 <b>Q. Okay. Did you ever communicate with</b></p> <p>19 <b>Ms. Johnson by e-mail?</b></p> <p>20 <b>A. No.</b></p> <p>21 <b>Q. All of your communications regarding these</b></p> <p>22 <b>accounts, the accounts that are at issue in this</b></p> <p>23 <b>lawsuit, were with Mr. Kaplan, is that right?</b></p> <p>24 <b>A. On e-mail, you mean?</b></p> <p>25 <b>Q. Yes.</b></p>
<p style="text-align: right;">66</p> <p>1 client profiles what?</p> <p>2 <b>Q. The results of these initial account</b></p> <p>3 <b>screenings.</b></p> <p>4 <b>A. I wouldn't know. I'm just a banker.</b></p> <p>5 <b>Q. And you understand that the initial account</b></p> <p>6 <b>screening that you referred to that is occurring in this</b></p> <p>7 <b>case prior to November the 2nd, 2011, that that's done</b></p> <p>8 <b>by Wells Fargo, it's an internally -- it's an internal</b></p> <p>9 <b>Wells Fargo determination, is that right?</b></p> <p>10 <b>A. You know, I'm not sure. I just know that on</b></p> <p>11 <b>our computer we have a process that allows us to open</b></p> <p>12 <b>accounts, and before you choose the products and</b></p> <p>13 <b>services there's an initial risk screening process that</b></p> <p>14 <b>instructs the banker to either continue or not.</b></p> <p>15 <b>Q. Okay.</b></p> <p>16 <b>A. And that's really all that I know.</b></p> <p>17 <b>Q. So as of November the 2nd, 2011, you had</b></p> <p>18 <b>apologized to Mr. Kaplan concerning certain things</b></p> <p>19 <b>orally, is that right?</b></p> <p>20 <b>A. Yes.</b></p> <p>21 <b>Q. And you promised Mr. Kaplan that you would</b></p> <p>22 <b>send him a written apology, correct?</b></p> <p>23 <b>A. He wanted one and I told him I would get one</b></p> <p>24 <b>for him.</b></p> <p>25 <b>Q. And you had conducted this initial screening</b></p>	<p style="text-align: right;">68</p> <p>1 <b>A. All e-mail communication I believe was with</b></p> <p>2 <b>Michael Kaplan.</b></p> <p>3 <b>Q. Okay. So, anyway, on November the 2nd, 2011,</b></p> <p>4 <b>at 5:24 p.m., you wrote to Mr. Kaplan: The red flags</b></p> <p>5 <b>were on those specific accounts. That is why they</b></p> <p>6 <b>cannot be reopened. I can make sure that we compensate</b></p> <p>7 <b>any fees for new checks and move forward with new</b></p> <p>8 <b>account numbers. Can I call you now?</b></p> <p>9 <b>Did I read that correctly?</b></p> <p>10 <b>A. Except you forgot that part, "red flags" is in</b></p> <p>11 <b>quotes.</b></p> <p>12 <b>Q. Okay. So let me read it again. The, quote,</b></p> <p>13 <b>red flags, end quote, were on those specific accounts.</b></p> <p>14 <b>That's the first sentence of the e-mail --</b></p> <p>15 <b>A. Correct.</b></p> <p>16 <b>Q. -- that you sent to Mr. Kaplan on November</b></p> <p>17 <b>the 2nd, on or about -- or at or about 5:24 p.m.,</b></p> <p>18 <b>correct?</b></p> <p>19 <b>A. Correct.</b></p> <p>20 <b>Q. Okay. What red flags are we referring to?</b></p> <p>21 <b>A. I was referring -- if you look lower, at the</b></p> <p>22 <b>e-mail he sent me at 4:18 p.m., my e-mail was sent at</b></p> <p>23 <b>5:24 p.m., in response to that e-mail Michael Kaplan</b></p> <p>24 <b>mentions: "It's important to maintain the same account</b></p> <p>25 <b>numbers to show that Lisa was not in any kind of error</b></p>

69

1 with Wells Fargo. To make sure there is no red flag on  
2 her account." I was referring to him using that term  
3 "red flag."

4 Q. Well, were there any red flags on those  
5 accounts?

6 A. I can't say for sure.

7 What do you mean?

8 What do you mean by that question?

9 Q. Why couldn't those original accounts be  
10 reopened as of October -- November the 2nd, 2011?

11 A. Like I said, the accounts were closed.

12 I don't have the capacity to open new accounts.

13 I'm sorry, I don't have the capacity -- I'm sorry,  
14 that -- I said that wrong. I don't have the capacity  
15 to reopen closed accounts.

16 Q. Okay. But you understood that you could open  
17 new accounts?

18 A. I could open new accounts, yes.

19 Q. Okay. And when you refer to red flags on  
20 those specific accounts, you had nothing specific in  
21 mind about there being a red flag in existence on these  
22 specific accounts?

23 A. No. I was simply using his language here in  
24 the last e-mail to keep it in line with, you know, him  
25 and what he was talking about.

70

1 Q. Okay. Now, referring your attention to the  
2 first page of this exhibit, Exhibit 3, Lisa J. 0011 --

3 A. Okay.

4 Q. -- the top half of this page, again it looks  
5 like it's an e-mail from you to Michael Kaplan on or  
6 about November the 3rd, 2011.

7 Do you see that?

8 A. Yeah.

9 Q. And the paragraph from you to Mr. Kaplan says:  
10 I checked up on the account profile and essentially you  
11 may walk into any branch of Wells Fargo Bank and reopen  
12 new accounts. I'm willing to do this for you through  
13 our bank -- branch here in Malibu as well. There are no  
14 issues from our end here at our branch in Malibu, please  
15 let me know if you encounter any. Thank you.

16 A. Correct.

17 Q. Did I read that correctly?

18 A. Yes, sir.

19 Q. Didn't leave out any in quotes?

20 A. No, sir.

21 Q. When you wrote that to Mr. Kaplan, you were  
22 referring to Mr. Kaplan and Ms. Johnson in terms of  
23 opening new accounts, weren't you?

24 A. Yes.

25 Q. So at least as of November the 3rd, 2011, you

71

1 believed that there was nothing prohibiting Wells Fargo  
2 opening new accounts from Mr. Kaplan or Ms. Johnson, is  
3 that right?

4 A. Correct.

5 MR. KISTLER: Let's take about a five-minute  
6 break at this point.

7 (Recess taken.)

8 MR. KISTLER: All right. Back on the record.

9 Q. BY MR. KISTLER: Mr. Dounel, you've now  
10 testified about certain events that occurred in  
11 October 2011 up through I think November the 3rd, 2011.  
12 That was the last e-mail entry that we discussed.

13 A. Yes.

14 Q. Okay. During that period of time,  
15 October 2011 through November the 3rd, 2011, were you  
16 discussing these events with anyone at the bank?

17 A. I don't recall other than my manager, probably  
18 the manager.

19 Q. Okay. And who was your manager at that period  
20 of time?

21 A. Jerry Galloway.

22 Q. Jerry Galloway?

23 A. Yeah.

24 Q. All right. So your best recollection is that  
25 you did discuss these events with Mr. Galloway from

72

1 whenever your first meeting was with Mr. Kaplan in  
2 October 2011 at least up to and through November 3,  
3 2011?

4 A. Yeah, briefly.

5 Q. Okay. What do you recall about those  
6 discussions?

7 A. You know, I had that letter that he wanted.  
8 He wanted me to send him a letter.

9 Q. That Mr. Kaplan wanted, that you promised you  
10 would send to him?

11 A. Yeah. So I discussed that, for example.

12 Q. Okay. You discussed that with your manager,  
13 Mr. Galloway?

14 A. Yes.

15 Q. And you had that discussion with Mr. Galloway  
16 before November the 3rd?

17 A. I'm not sure.

18 Q. Do you think that you did talk with  
19 Mr. Galloway about these events, i.e., from the first  
20 meeting with Mr. Kaplan in October 2011 up through  
21 November 3, 2011, do you think that you discussed these  
22 events with Mr. Galloway?

23 A. Yes.

24 Q. Okay, all right.

25 One question just to catch up from the -- from



<p style="text-align: right;">73</p> <p>1 an earlier question, you told us that you haven't been</p> <p>2 on medical leave from Wells Fargo during, say, the</p> <p>3 six-month period of time prior to today's date, is that</p> <p>4 right?</p> <p>5 MR. FITTS: I'm going to object and I'll just</p> <p>6 object as to form.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: Prior to today's date is what</p> <p>9 I said "no" to. I returned from leave earlier this</p> <p>10 month, so.</p> <p>11 Q. BY MR. KISTLER: Okay. But that wasn't</p> <p>12 medical leave, correct?</p> <p>13 A. That was medical leave.</p> <p>14 Q. It was medical leave?</p> <p>15 A. Yes, sir.</p> <p>16 Q. All right. When were you on -- what was the</p> <p>17 period of time that you were on medical leave?</p> <p>18 A. It was about six months.</p> <p>19 Q. Okay. It started when and ended when?</p> <p>20 A. It ended around the beginning of October,</p> <p>21 right around that time, and then six months prior, so.</p> <p>22 Q. Okay. And during the period of time that you</p> <p>23 were on medical leave, were you inside the</p> <p>24 United States?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">75</p> <p>1 Q. BY MR. KISTLER: Well, I mean were you in that</p> <p>2 area?</p> <p>3 Did you basically stay at home during that</p> <p>4 period of time?</p> <p>5 A. I didn't stay at home for six months. I went</p> <p>6 out of the house and did things.</p> <p>7 Q. Okay. But you didn't travel, say, to New York</p> <p>8 or Philadelphia or London or anything like that, did</p> <p>9 you?</p> <p>10 A. Unfortunately not.</p> <p>11 Q. Okay.</p> <p>12 A. I had -- you know, I had to be involved with</p> <p>13 physicians and this and that, so.</p> <p>14 Q. I understand. But that was based out of your</p> <p>15 home, is that right?</p> <p>16 A. It was --</p> <p>17 MR. FITTS: Objection, form.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: I'd say home, if you want to</p> <p>20 call "home" County of Los Angeles, correct.</p> <p>21 Q. BY MR. KISTLER: Fair enough.</p> <p>22 MR. KISTLER: If you could mark this as the</p> <p>23 next in line, which is 4.</p> <p>24 (Plaintiff's Exhibit 4 marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">74</p> <p>1 Q. Okay. Were you available by telephone?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Was the medical leave that you were on, was</p> <p>4 that based on a life-threatening problem?</p> <p>5 MR. FITTS: I'm going to object. That's</p> <p>6 privileged information.</p> <p>7 Q. BY MR. KISTLER: You can still answer unless</p> <p>8 your counsel instructs you not to.</p> <p>9 A. Privilege.</p> <p>10 MR. FITTS: You have a privilege -- privilege</p> <p>11 to your medical information, and so unless you want to</p> <p>12 waive that you -- I'm telling you as your attorney that</p> <p>13 you don't have to disclose the medical reasons for your</p> <p>14 leave.</p> <p>15 THE WITNESS: Yeah, I understand and</p> <p>16 I completely agree, it's privileged and I don't want to</p> <p>17 talk about it.</p> <p>18 Q. BY MR. KISTLER: Okay. But you were available</p> <p>19 by telephone in that period of time?</p> <p>20 A. I was.</p> <p>21 Q. And you were in the country?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Were you at home?</p> <p>24 A. What do you mean, for six months?</p> <p>25 MR. FITTS: Objection, form.</p>	<p style="text-align: right;">76</p> <p>1 MR. KISTLER: We're done with those and</p> <p>2 Ms. Court Reporter here keeps everything that has a</p> <p>3 sticker on it.</p> <p>4 THE WITNESS: There you go.</p> <p>5 THE REPORTER: Thank you.</p> <p>6 THE WITNESS: Did you say your name is Joseph</p> <p>7 or Sam?</p> <p>8 Q. BY MR. KISTLER: My first name is Joseph.</p> <p>9 My middle name is Sidney. I go by Sid.</p> <p>10 A. Oh, you go by Sid. Okay, cool.</p> <p>11 Q. Exhibit 4 is a two-page exhibit, consisting of</p> <p>12 Lisa J. 0045 and 0044.</p> <p>13 Looking at the second page of the document</p> <p>14 of this exhibit, 0044, at the bottom of the page,</p> <p>15 the bottom half, bottom third, we see an e-mail from</p> <p>16 Mr. Kaplan to you dated November the 10th, 2011 at about</p> <p>17 9:52 a.m.</p> <p>18 A. You're looking at 44?</p> <p>19 Q. Yeah, the second page of the exhibit, the</p> <p>20 bottom half of the second page.</p> <p>21 A. Yes, sir.</p> <p>22 Q. It's Bates number 0044.</p> <p>23 A. Correct.</p> <p>24 Q. Do you see that?</p> <p>25 A. Yes, sir.</p>

77

1 Q. And we have an e-mail from Mr. Kaplan dated  
2 November the 10th, 2011 at about 9:52 a.m. to you.

3 Do you recall receiving this e-mail from  
4 Mr. Kaplan?

5 A. Yes, sir.

6 Q. And in that e-mail Mr. Kaplan informs you that  
7 he went to the Wells Fargo branch at Sahara and --  
8 Rainbow and Sahara and they refused to allow me, him,  
9 to open the accounts. Please advise as to what's going  
10 on with this matter.

11 Did I read that more or less correctly?

12 A. Correct.

13 Q. And you recall receiving that e-mail?

14 A. Yes.

15 Q. And you responded given in the second -- top  
16 half of the page 0044, saying that you needed to ask for  
17 more details. I can either call you or you may call my  
18 office. And you give numbers.

19 Did I more or less synopsise what your  
20 response to Mr. Kaplan was?

21 A. Correct.

22 Q. Now we're at November the 10th, 2011.

23 Had you consulted with anyone other than  
24 Mr. Galloway concerning this matter as of that date?

25 A. I can't recall.

78

1 Q. The first page of this exhibit, Exhibit 4,  
2 that's Lisa J. 0045, the bottom half of the page states,  
3 from Mr. Kaplan to you on November 30, 2011, at  
4 4:48 p.m.: "I still haven't received the letter you  
5 promised."

6 Did I read that correctly?

7 A. Correct.

8 Q. Okay. Do you recall receiving that e-mail?

9 A. Correct.

10 Q. Your response is given in the top half of the  
11 first page of Exhibit 4 and it reads as follows: "Hello  
12 Mr. Kaplan, I regret to inform you that I have sent the  
13 letter to my management and our legal department cannot  
14 allow me to send an official letter of apology. I hope  
15 the apology I have given you thus far verbally can  
16 suffice and that in the future we can help you meet all  
17 of your financial needs as a bank branch and a financial  
18 institution. Sincerely," with your signature,  
19 identifying information.

20 A. Correct.

21 Q. Did I read that correctly?

22 A. Yes, sir.

23 Q. Did you recall sending that e-mail to  
24 Mr. Kaplan?

25 A. Yes, sir.

79

1 Q. So after you prepared this letter that you  
2 promised Mr. Kaplan, what did you do with it?

3 A. After I prepared the letter that I promised  
4 Mr. Kaplan? I drafted a letter and showed it to Jerry.

5 Q. Mr. Galloway?

6 A. Yes, sir.

7 And his response was that we can't do this.  
8 And I had -- I had prepared this e-mail for Mr. Kaplan  
9 and that was about all I recall from that event.

10 Q. Okay. Was that the first time you consulted  
11 with Mr. Galloway concerning sending an apology letter  
12 to Mr. Kaplan?

13 A. Yes, sir.

14 Q. When you say you regret to inform -- "I regret  
15 to inform you that I have sent the letter to my  
16 management and our legal department cannot allow me to  
17 send an official letter of apology."

18 When you say "I have sent the letter to my  
19 management," are you referring to Mr. Galloway?

20 A. Yes, sir.

21 Q. Was there anyone else that you sent it to?

22 A. No, sir.

23 Q. When you state "and our legal department  
24 cannot allow me to send an official letter of apology,"  
25 that wasn't based on anyone from the legal department

80

1 contacting you, is that right?

2 A. No, sir.

3 Q. Is that what Mr. Galloway told you?

4 A. That's Mr. Galloway's department. That was --  
5 that was his idea of how to tell Mr. Kaplan we're not  
6 going to send the letter.

7 Q. Do you know if, in fact, Wells Fargo's legal  
8 department said that you could not send the letter --

9 A. I do not.

10 Q. -- to Mr. Kaplan?

11 A. I'm not sure about that.

12 Q. So are you telling me that this phraseology  
13 "and our legal department cannot allow me to send an  
14 official letter of apology," that that's language that  
15 Mr. Galloway came up with?

16 A. I don't recall.

17 Q. Okay. Is -- do you know whether or not that  
18 language is true?

19 A. No.

20 Q. Did Mr. Galloway help you in preparing this  
21 response, the first -- the top half of the first page of  
22 Exhibit 4 that's Bates --

23 A. I can't say for sure.

24 Q. -- Lisa J. 0045?

25 A. I -- I can't say for sure. I was -- it was

<p style="text-align: right;">81</p> <p>1 a year ago, thousands of interactions like this have</p> <p>2 happened, so I can't say for sure that -- what happened</p> <p>3 with me -- me and Galloway with this response.</p> <p>4 Q. Is this Exhibit 4 one of the documents that</p> <p>5 Mr. Fitts showed you in your three-hour meeting with him</p> <p>6 yesterday?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. And by showing you this document,</p> <p>9 that didn't help refresh your recollection as to these</p> <p>10 events?</p> <p>11 A. No.</p> <p>12 Q. Let me ask you this. After meeting with</p> <p>13 Mr. Fitts yesterday for three hours, was your</p> <p>14 recollection refreshed in any way concerning your</p> <p>15 testimony here today?</p> <p>16 A. You know, I can't gauge that. I can't say</p> <p>17 my recollection was one out of ten here and then now</p> <p>18 it's one out of ten here. I can't say for sure.</p> <p>19 Q. When was the last time that you looked at any</p> <p>20 documents concerning this matter prior to yesterday?</p> <p>21 A. Excuse me. I was drinking again.</p> <p>22 Q. When was the last time that you looked,</p> <p>23 reviewed any documents concerning this matter prior to</p> <p>24 yesterday?</p> <p>25 A. Prior to yesterday.</p>	<p style="text-align: right;">83</p> <p>1 so I have no idea.</p> <p>2 Q. Okay. Well, what -- what did you do with the</p> <p>3 letter?</p> <p>4 A. I don't even -- like I say, I don't know --</p> <p>5 I don't know.</p> <p>6 Q. Do you recall whether or not you showed</p> <p>7 Mr. Galloway the actual letter or you just spoke with</p> <p>8 him concerning the contents of the letter?</p> <p>9 A. You know, I can't say for sure about that</p> <p>10 either.</p> <p>11 Q. Do you recall destroying the letter?</p> <p>12 A. No.</p> <p>13 Q. Have you searched for the letter since</p> <p>14 November 2011?</p> <p>15 A. No.</p> <p>16 Q. Have you been asked to do so?</p> <p>17 A. No.</p> <p>18 (Plaintiff's Exhibit 5 marked for</p> <p>19 identification.)</p> <p>20 Q. BY MR. KISTLER: Now, Exhibit 5 is a six-page</p> <p>21 exhibit, consisting of Bates numbers Lisa J. 0048</p> <p>22 through Lisa J. 0053.</p> <p>23 A. Correct.</p> <p>24 Q. And this appears to be an e-mail chain by and</p> <p>25 between Mr. Kaplan and certain Wells Fargo individuals.</p>
<p style="text-align: right;">82</p> <p>1 This specific exhibit?</p> <p>2 Q. The documents that Mr. Fitts showed you.</p> <p>3 A. I had -- I had been given documents to review</p> <p>4 before I met with Mr. Fitts. I'm not sure what</p> <p>5 specifics. However, those were faxed to my attention.</p> <p>6 Q. Okay. And when did that event occur?</p> <p>7 A. Within this month, within October.</p> <p>8 Q. Okay. So your testimony is that someone faxed</p> <p>9 some documents to you for your review within the last</p> <p>10 month?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. Do you know the source of that fax?</p> <p>13 A. The offices of Mr. Fitts, the attorney.</p> <p>14 Q. The letter that you prepared for Mr. Kaplan</p> <p>15 that you never sent because Mr. Galloway told you that</p> <p>16 management and the -- and the bank's legal department</p> <p>17 cannot allow you to send such a letter, did you prepare</p> <p>18 that letter on your computer?</p> <p>19 A. I'm not sure. I've been actually thinking</p> <p>20 about whether it was in the computer or whether I wrote</p> <p>21 it by hand. I'm not really sure.</p> <p>22 Q. Do you still have a copy of the letter?</p> <p>23 A. No.</p> <p>24 Q. What happened to it?</p> <p>25 A. I'm not sure but we weren't going to send it</p>	<p style="text-align: right;">84</p> <p>1 A. Correct.</p> <p>2 Q. Now, I notice that you're not shown on any</p> <p>3 of the e-mails as either being the sender, the receiver,</p> <p>4 or as being copied on these e-mails.</p> <p>5 A. Correct.</p> <p>6 Q. Do you recall seeing these e-mails at any</p> <p>7 point in time?</p> <p>8 A. No.</p> <p>9 Q. Was this -- were these e-mails shown to you</p> <p>10 yesterday?</p> <p>11 A. No.</p> <p>12 Q. The e-mails appear to be from a Mr. Andrew M.</p> <p>13 Noll to Mr. Kaplan, to and from each other, copied to</p> <p>14 Mr. Chad Maze, M-a-z-e.</p> <p>15 A. What page are you looking at?</p> <p>16 Q. I'm looking at the last page of the exhibit,</p> <p>17 for example.</p> <p>18 A. On that page, let's see, yes, they do.</p> <p>19 Q. Okay. And the rest of the e-mails are either</p> <p>20 sent by Mr. Kaplan to Mr. Maze and Mr. Noll or from</p> <p>21 Mr. Maze or Mr. Noll to Mr. Kaplan, is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Do you know who Mr. Maze is?</p> <p>24 A. No, sir.</p> <p>25 Q. Do you know who Mr. Noll is?</p>

85

1 **A. No, sir.**  
 2 **Q.** Do you know how they got involved in this  
 3 matter?  
 4 **A. No.**  
 5 **Q.** Did there come a point in time where you were  
 6 told not to communicate with Mr. Kaplan any longer?  
 7 **A. I don't recall.**  
 8 **Q.** Okay. When was the last communication you had  
 9 with Mr. Kaplan?  
 10 **A. It should be right around the time of these**  
 11 **e-mails that you showed in the last exhibit with me and**  
 12 **him.**  
 13 **Q.** Okay. Well, the e-mails of Exhibit 5 are  
 14 dated on or -- well, are dated on November the 16th,  
 15 2011.  
 16 **A. Yeah. I don't have an exact date for you.**  
 17 **I would say right around that time was when I last spoke**  
 18 **with him.**  
 19 **Q.** Okay. And how did that come about, i.e., how  
 20 did it come about that you no longer communicated with  
 21 Mr. Kaplan and others at the bank did?  
 22 **A. I'm not sure.**  
 23 **Q.** You don't recall?  
 24 **A. I'm not sure how others ended up speaking with**  
 25 **him.**

86

1 **Q.** How did it come about that you no longer  
 2 communicated with Mr. Kaplan?  
 3 **A. You know, a two-way street. If he doesn't**  
 4 **communicate with me, we don't communicate.**  
 5 **Q.** So your testimony is the reason you stopped  
 6 communicating with Mr. Kaplan is because he stopped  
 7 sending e-mails to you?  
 8 **A. Again, I'm going back to guessing so I'm going**  
 9 **to say I'm not sure.**  
 10 **Q.** Okay. But you have no recollection of anyone  
 11 for or on behalf of Wells Fargo telling you to stop your  
 12 communication with Mr. Kaplan?  
 13 **A. I am not sure of that either.**  
 14 **Q.** Could that have happened?  
 15 **A. Could that have happened?**  
 16 **Q.** Yes.  
 17 **A. It could.**  
 18 **Q.** Okay. So you have no recollection one way or  
 19 the other as to whether that did happen, is that right?  
 20 **A. No, I don't.**  
 21 **Q.** Do you have any other e-mails to or from  
 22 Mr. Kaplan that we haven't reviewed here today?  
 23 **A. Do I have any other e-mails to or from**  
 24 **Mr. Kaplan that we haven't reviewed here today, is that**  
 25 **what you're asking?**

87

1 **Q.** That's what I'm asking.  
 2 **A. No.**  
 3 **Q.** Okay. You don't recall sending Mr. Kaplan  
 4 any other e-mails concerning any other matters other  
 5 than what we've discussed in Exhibits 2 through 4?  
 6 **A. No.**  
 7 **Q.** Is that right?  
 8 **A. That's correct.**  
 9 **Q.** Okay. You haven't searched your computer for  
 10 any e-mails?  
 11 **A. No, sir.**  
 12 **Q.** Did you prepare any documents or any summaries  
 13 for bank use regarding this matter?  
 14 **A. Did I prepare any documents or summaries?**  
 15 **I'm not sure.**  
 16 **Q.** For example, did Mr. Galloway say, hey, why  
 17 don't you just write down a memo as to what happened  
 18 here?  
 19 **A. I wouldn't be able to tell you.**  
 20 **Q.** You don't recall whether or not that ever  
 21 happened?  
 22 **A. I don't recall.**  
 23 **Q.** Could it have happened?  
 24 **A. Definitely possible.**  
 25 **Q.** Okay. But you don't -- do you recall anyone

88

1 on behalf of the bank asking you to prepare any kind of  
 2 a summary, memo, or anything else regarding these  
 3 events?  
 4 **A. I don't. Regularly we do, you know, interact**  
 5 **with clients and put down what we -- our interactions**  
 6 **were so we can refer back to them, so we can deal with**  
 7 **them, so.**  
 8 **Q.** Isn't it a form that you would usually fill  
 9 out whenever you had a -- whenever you had a client or  
 10 account holder contact?  
 11 **A. Is there a form? I don't understand the**  
 12 **nature of -- what is -- rephrase it.**  
 13 **Q.** Is there a method that you used to record the  
 14 date, time, individual, and substance of conversations  
 15 that you had with clients?  
 16 **A. I would normally get a paper and pad that**  
 17 **I daily speak to clients, I would put my own notes on**  
 18 **as to what happened.**  
 19 **Q.** And what did you do with those notes?  
 20 **A. I keep the notes for about a month, I refer**  
 21 **back to them, maybe two months depending on the client.**  
 22 **Some clients are, you know -- they need more time before**  
 23 **I would be able to go into more discussions of different**  
 24 **things, so a lot of times the notebook after a month or**  
 25 **two months, I just would either tear out the pages,**

<p style="text-align: right;">89</p> <p>1 continue, or throw away the notebook if it's full, you</p> <p>2 know, and get a new one.</p> <p>3 Q. Okay. Do you recall doing that in this case,</p> <p>4 i.e., recording the conversations that you had with</p> <p>5 Mr. Kaplan in your notebook?</p> <p>6 A. No. I would just take notes as I'm talking or</p> <p>7 afterwards put down, jot down some notes to remind me.</p> <p>8 It's not recorded.</p> <p>9 Q. Okay. You don't recall doing that</p> <p>10 specifically regarding Mr. Kaplan?</p> <p>11 A. No.</p> <p>12 Q. But it was your custom and practice to do so</p> <p>13 at that time, i.e., October, November of 2011?</p> <p>14 A. Yes. Kind of like you guys. Attorneys take</p> <p>15 notes.</p> <p>16 Q. Have you looked for any notes regarding this</p> <p>17 case?</p> <p>18 A. No.</p> <p>19 Q. Have you been asked to do so?</p> <p>20 A. No, sir.</p> <p>21 Q. Have you ever had any conversations with</p> <p>22 Mr. Maze or Mr. Noll regarding these matters?</p> <p>23 A. No.</p> <p>24 Q. And I'm referring to the same Mr. Maze and</p> <p>25 Mr. Noll as reflected on Exhibit 5.</p>	<p style="text-align: right;">91</p> <p>1 When did you speak with Ms. Stockman?</p> <p>2 A. This morning.</p> <p>3 Q. Okay. Was that the first time you've spoken</p> <p>4 with her?</p> <p>5 A. I just met her.</p> <p>6 Q. Okay. Any other -- any other employee of the</p> <p>7 bank that you've discussed this with?</p> <p>8 A. I haven't discussed this with any other</p> <p>9 employees. I'd had -- at my own branch it was Galloway</p> <p>10 but I can't say for sure if other employees were present</p> <p>11 or not and -- and who they were.</p> <p>12 Q. Okay.</p> <p>13 MR. KISTLER: Okay. Could you mark this next</p> <p>14 in line. This'll be Exhibit 6.</p> <p>15 (Plaintiff's Exhibit 6 marked for</p> <p>16 identification.)</p> <p>17 Q. BY MR. KISTLER: Mr. Dounel, I'm showing you</p> <p>18 what's been marked as Exhibit 6, which is Defendant</p> <p>19 Wells Fargo Bank N.A.'s Supplemental Answer to</p> <p>20 Plaintiff's Interrogatory No. 12. That's the title on</p> <p>21 the first page. And this document -- this exhibit is a</p> <p>22 five-page document.</p> <p>23 A. Right.</p> <p>24 Q. Now, Mr. Dounel, the third page of this</p> <p>25 document shows it dated October 19, 2012.</p>
<p style="text-align: right;">90</p> <p>1 A. No.</p> <p>2 Q. That's the way you understood my question,</p> <p>3 right?</p> <p>4 I was referring to these guys --</p> <p>5 A. Correct.</p> <p>6 Q. -- in this exhibit.</p> <p>7 A. I don't know them. Never spoken to them.</p> <p>8 Q. Who at the bank have you had discussions with</p> <p>9 concerning the matters in this case?</p> <p>10 A. I would --</p> <p>11 Q. You had Mr. Galloway?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay.</p> <p>14 A. That's it.</p> <p>15 Q. You talked to Mr. Fitts. We've established</p> <p>16 that.</p> <p>17 A. You said with the bank, though.</p> <p>18 Q. That's right.</p> <p>19 Anyone else with the bank that you've talked</p> <p>20 to about this?</p> <p>21 A. Her over there. She's with the bank.</p> <p>22 Q. Okay. And you were referring to Ms. --</p> <p>23 MS. STOCKMAN: Stockman.</p> <p>24 Q. BY MR. KISTLER: -- Stockman that's present</p> <p>25 here in the deposition room.</p>	<p style="text-align: right;">92</p> <p>1 A. Yes.</p> <p>2 Q. Do you see that? The third page of --</p> <p>3 A. Third page, dated October 19, 2012, correct.</p> <p>4 Q. The third page of this document is dated</p> <p>5 October 19, 2012.</p> <p>6 Did anyone consult with you concerning this</p> <p>7 Interrogatory on or prior to October 19, 2012?</p> <p>8 A. Mr. Fitts.</p> <p>9 Q. Mr. Fitts did.</p> <p>10 Now, the interrogatory states about halfway</p> <p>11 down on the second page: Please explain in full detail</p> <p>12 the contents of "the apology that [Arash Dounel has]</p> <p>13 given [Michael Kaplan]" -- those two names with the</p> <p>14 halves are in brackets, Mr. Kaplan's name is in</p> <p>15 brackets -- "thus far verbally" regarding Wells Fargo's</p> <p>16 closure of the accounts referenced in Interrogatory</p> <p>17 No. 1. For reference purposes, please see Lisa J. 005.</p> <p>18 Did I read that more or less correctly?</p> <p>19 A. 0045.</p> <p>20 Q. 0045, yes.</p> <p>21 Did I read that more or less correctly?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Now, you would be the individual that would</p> <p>24 have knowledge concerning the contents of the apology</p> <p>25 that you gave Mr. Kaplan verbally --</p>

93

1 **A. Correct.**

2 **Q.** -- wouldn't you?

3 Would there be anyone else at the bank, to  
4 your knowledge, that would have that information?

5 **A. No.**

6 **Q.** So you would have all of that information, is  
7 that right?

8 **A. The one with the apology.**

9 **Q.** Okay. Referring your attention to the  
10 next-to-the-last page of this exhibit, Verification of  
11 Defendant Wells Fargo Bank's Supplemental Answer to  
12 Plaintiff's Interrogatory No. 12, it appears to be a  
13 statement signed by Ms. Stockman on or about October  
14 the 19th, 2012.

15 **A. Correct.**

16 **Q.** And the statement says: "Raelynn Stockman,  
17 being first duly sworn, deposes and states that I am a  
18 Vice President and Regional Services Manager with Wells  
19 Fargo Bank, N.A. The foregoing Answer contains the  
20 phraseology of counsel, and since the interrogatories  
21 are directed to a corporation, this Answer does not  
22 constitute, nor are the same derived from, the personal  
23 knowledge of any single individual, and they include  
24 record information, knowledge obtained that cannot be  
25 attributed to specific individuals, recollections of

94

1 employees and former employees, and my own personal  
2 general knowledge. I have read the foregoing Answer,  
3 and, to the best of my knowledge, I am informed and  
4 believe the same to be true."

5 Did I read that correctly?

6 **A. Correct.**

7 **Q.** Okay. Well, I mean there really is one person  
8 that can tell us at Wells Fargo what -- the contents of  
9 the apology that Arash Dounel gave Michael Kaplan  
10 verbally.

11 **A. Correct.**

12 **Q.** There is a person, that's you?

13 **A. Yeah.**

14 **Q.** Did you have discussions with Ms. Stockman  
15 prior to October 19, 2012 regarding the contents of the  
16 apology that you gave Mr. Kaplan verbally?

17 **A. No.**

18 **Q.** When Ms. Stockman swears under oath that this  
19 concerns information and knowledge obtained that cannot  
20 be attributed to specific individuals, do you know what  
21 she's talking about there?

22 MR. FITTS: Objection, form, foundation.

23 **Q.** BY MR. KISTLER: Do you know what she's  
24 talking about?

25 **A. No.**

95

1 **Q.** In fact, there is a specific individual that  
2 can tell us the answer to that and that was you?

3 **A. Correct.**

4 MR. KISTLER: If you can mark this next in  
5 order, please.

6 (Plaintiff's Exhibit 7 marked for  
7 identification.)

8 **Q.** BY MR. KISTLER: Mr. Dounel, if you could  
9 review this document.

10 **A. Okay. Wait. I'm done.**

11 **Q.** Exhibit 7 is Wells Fargo Bank, N.A.'s  
12 Supplemental Responses to Plaintiff's Requests for  
13 Admissions Nos. 2-9.

14 **A. Okay.**

15 **Q.** And the last page is dated October the 19th,  
16 2012.

17 Do you see that?

18 **A. I do.**

19 **Q.** Okay. Have you ever seen this document  
20 before?

21 **A. Can't say that I have.**

22 **Q.** Okay. Was this a document that was shown to  
23 you yesterday in the three-hour meeting you had with  
24 Mr. Fitts?

25 **A. I'm not sure. There's a lot of them that look**

96

1 like this.

2 **Q.** Mr. Fitts showed you a lot of pleadings?

3 **A. Are these what these are called with the  
4 numbers on the right -- or left?**

5 **Q.** Yes.

6 **A. Yeah, I've seen some documents that look like  
7 this but I don't know if it's this.**

8 **Q.** Okay. Do you recall discussing the contents  
9 of this document with Mr. Fitts prior to October the  
10 12th, 2012?

11 MR. FITTS: I'm going to object.

12 **Q.** BY MR. KISTLER: October the 19th, 2012?

13 MR. FITTS: I'm going to object to the extent  
14 it calls for attorney/client privileged communications.

15 **Q.** BY MR. KISTLER: You can still answer the  
16 question.

17 **A. I don't recall.**

18 **Q.** You don't recall whether or not you ever  
19 discussed the -- the subject matter -- strike that.

20 Do you recall discussing the subject matter  
21 addressed in this document with Mr. Fitts prior to  
22 October --

23 **A. The subject matter --**

24 **Q.** -- 19th, 2012?

25 **A. The subject matter I have, but the actual**

1 document, I'm not specifically recalling talking.  
 2 Q. Okay. And when do you recall discussing the  
 3 subject matter of -- addressed in this document prior to  
 4 October 19th, 2012?  
 5 A. Just to make it clear, the subject matter  
 6 is -- to me this looks like, you know, responses, is  
 7 that what it says, is that Wells Fargo? I don't know  
 8 what this is.  
 9 But it looks like to me when I mean subject  
 10 matter, I mean just the events that have transpired  
 11 between me and him, with Kaplan and this -- this whole  
 12 thing.  
 13 Q. And October the 19th is last Friday?  
 14 A. It was last Friday.  
 15 Q. Last Friday.  
 16 And your testimony is you recall discussing  
 17 the subject matter that is addressed in this document,  
 18 the conversations you had and the promises about letters  
 19 and things that you made to Mr. Kaplan prior to the date  
 20 of this?  
 21 MR. FITTS: I'm going to object, form and  
 22 foundation.  
 23 Q. BY MR. KISTLER: Prior to the date of this  
 24 document, October 19th, 2012?  
 25 A. I was available by phone for Mr. Fitts and

1 have discussed the subject matter of the case with him.  
 2 Q. Okay. And when did that occur?  
 3 A. A few times or a little bit more than a few  
 4 times in this month, in or around October.  
 5 Q. You told us that you got off of medical leave  
 6 about three weeks ago?  
 7 A. Yeah, beginning of October.  
 8 Q. Okay. Is it fair to say that you never talked  
 9 with Mr. Fitts about this case until after that event  
 10 occurred?  
 11 A. No, I did also speak with Mr. Fitts. We had  
 12 phone conversations about --  
 13 MR. FITTS: I'm going to object and instruct  
 14 you not to disclose the contents of any attorney/client  
 15 privileged information.  
 16 THE WITNESS: Right. We had had -- we had  
 17 spoken on the phone and -- to introduce himself about  
 18 who he was and his capacity and that I would be -- when  
 19 I get back from leave we'd be able to work on why he's  
 20 been I guess retained to this case.  
 21 Q. BY MR. KISTLER: Okay. And that's what you  
 22 recall of that conversation?  
 23 A. Yeah. No specifics, just --  
 24 Q. No specifics?  
 25 A. Yeah, just basically, hey, when you get back

1 we're going to -- we have some stuff to talk about.  
 2 Q. Okay. And when did that conversation occur?  
 3 A. You know, I can't say for sure but I mean  
 4 during my leave. I'd say during my leave.  
 5 Q. All right. And can you give us your best  
 6 well-reasoned estimate of when that occurred?  
 7 A. No.  
 8 Q. Was it a month before your leave was  
 9 completed?  
 10 A. Within the six months.  
 11 Q. Sometime within the six-month period of time?  
 12 A. Yeah.  
 13 Q. Was it towards the end of the six-month period  
 14 of time or towards the beginning?  
 15 Do you recall?  
 16 A. I don't have -- I don't have that -- I don't  
 17 have that in front of me. I don't have that -- I didn't  
 18 jot it down or take notes. I don't know.  
 19 Q. Okay. At the time that you had that  
 20 conversation with Mr. Fitts, was there any -- any  
 21 reason why you couldn't talk with Mr. Fitts about the  
 22 allegations made in this lawsuit?  
 23 MR. FITTS: I'm going to object. That calls  
 24 for privileged medical information.  
 25 And you're not required to disclose any

1 medical information. You have a privilege with respect  
 2 to that. You can waive it if you want. But you have a  
 3 privilege and you don't have to answer that question.  
 4 THE WITNESS: Right.  
 5 For the reason he's actually saying.  
 6 I actually told Mr. Fitts --  
 7 MR. FITTS: Wait a minute. I'm going to  
 8 instruct the witness not to disclose attorney/client  
 9 privileged communications --  
 10 THE WITNESS: Okay.  
 11 MR. FITTS: -- between -- with legal counsel.  
 12 Q. BY MR. KISTLER: When you talked with  
 13 Mr. Fitts while you were on medical leave, why didn't  
 14 you discuss this lawsuit?  
 15 MR. FITTS: I'm going to object again to the  
 16 extent that it calls for privileged medical information.  
 17 THE WITNESS: I was on leave and I was  
 18 focusing on me.  
 19 Q. BY MR. KISTLER: Okay. So you didn't want to  
 20 talk to him about it at that time, is that fair to say?  
 21 A. I was focused on what my -- becoming healthy  
 22 and it couldn't serve me to address it.  
 23 Q. Now, Mr. Dounel, if you could refer your  
 24 attention to the third page of this document.  
 25 A. They're not numbered but I'm guessing just the

<p style="text-align: right;">101</p> <p>1 third piece of paper.</p> <p>2 Q. The third piece of paper --</p> <p>3 A. Right.</p> <p>4 Q. -- would be the third page.</p> <p>5 About a third of the way down on the third</p> <p>6 piece of paper, which would be the third page of this</p> <p>7 document, we have Request No. 3.</p> <p>8 Do you see that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. It says: "Please admit that, on October 6,</p> <p>11 2011, Arash Dounel stated to Michael Kaplan that Lisa</p> <p>12 Johnson 'must have some type of criminal background.'"</p> <p>13 Did I read that correctly?</p> <p>14 A. Correct.</p> <p>15 Q. And then we have a response that follows for</p> <p>16 the rest of that page.</p> <p>17 Now, that response continues on to the top of</p> <p>18 the fourth page.</p> <p>19 A. I see that.</p> <p>20 Q. And I guess let me start at the bottom of the</p> <p>21 third page: "Upon information and belief, Wells Fargo</p> <p>22 admits that, in or about October of 2011, Mr. Kaplan</p> <p>23 pressed Mr. Dounel with questions regarding why the</p> <p>24 subject accounts were closed and asked Mr. Dounel for</p> <p>25 his opinion regarding what Mr. Dounel would do if he</p>	<p style="text-align: right;">103</p> <p>1 A. It was many different forms of why.</p> <p>2 Q. Like what? What do you recall now?</p> <p>3 A. I mean I just don't know.</p> <p>4 MR. FITTS: Objection, form, foundation.</p> <p>5 Go ahead and answer.</p> <p>6 THE WITNESS: I don't know exactly verbatim,</p> <p>7 but, no, he didn't accept the way -- If I wasn't able to</p> <p>8 give him an answer with the way he asked why he would</p> <p>9 find a different way to ask why.</p> <p>10 And I knew he was an attorney and so there's</p> <p>11 many ways that he can ask why. So he just kept going on</p> <p>12 and on.</p> <p>13 Q. BY MR. KISTLER: Well, how many ways -- what</p> <p>14 do you recall about Mr. Kaplan pressing you for an</p> <p>15 answer?</p> <p>16 MR. FITTS: Objection, form, foundation.</p> <p>17 THE WITNESS: I'm not recalling exactly how.</p> <p>18 Q. BY MR. KISTLER: Okay. Now, as you sit here</p> <p>19 today, do you recall anything about your interaction</p> <p>20 with Mr. Kaplan that you haven't told us about?</p> <p>21 A. No.</p> <p>22 Q. Okay. And, again, the purpose that I have in</p> <p>23 asking you that question is six months from now I don't</p> <p>24 want you to go before the court and say, oh, I remember</p> <p>25 a whole lot more now, later --</p>
<p style="text-align: right;">102</p> <p>1 were Mr. Kaplan."</p> <p>2 Did I read that correctly?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Now, the word "pressed" is the -- is</p> <p>5 the word I want to focus on at this point.</p> <p>6 You used that word earlier in your testimony</p> <p>7 here today. And then when I followed up with that, you</p> <p>8 said, well, Mr. Kaplan wasn't happy, he was frustrated,</p> <p>9 he was worried, he was annoyed.</p> <p>10 Do you recall your testimony along those</p> <p>11 lines?</p> <p>12 A. Correct.</p> <p>13 Q. And I asked you, well, did Mr. Kaplan raise</p> <p>14 his voice, did Mr. Kaplan threaten you, did Mr. Kaplan</p> <p>15 threaten to do anything?</p> <p>16 A. No.</p> <p>17 Q. Okay. And yet the word "pressed" is used in</p> <p>18 this document that was filed on behalf of the bank in</p> <p>19 this particular case.</p> <p>20 Isn't it true that all Mr. Kaplan did was just</p> <p>21 ask you why the account was closed?</p> <p>22 MR. FITTS: Objection, form, foundation.</p> <p>23 You can answer.</p> <p>24 THE WITNESS: That's not all he did.</p> <p>25 Q. BY MR. KISTLER: What else did he do?</p>	<p style="text-align: right;">104</p> <p>1 A. That's true.</p> <p>2 Q. -- than I remembered in Mr. Kistler's office</p> <p>3 on October the 25th. That's the purpose that I'm asking</p> <p>4 you the question.</p> <p>5 A. I know.</p> <p>6 Q. Okay. So I want you to sit back, reflect, use</p> <p>7 your powers of recollection that you can summon up at</p> <p>8 this point in time, and again I'll ask you the question:</p> <p>9 Do you recall anything else about your interaction with</p> <p>10 Mr. Kaplan in October, November, or any other time other</p> <p>11 than what you've testified about here today in your</p> <p>12 deposition?</p> <p>13 A. To the best of my knowledge, he was being --</p> <p>14 by saying that he was pressing me for an answer, the</p> <p>15 context of being pressed, just pressing, by when I say</p> <p>16 "pressed," it didn't involve him being loud or</p> <p>17 threatening.</p> <p>18 He simply, from the best of my knowledge,</p> <p>19 I can remember he -- to me I interpreted him as being</p> <p>20 annoyed, frustrated, and I remember the situation as me</p> <p>21 just trying to help him to the best I can with what</p> <p>22 I generally do with clients, which is, you know, turn</p> <p>23 the frown upside down and try to get them to, you know,</p> <p>24 realize, you know, where I come from working at the bank</p> <p>25 and how much I can do, I'll do the best I can, and from</p>



<p style="text-align: right;">105</p> <p>1 that realization be able to work with him.</p> <p>2 So this emotional Mr. Kaplan was pressing me</p> <p>3 for more, and the amount I can give you a year from then</p> <p>4 was just me and how I generally deal with clients, is</p> <p>5 trying to deal with emotion. I mean we are in an</p> <p>6 environment in a bank that people have their money</p> <p>7 there, it's an emotional place sometimes.</p> <p>8 So dealing with emotion, providing the best</p> <p>9 I -- that I can service, that I can -- best service that</p> <p>10 I can communicate for the client, you know, being there</p> <p>11 for them if they need me, being available. Those are</p> <p>12 the kinds of things I was doing for Mr. Kaplan.</p> <p>13 Specifically how much can I remember? I can't</p> <p>14 tell you because it's been so long and I deal with</p> <p>15 thousands of clients since then.</p> <p>16 So I can just, you know, give you the best</p> <p>17 that I can, like I would Mr. Kaplan being my client,</p> <p>18 I would like to give you that too.</p> <p>19 Q. Again the question is: Do you recall anything</p> <p>20 that occurred, anything that was said between you and</p> <p>21 Mr. Kaplan either on the phone, in person, by e-mail --</p> <p>22 A. Not specifically.</p> <p>23 Q. -- that you haven't told us about today in</p> <p>24 your deposition?</p> <p>25 A. I don't recall, no.</p>	<p style="text-align: right;">107</p> <p>1 MR. KISTLER: All right. I have no further</p> <p>2 questions.</p> <p>3 CROSS-EXAMINATION</p> <p>4 BY MR. FITTS:</p> <p>5 Q. Mr. Arash, just a couple questions so I know</p> <p>6 I understand your testimony today.</p> <p>7 This is your first deposition?</p> <p>8 A. It is.</p> <p>9 Q. Kind of nervous?</p> <p>10 A. Very. Sweaty palms, kind of cold, jittery</p> <p>11 from coffee.</p> <p>12 Q. In your capacity as a personal banker for</p> <p>13 Wells Fargo Bank, are you motivated to please the</p> <p>14 customer?</p> <p>15 MR. KISTLER: Objection, leading.</p> <p>16 Q. BY MR. KISTLER: You can answer.</p> <p>17 A. Very.</p> <p>18 Q. Okay. Why is that?</p> <p>19 A. My context in my life, helping people, it's</p> <p>20 just -- even before working at Wells Fargo, I love</p> <p>21 helping people. It's rewarding to know that I have that</p> <p>22 ability to, you know, give away what I want for myself.</p> <p>23 I would want to have someone be just as helpful and</p> <p>24 there for me as I want to be for them. So that's why.</p> <p>25 Q. Okay. And is that how you generally felt with</p>
<p style="text-align: right;">106</p> <p>1 Q. Do you have any information that Mrs. -- that</p> <p>2 Ms. Lisa Johnson has been engaged in any criminal</p> <p>3 activity?</p> <p>4 A. No.</p> <p>5 Q. So you have -- just so the record is clear,</p> <p>6 you have no information whatsoever that Ms. Johnson has</p> <p>7 been engaged in criminal activity?</p> <p>8 A. None.</p> <p>9 Q. And that's true today?</p> <p>10 A. That's true today.</p> <p>11 Q. And it was true as of October 2011?</p> <p>12 A. Correct.</p> <p>13 Q. Do you have any information that Ms. Johnson,</p> <p>14 Lisa Johnson, has any outstanding warrants for her</p> <p>15 arrest?</p> <p>16 A. No.</p> <p>17 Q. Okay. And that's true today?</p> <p>18 A. Correct.</p> <p>19 Q. And that was true in October 2011, is that</p> <p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. That you had no knowledge whatsoever of any</p> <p>23 criminal activity or arrest warrants regarding Ms. Lisa</p> <p>24 Johnson as of October 2011?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">108</p> <p>1 respect to Mr. Kaplan and Ms. Johnson?</p> <p>2 MR. KISTLER: Objection, leading.</p> <p>3 Q. BY MR. FITTS: You can answer.</p> <p>4 A. I didn't hear you because the objection came</p> <p>5 up.</p> <p>6 Q. Is that how you generally felt -- well, just</p> <p>7 is that how you generally felt with respect to</p> <p>8 Mr. Kaplan and Ms. Johnson as customers of the bank?</p> <p>9 MR. KISTLER: Objection, leading.</p> <p>10 THE WITNESS: Yes, yeah.</p> <p>11 Q. BY MR. KISTLER: Do you have any ill will</p> <p>12 toward Mr. Kaplan?</p> <p>13 A. No.</p> <p>14 Q. Any ill will toward Ms. Johnson?</p> <p>15 A. No.</p> <p>16 Q. You said you knew that or you were aware that</p> <p>17 Mr. Kaplan was an attorney?</p> <p>18 A. Correct.</p> <p>19 Q. How did you become aware of that?</p> <p>20 A. I probe my clients for -- to get to know more</p> <p>21 about them. Within the bank they call it peeling the</p> <p>22 onion. I just personally like to know little tidbits of</p> <p>23 things about my clients so that I can build a</p> <p>24 relationship with them.</p> <p>25 He's just extremely, you know, interesting.</p>

109

1 He's funny and he has a -- you know, he's just  
2 interesting to talk to. So sitting down with him I had  
3 a great time getting to know him because he's pretty  
4 open about himself and things like that.

5 Q. Okay. So you generally recall a conversation  
6 with Mr. Kaplan about the fact that he's an attorney?

7 MR. KISTLER: Objection, leading.

8 Q. BY MR. FITTS: You can answer.

9 A. Generally what I would do is while I'm working  
10 with a client start talking to them about whatever. So  
11 I do recall learning that information early on about him  
12 while I was looking up his account, possibly talking to  
13 him about what does he do, so what do you do for a  
14 living, Mr. Kaplan, something like that, along that  
15 line. So I do remember like early on finding out about  
16 him as much as I can while I'm working with him to help  
17 him -- well, while I'm helping him.

18 Q. Okay. Let's go to Exhibit 7.

19 Have you read through these responses?

20 A. I haven't.

21 Q. I'm sorry?

22 A. Skimming through it right now.

23 Q. Okay. You were asked about the response to

24 No. 5.

25 Do you see that on the third page?

110

1 A. It's -- one, two, three.

2 Q. Do you see that?

3 A. It's the fourth page.

4 Q. Okay.

5 A. I do see it.

6 Q. And if you go to the next page, there's the  
7 completion of the response.

8 A. Correct.

9 Q. Okay. And let's see, do you see the -- the  
10 text does not line up specifically with the numbers on  
11 the left side, does it, at least on my copy, but --

12 A. Correct.

13 Q. -- do you see about line 6 where it says --

14 A. You're right. I didn't notice that.

15 Q. Generally states that Mr. Kaplan asked  
16 Mr. Dounel for his opinion regarding what Mr. Dounel  
17 would do if he were Mr. Kaplan.

18 A. Correct.

19 Q. Okay. Do you -- Is that correct?

20 A. What?

21 Q. Is that a correct statement?

22 Did Mr. Kaplan ask you what you would do if  
23 you were in his position?

24 A. Oh, yes.

25 Q. Okay. Do you have a general recollection of

111

1 that?

2 A. Yes.

3 Q. Do you recall the specific words, though, that  
4 were spoken a year ago?

5 A. No.

6 Q. Okay. Do you -- and I think Mr. Kistler  
7 wanted -- he wants to know everything that you knew --  
8 that you can recall about your conversations.

9 A. Right.

10 Q. Okay. And you want to provide that  
11 information?

12 A. Absolutely.

13 Q. Okay. So I want to make sure you understand,  
14 did -- do you recall what you said in response to  
15 Mr. Kaplan's, you know, general inquiry regarding what  
16 you would do if you were in his position?

17 A. Yeah, he was asking me about what I would do  
18 as part of his pressing me for more, way of asking, you  
19 know, why it was it closed, what would I do, he wanted  
20 to know what to do. I remember this event.

21 I remember telling him that, hey, you know,  
22 you're an attorney, and you should know more than  
23 I would. You'd probably know more than I would about  
24 this.

25 Q. That's your general recollection?

112

1 A. Yeah, generally.

2 Q. Okay.

3 A. I don't know the specific way I said it, but  
4 something along those lines.

5 Q. Do you remember anything else when Mr. Kaplan  
6 generally asked you, well, what would you do if you were  
7 in my -- if you were he or in his shoes?

8 A. I remember telling him like I -- I would  
9 probably consult an attorney myself, but you're already  
10 an attorney. And that's about it, yeah.

11 Q. You talked about the initial screening  
12 process.

13 A. Correct.

14 Q. And there was a conversation where --  
15 regarding -- between you and Mr. Kaplan in the e-mails  
16 regarding whether or not accounts could be opened again?

17 A. Correct.

18 Q. Okay. And that you said you used customer  
19 profile --

20 A. Yes.

21 Q. -- Information.

22 Was that the customer profile information that  
23 had been provided -- that the bank had in connection  
24 with the joint accounts that Mr. Kaplan and Ms. Johnson  
25 had?

113

1 **A. Yeah, they were existing profiles.**

2 **Q. Okay. And I just want to clarify, I believe**

3 **at the beginning of the deposition you were asked**

4 **whether you were on medical leave up until this time.**

5 **Do you remember that?**

6 **A. Yeah, up until today's date.**

7 **Q. And your answer to that question was "no"?**

8 **A. "No."**

9 **Q. Why did you answer "no" when you subsequently**

10 **told Mr. Kistler that, yes, you had been on medical**

11 **leave?**

12 **A. Because I was up -- I was on medical leave up**

13 **until early October, not today's date.**

14 **Q. So that's why you said "no"?**

15 **A. Yeah.**

16 **Q. Okay. And then later on you wanted to let**

17 **Mr. Kistler know that you had, in fact, been on medical**

18 **leave?**

19 **A. Yes, I have.**

20 **Q. But it just wasn't up until today?**

21 **A. It just wasn't up until today.**

22 **Q. You've worked for the bank for five and a half**

23 **years?**

24 **A. Yes, sir.**

25 **Q. Okay. How many people do you -- customers do**

114

1 **you generally converse with on a daily basis?**

2 **A. It could be anywhere from 10 to 30.**

3 **Q. Oh, yeah?**

4 **So it's fair to state that you've talked to a**

5 **lot of customers over the past year as an employee of**

6 **the bank?**

7 **A. Oh, yeah. And there's a lot that I probably**

8 **am not even counting, if you're talking about taking**

9 **straight deposits and stuff, you know, get even higher**

10 **than that.**

11 **Q. And so you've -- you've stated your answers to**

12 **the best of your recollection today?**

13 **A. Yes, sir.**

14 **Q. Do you ever recall telling any customer or**

15 **anyone that a customer had a criminal background?**

16 **A. Do I ever recall telling a customer?**

17 **Q. Do you ever recall ever stating that a bank**

18 **customer that you had dealt with had a criminal**

19 **background?**

20 **A. No.**

21 **Q. Do you ever recall stating that a customer**

22 **you've ever dealt with had arrest warrants?**

23 **A. No.**

24 **Q. Now, there's this allegation that Mr. Kaplan**

25 **states that you told him that -- in general terms, that**

115

1 **he should hire a private investigator.**

2 **Did you say that?**

3 **A. No.**

4 **Q. Do you recall saying that?**

5 **A. I don't recall saying that.**

6 **Q. Okay. When Mr. Kaplan asked you what you**

7 **would do if you were him, did you say anything about**

8 **conducting an investigation?**

9 **A. I do recall saying that I would investigate it**

10 **for myself, I would call the 800 number I'm giving him,**

11 **for example, I would call and investigate what's going**

12 **on.**

13 **Q. Do you recall that?**

14 **A. Yes.**

15 **Q. Do you recall that generally or do you recall**

16 **that specifically?**

17 **A. I recall that specifically.**

18 **Q. Okay. Because we want to make sure that you**

19 **share with Ms. Johnson and Mr. Kistler everything that**

20 **you recall.**

21 **A. Right. I want to give you guys as much as**

22 **possible.**

23 **Q. Okay. And so do you feel you've done that to**

24 **the best of your ability today?**

25 **A. Yes, sir.**

116

1 **MR. FITTS: Okay, all right.**

2 **MR. KISTLER: All right. I have no further**

3 **questions.**

4 **THE REPORTER: And signature, read and sign or**

5 **waive?**

6 **MR. FITTS: You can send it to me and I'll**

7 **send it to Mr. Dounel.**

8 **(Deposition was concluded at 11:44 a.m.)**

9 **\* \* \* \* \***

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117

## CERTIFICATE OF WITNESS

PAGE LINE CHANGE REASON

\* \* \* \* \*

I, ARASH DOUNEL, witness herein, do  
 hereby certify and declare the within and foregoing  
 transcription to be my deposition in said action; that  
 I have read, corrected and do hereby affix my signature  
 to said deposition.

ARASH DOUNEL, Witness

Subscribed and sworn to before me this \_\_\_\_ day  
 of \_\_\_\_\_, 2012.

Notary Public

118

## CERTIFICATE OF REPORTER

STATE OF NEVADA )

SS:

COUNTY OF CLARK )

I, Pamela A. Manning, Certified Court Reporter  
 and Notary Public for the County of Clark, State of  
 Nevada, do hereby certify:

That I reported the taking of the deposition of  
 the witness, ARASH DOUNEL, commencing on Thursday,  
 October 25, 2012, at 9:19 o'clock a.m.

That prior to being examined the witness was by  
 me duly sworn to testify to the truth.

That the foregoing transcription is a true,  
 complete, and accurate transcription of the stenographic  
 notes of the testimony taken by me in the matter  
 entitled herein to the best of my knowledge, skill, and  
 ability.

That prior to the completion of the proceedings,  
 the reading and signing of the transcript was requested  
 by the witness or a party.

I further certify that I am not a relative or  
 employee of an attorney or counsel of any of the  
 parties, nor a relative or employee of an attorney or  
 counsel involved in said action, nor a person  
 financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand  
 in my office in the County of Clark, State of Nevada,  
 this \_\_\_\_ day of \_\_\_\_\_, 2012.

Pamela A. Manning, RMR, CCR 226

# EXHIBIT F

**NOTC**

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

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

TO: ALL INTERESTED PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on 25<sup>th</sup> day of September, 2012 at 3:00 p.m., that  
the Plaintiff by and through her counsel of record of the law firm of Hutchison and  
Steffen, upon oral examination, before a notary public or other officer authorized by law  
to administer oaths, will take THE DEPOSITION OF PERSON MOST  
KNOWLEDGEABLE FOR WELLS FARGO BANK NATIONAL ASSOCIATION  
PURSUANT TO N.R.C. P. 30 (b)(6) regarding: Wells Fargo's knowledge and information  
as to the following Wells Fargo accounts, including the reason(s) Wells Fargo closed the  
following accounts:

(1) Guitarfile, LLC, account no. 2273587051

(2) Guitarfile, LLC, account no. 4856200225012957

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

**HUTCHISON & STEFFEN**


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

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

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

4 DATED this 31<sup>st</sup> day of August, 2012.

6 HUTCHISON & STEFFEN, LLC

7   
8 Mark A. Hutchison (4639)  
9 Joseph S. Kistler (3458)  
10 Timothy R. Koval (12014)  
11 Peccole Professional Park  
12 10080 West Alta Drive, Suite 200  
13 Las Vegas, NV 89145  
14 Attorneys for Plaintiff Lisa Johnson

**CERTIFICATE OF SERVICE**

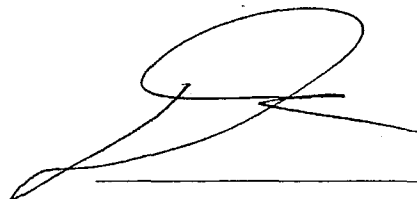
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 31<sup>st</sup> day of August, 2012, I caused the above and foregoing document entitled **NOTICE OF TAKING THE DEPOSITION OF ARASH DOUNEL** to be served as follows:

- ☒ 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 G

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

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

**GENERAL OBJECTIONS**

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

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

### 11 ANSWERS

#### 12 INTERROGATORY NO. 1:

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

#### 18 ANSWER:

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

**INTERROGATORY NO. 2:**

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

**ANSWER:**

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

**INTERROGATORY NO. 3:**

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

**ANSWER:**

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

**INTERROGATORY NO. 4:**

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

**ANSWER:**

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

**INTERROGATORY NO. 5:**

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

**ANSWER:**

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

**INTERROGATORY NO. 6:**

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

**ANSWER:**

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

**INTERROGATORY NO. 7:**

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

**ANSWER:**

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

**INTERROGATORY NO. 8:**

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

**ANSWER:**

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

**INTERROGATORY NO. 9:**

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

**ANSWER:**

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

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

4 **INTERROGATORY NO. 10:**

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

8 **ANSWER:**

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

17 **INTERROGATORY NO. 11:**

18  
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  
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

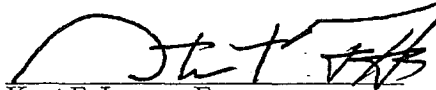
SMITH LARSEN & WIXOM

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

consent of Wells Fargo and its legal counsel.

DATED this 2 day of August, 2012

SMITH LARSEN & WIXOM

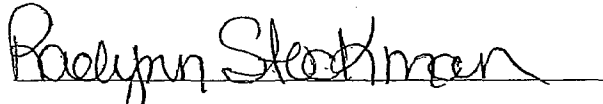


Kent F. Larsen, Esq.  
Nevada Bar No. 3463  
Stewart C. Fitts, Esq.  
Nevada Bar No. 5635  
SMITH LARSEN & WIXOM  
Hills Center Business Park  
1935 Village Center Circle  
Las Vegas, Nevada 89134  
Tel: (702) 252-5002  
Fax: (702) 252-5006  
Attorneys for Defendants  
Wells Fargo Bank, N.A.

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

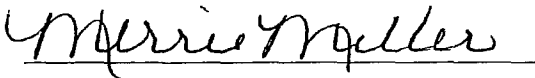
STATE OF NEVADA       )  
  ) ss.  
COUNTY OF CLARK       )

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

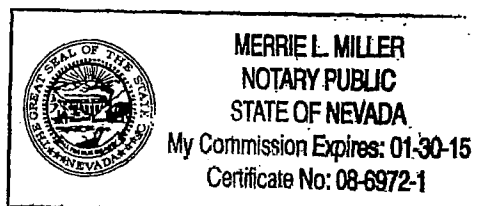
  
Raelynn Stockman

SUBSCRIBED AND SWORN to before me

this 2nd day of August, 2012.



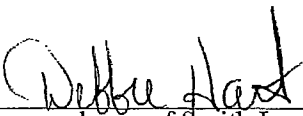
Notary Public



**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**

# EXHIBIT H

**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 SUPPLEMENTAL 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 Supplemental answers to Plaintiff's Amended First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

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

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

#### 11 ANSWERS

#### 12 INTERROGATORY NO. 1:

13 Please explain in full detail why you decided to close the following Wells Fargo  
14 accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account  
15 no. xxxxxx7051, (2) Guitarfile, LLC, account no. xxxxxxxxxxxxx2957, and (3) account of  
16 Michael Kaplan and Lisa Johnson, account no. xxxxxx4164.  
17

#### 18 ANSWER:

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

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

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

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

7  
8 Subject to and without waiving these objections, please refer to notices that have  
9 previously been provided regarding closure of the subject accounts.

10 **INTERROGATORY NO. 2:**

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

13 **ANSWER:**

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

20  
21 Wells Fargo also objects on grounds that this interrogatory seeks information that is  
22 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since  
23 each party had the right to close the subject accounts at any time without any requirement  
24 that an explanation be provided.

25  
26 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
27 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
28



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

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

5 **INTERROGATORY NO. 3:**

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

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. To the extent that this request seeks  
12 information within the scope of the Bank Secrecy Act, such information, if any, is protected  
13 by an unqualified discovery and evidentiary privilege that cannot be waived. *See, e.g.*, 31  
14 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

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

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

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

1 **INTERROGATORY NO. 4:**

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

5 **ANSWER:**

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

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

17 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
18 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
19 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking  
20 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if  
21 any, were made to her in connection with the closure of the accounts.  
22

23 Subject to and without waiving these objections, please also refer to the response to  
24 Request for Admission No. 3.  
25

26 **INTERROGATORY NO. 5:**

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

1 effect?

2 **ANSWER:**

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

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

14 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
15 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
16 that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate  
17 the banking relationship and no longer conduct business with Plaintiff and/or why alleged  
18 statements, if any, were made to her in connection with the closure of the accounts.  
19

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

22 **INTERROGATORY NO. 6:**

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

26 **ANSWER:**

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

1     pertaining to a non-party customer.

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

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

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

17    **INTERROGATORY NO. 7:**

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

22    **ANSWER:**

23            In addition to the general objections, Wells Fargo objects on grounds that this  
24    interrogatory assumes facts not in evidence and is vague and ambiguous. Wells Fargo also  
25    objects on grounds that whether or not Mr. Kaplan is or was eligible to open an account is  
26    irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.  
27    Wells Fargo objects on grounds that this interrogatory assumes facts not in evidence and  
28

1 improperly seeks confidential information pertaining to a non-party customer.

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

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

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

17 **INTERROGATORY NO. 8:**

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

24 **ANSWER:**

25 In addition to the general objections, Wells Fargo objects on grounds that this  
26 interrogatory improperly seeks privileged and confidential bank supervisory information and  
27 confidential proprietary and business information. To the extent that this request seeks  
28

1 information within the scope of the Bank Secrecy Act, such information, if any, is protected  
2 by an unqualified discovery and evidentiary privilege that cannot be waived. *See.*, 31 U.S.C.  
3 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

4 Wells Fargo also objects on grounds that this interrogatory seeks information that is  
5 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence  
6

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

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

15 **INTERROGATORY NO. 9:**

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

21 **ANSWER:**

22 In addition to the general objections, Wells Fargo objects on grounds that this  
23 interrogatory improperly seeks privileged and confidential bank supervisory information and  
24 confidential proprietary and business information. To the extent that this request seeks  
25 information within the scope of the Bank Secrecy Act, such information, if any, is protected  
26 by an unqualified discovery and evidentiary privilege that cannot be waived. *See, e.g.*, 31  
27 U.S.C. 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).  
28

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

3 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
4 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
5 that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate  
6 the banking relationship and no longer conduct business with Plaintiff and/or why alleged  
7 statements, if any, were made to her in connection with the closure of the accounts.  
8

9 Subject to and without waiving these objections, please refer to notices that have  
10 previously been provided regarding closure of the subject accounts.  
11

12 **INTERROGATORY NO. 10:**

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

16 **ANSWER:**

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

24 Wells Fargo also objects on grounds that this interrogatory seeks information that is  
25 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.  
26

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

1 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking  
2 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if  
3 any, were made to her in connection with the closure of the accounts.

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

6  
7 **INTERROGATORY NO. 11:**

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

10 **ANSWER:**

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

17  
18 Wells Fargo also objects on grounds that this interrogatory seeks information that  
19 is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

20  
21 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
22 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
23 that she is entitled to know the reasons why Wells Fargo exercised its legal right to terminate  
24 the banking relationship and no longer conduct business with Plaintiff.

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

28



**INTERROGATORY NO. 12:**

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

**ANSWER:**

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

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

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

**INTERROGATORY NO. 13:**

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

**ANSWER:**

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

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

8 Wells Fargo maintains an attorney-client privilege with respect to Mr. Dounel and  
9 Plaintiff, Plaintiff's counsel, and Mr. Kaplan (who appears to be represented by Plaintiff's  
10 counsel in this matter), may not have communications with Mr. Dounel without the express  
11 written consent of Wells Fargo and its legal counsel.  
12

13 DATED this 18 day of September, 2012

14 SMITH LARSEN & WIXOM

15 

16 Kent F. Larsen, Esq.

17 Nevada Bar No. 3463

18 Stewart C. Fitts, Esq.

19 Nevada Bar No. 5635

20 SMITH LARSEN & WIXOM

21 Hills Center Business Park

22 1935 Village Center Circle

23 Las Vegas, Nevada 89134

24 Tel: (702) 252-5002

25 Fax: (702) 252-5006


26 Attorneys for Defendants

27 Wells Fargo Bank, N.A.  
28

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

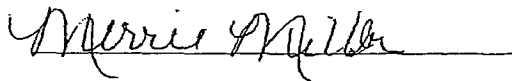
STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )

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

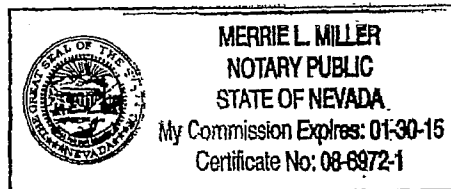
  
Raelynn Stockman

SUBSCRIBED AND SWORN to before me

this 18<sup>th</sup> day of September, 2012.



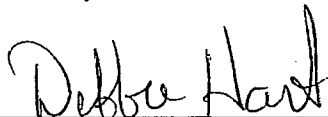
Notary Public



## CERTIFICATE OF SERVICE BY MAIL

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

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

  
an employee of Smith Larsen & Wixom

# EXHIBIT I

**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.	)	

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

1 closure of the subject accounts.

2 **REQUEST NO. 9:**

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

7 **RESPONSE:**

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

17 **REQUEST NO. 10:**

18 Please provide all documents concerning the "ongoing reviews of [your] account"  
19 relationships in connection with the Bank's responsibilities to oversee and manage risks in  
20 its banking operations" as relating to the accounts referenced in Request No. 1 For reference  
21 purposes, please see Lisa J. 006 to Lisa J. 008.  
22

23 **RESPONSE:**

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


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 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  
6 DATED this 2 day of August, 2012

7 SMITH LARSEN & WIXOM

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

17 Tel: (702) 252-5002

18 Fax: (702) 252-5006

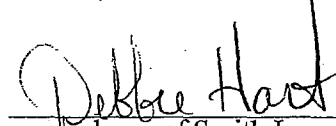
19 Attorneys for Defendants

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

# EXHIBIT J

**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,

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****SUPPLEMENTAL 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



1 early case conference and NRCP 16.1. Discovery is continuing and Wells Fargo reserves the  
2 right to make additional supplemental disclosures.

### 3 GENERAL OBJECTIONS

4 Wells Fargo objects to the definitions and instructions accompanying Plaintiff's  
5 discovery requests, and the discovery requests themselves, to the extent they seek to require  
6 Wells Fargo to perform acts beyond those required by the Nevada Rules of Civil Procedure,  
7 the Local Rules of the Eighth Judicial District Court, or any applicable order from this Court.

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

### 22 RESPONSES

#### 23 REQUEST NO. 1:

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

1

2 **RESPONSE:**

3 In addition to the general objections, Wells Fargo objects on grounds that this request  
4 improperly seeks privileged and information that protected by the attorney-client privilege  
5 and the attorney work-product doctrine. Wells Fargo also objects on grounds that this request  
6 seeks privileged and confidential bank supervisory material and confidential business and  
7 proprietary information. Further, Wells Fargo objects on grounds that this request seeks  
8 information that is duplicative, redundant, assumes facts not in evidence, and is irrelevant  
9 and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and  
10 without waiving these objections, and after conducting a reasonable review of available  
11 information, Wells Fargo states that it has not been able to locate any document within the  
12 scope of this request. Wells Fargo reserves the right to supplement this response as discovery  
13 continues.  
14

15 **REQUEST NO. 2:**

16 Please provide all documents concerning your risk assessment processes or analysis  
17 for closing accounts such as those of Lisa Johnson and Michael Kaplan.  
18

19 **RESPONSE:**

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

27 Wells Fargo also objects on grounds that this request seeks information that is  
28

1 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since  
2 each party had the right to close the subject accounts at any time without any requirement  
3 that an explanation be provided.

4 Wells Fargo also objects on grounds that this request is improper and/or premature  
5 because Plaintiff has not obtained declaratory relief from the District Court stating that she  
6 is entitled to know why Wells Fargo exercised its legal right to terminate the banking  
7 relationship and no longer conduct business with Plaintiff.  
8

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

11 **REQUEST NO. 3:**

12 Please provide all documents concerning your decision to close the following Wells  
13 Fargo accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC,  
14 account no. XXXXXXXX7051, (2) Guitarfile, LLC, account no. XXXXXXXXXXXXXXX2957, and  
15 (3) account of Michael Kaplan and Lisa Johnson, account no. XXXXXXXX4164.  
16

17 **RESPONSE:**

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

25 Wells Fargo also objects on grounds that this request seeks information that is  
26 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since  
27 each party had the right to close the subject accounts at any time without any requirement  
28

1 that an explanation be provided.

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

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

9 **REQUEST NO. 4:**

10 Please provide all documents concerning the basis or bases for Arash Dounel's  
11 statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have some type of  
12 criminal background" or words to that effect.  
13

14 **RESPONSE:**

15 In addition to the general objections, Wells Fargo also objects on grounds that this  
16 request assumes facts not in evidence. Wells Fargo also objects on grounds that this request  
17 improperly seeks privileged and confidential bank supervisory information and confidential  
18 proprietary and business information. To the extent that this request seeks information within  
19 the scope of the Bank Secrecy Act, such information, if any, is protected by an unqualified  
20 discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12 C.F.R.  
21 21.11(k); 31 C.F.R. 1020.320(c).  
22

23 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
24 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
25 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking  
26 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if  
27 any, were made to her in connection with the closure of the accounts.  
28

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

3 **REQUEST NO. 5:**

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

7 **RESPONSE:**

8 In addition to the general objections, Wells Fargo also objects on grounds that this  
9 request assumes facts not in evidence. Wells Fargo also objects on grounds that this request  
10 improperly seeks privileged and confidential bank supervisory information and confidential  
11 proprietary and business information. To the extent that this request seeks information  
12 within the scope of the Bank Secrecy Act, such information, if any, is protected by an  
13 unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12  
14 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

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

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

22 **REQUEST NO. 6:**

23 Please provide all documents concerning the basis or bases for Arash Dounel's  
24 statement to Michael Kaplan on October 6, 2011 that Lisa Johnson "must have arrest  
25  
26  
27  
28

1 warrants outstanding" or words to that effect.

2 **RESPONSE:**

3 In addition to the general objections, Wells Fargo also objects on grounds that this  
4 request assumes facts not in evidence. Wells Fargo also objects on grounds that this request  
5 improperly seeks privileged and confidential bank supervisory information and confidential  
6 proprietary and business information. To the extent that this request seeks information within  
7 the scope of the Bank Secrecy Act, such information, if any, is protected by an unqualified  
8 discovery and evidentiary privilege that cannot be waived. 31 U.S.C. 5318(g); 12 C.F.R.  
9 21.11(k); 31 C.F.R. 1020.320(c).

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

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

19  
20 **REQUEST NO. 7:**

21 Please provide all documents concerning the basis or bases for the statements by a  
22 Wells Fargo representative named Joceda Freeman and/or a Wells Fargo representative  
23 named Sheila that Michael Kaplan was not eligible to open an account at Wells Fargo on  
24 November 8, 2011.

25  
26 **RESPONSE:**

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

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

7 Wells Fargo also objects on grounds that whether or not Mr. Kaplan is or was eligible  
8 to open an account is irrelevant and not reasonably calculated to lead to the discovery of  
9 admissible evidence. Mr. Kaplan is not a party to this action and his eligibility to open an  
10 account is not at issue.

11 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
12 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
13 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking  
14 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if  
15 any, were made to her in connection with the closure of the accounts.  
16

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

19 **REQUEST NO. 8:**  
20

21 Please provide all documents concerning the basis or bases for Chad Maze's  
22 statement to Michael Kaplan that if Mr. Kaplan wanted to open an account with Wells Fargo,  
23 "the account would not be accepted if Lisa [Johnson] was associated with it. Of course you  
24 could open an account in your name, or the name of your trust, but including Lisa could not  
25 be one of the options." For reference purposes, please see Lisa J. 0048.  
26

27 **RESPONSE:**

28 In addition to the general objections, Wells Fargo also objects on grounds that this

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

6  
7 Wells Fargo also objects on grounds that this request seeks information that is  
8 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since  
9 each party had the right to close the subject accounts at any time without any requirement  
10 that an explanation be provided.

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

17  
18 Subject to and without waiving these objections, please refer to notices that have  
19 previously been provided regarding closure of the subject accounts.

20 **REQUEST NO. 9:**

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

24 **RESPONSE:**

25  
26 In addition to the general objections, Wells Fargo objects on grounds that this request  
27 seeks improperly seeks privileged and confidential bank supervisory information and  
28 confidential proprietary and business information. To the extent that this request seeks



1 information within the scope of the Bank Secrecy Act, such information, if any, is protected  
2 by an unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C.  
3 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).

4 Wells Fargo also objects on grounds that this request seeks information that is  
5 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since  
6 each party had the right to close the subject accounts at any time without any requirement  
7 that an explanation be provided.

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

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

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.

23 **RESPONSE:**

24 In addition to the general objections, Wells Fargo objects on grounds that this request  
25 seeks improperly seeks privileged and confidential bank supervisory information and  
26 confidential proprietary and business information. To the extent that this request seeks  
27 information within the scope of the Bank Secrecy Act, such information, if any, is protected  
28

1 by an unqualified discovery and evidentiary privilege that cannot be waived. 31 U.S.C.  
2 5318(g); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(c).


3 Wells Fargo also objects on grounds that this request seeks information that is  
4 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence since  
5 each party had the right to close the subject accounts at any time without any requirement  
6 that an explanation be provided.

7  
8 Wells Fargo also objects on grounds that this interrogatory is improper and/or  
9 premature because Plaintiff has not obtained declaratory relief from the District Court stating  
10 that she is entitled to know why Wells Fargo exercised its legal right to terminate the banking  
11 relationship and no longer conduct business with Plaintiff and/or why alleged statements, if  
12 any, were made to her in connection with the closure of the accounts.

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

16 DATED this 18<sup>th</sup> day of September, 2012

17 SMITH LARSEN & WIXOM

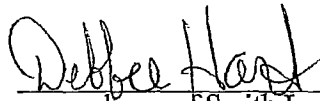
18  
19 

20 Kent F. Larsen, Esq.  
21 Nevada Bar No. 3463  
22 Stewart C. Fitts, Esq.  
23 Nevada Bar No. 5635  
24 SMITH LARSEN & WIXOM  
25 Hills Center Business Park  
26 1935 Village Center Circle  
27 Las Vegas, Nevada 89134  
28 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 the 18 day of September, 2012, a true copy of the foregoing WELLS FARGO BANK, N.A.'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS was mailed, postage prepaid, to the following as noted:

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

  
an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

ATTORNEYS

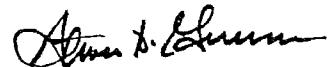
HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

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

# EXHIBIT K



CLERK OF THE COURT

1 NOEJ  
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 Defendant  
15 Wells Fargo Bank, N.A.

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

12 LISA JOHNSON, a Nevada resident,  
13 Plaintiff,

CASE NO: A-12-655393-C  
DEPT: XXVI

14 v.

NOTICE OF ENTRY OF ORDER


15 WELLS FARGO BANK, NATIONAL  
16 ASSOCIATION; DOES 1 through X,  
17 inclusive; and ROE CORPORATIONS,  
18 1 through X, inclusive

Defendants.

19 NOTICE IS HEREBY GIVEN that the attached Discovery Commissioner's Report  
20 and Recommendations was entered by the Court on the 13<sup>th</sup> day of November, 2012.

21 DATED this 13<sup>th</sup> day of November, 2012.

23 SMITH LARSEN & WIXOM



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

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

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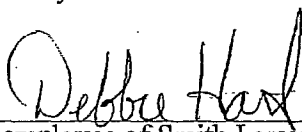
TEL (702) 252-5002 • FAX (702) 252-5006

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## CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on this 14 day of November, 2012, a true and correct copy of the foregoing **Notice of Entry of Order** was mailed, postage prepaid, to the following:

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

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

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

ORIGINAL

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CLERK OF THE COURT

DCRR  
Kent F. Larsen, Esq.  
Nevada Bar No. 3463  
Stewart C. Fitts, Esq.  
Nevada Bar No. 5635  
SMITH LARSEN & WIXOM  
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Tel: (702) 252-5002  
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Email: kfl@slwlaw.com  
scf@slwlaw.com  
Attorneys for Defendants  
Wells Fargo Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,

Plaintiff,

v.

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

Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

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  
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.]  
19  
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SMITH LARSEN & WIXOM

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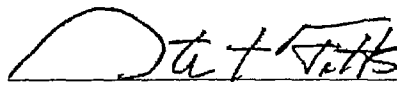
3. Wells Fargo's request for attorneys' fees and costs is denied.

DATED this 19 day of <sup>October,</sup> ~~May~~, 2012.

  
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

SMITH LARSEN & WIXOM

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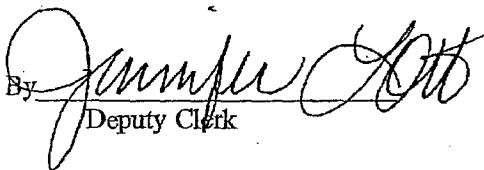
NOTICE

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

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,

☒ <sup>mm</sup> 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 

# EXHIBIT L

**SUPP**  
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 Defendant  
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

**FIRST SUPPLEMENTAL RULE 16.1  
DISCLOSURES OF DEFENDANT  
WELLS FARGO BANK N.A.**

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

...

...

## I. DOCUMENTS

Wells Fargo identifies and/or discloses the following documents which are marked as "Confidential" pursuant to the Confidentiality Agreement and Stipulated Protective Order" which has been proposed in this action.

- A. Consumer Account Agreement re: Account ending in #4164 (WFB 0001-0002).
- B. Consumer Account Agreement re: Account ending in #4164 (WFB 0003-0074).
- C. Account Statements re: Account ending in #4164 (WFB 0075-0257).
- D. Closure Notification re: Account ending in #4164 (WFB 0258).
- E. Business Account Application re: Accounts ending in #7051, #7036, #4981 and Business Credit Card # 2957 (WFB 0259-0263).
- F. Business Account Agreement re: Accounts ending in #7051, #7036, and #4981 (WFB 0264-0335).
- G. Account Statements re: Account ending in #7051 (WFB 0336-0398).
- H. Account Statements re: Account ending in #7036 (WFB 0399-0417).
- I. Account Statement re: Account ending in #4981 (WFB 0418-0436).
- J. Closure Notification re: Account ending in #7051 (WFB 0437).
- K. Business Card Agreement re: Account ending in #2957 (WFB 0438-0439).
- L. Account Statements re: Account ending in #2957 (WFB 0440-0465).
- M. Closure Notification re: Account ending in #2957 (WFB 0466).
- N. Email correspondence re: Michael Kaplan/Chad Maze/Andrew Noll (November-December 2011) (WFB 0467-0471).

1 O. Email correspondence re: Michael Kaplan/Jennifer Scafe (December  
2 2011) (WFB 0472-0475).

3 P. Dirk A. Ravenholt, Esq. letter, dated October 17, 2011 (WFB 0476).

4 Q. Wells Fargo letter to Dirk Ravenholt, Esq., dated October 26, 2011  
5 (WFB 0477).

6  
7 R. Michael Kaplan letter, dated December 16, 2011 (WFB 0478-0479).

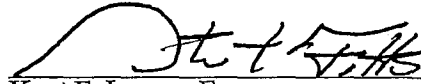
8 Wells Fargo incorporates all documents disclosed by the other parties to this action.  
9 Wells Fargo also reserves the right to supplement this disclosure as information is gathered  
10 and discovery continues.

11 **II. RESERVATIONS**

12 Wells Fargo reserves all objections as to the admissibility of all documents  
13 produced by all parties.  
14

15 DATED this 17<sup>th</sup> day of December, 2012.

16 SMITH LARSEN & WIXOM

17 

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

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

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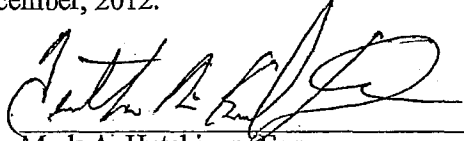
28 Attorneys for Defendant

Wells Fargo Bank, N.A.

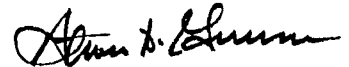


RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing **FIRST SUPPLEMENTAL RULE 16.1**  
**DISCLOSURES OF DEFENDANT WELLS FARGO BANK N.A.** is hereby  
acknowledged this 17<sup>th</sup> day of December, 2012.



Mark A. Hutchison, Esq.  
Joseph S. Kistler, Esq.  
Timothy R. Koval, Esq.  
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CLERK OF THE COURT

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8 *Attorneys for Lisa Johnson*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 LISA JOHNSON, a Nevada resident,	)	Case No.: A-12-655393-C
12 Plaintiff,	)	Dept.: XXVI
13 vs.	)	
14 WELLS FARGO BANK, NATIONAL	)	<b>PLAINTIFF'S REPLY IN SUPPORT</b>
ASSOCIATION; DOES I through X,	)	<b>OF HER OBJECTION TO</b>
15 inclusive; and ROE CORPORATIONS, I	)	<b>DISCOVERY COMMISSIONER'S</b>
through X, inclusive,	)	<b>OCTOBER 19, 2012 REPORT AND</b>
16 Defendants.	)	<b>RECOMMENDATIONS</b>
17	)	

18 Plaintiff Lisa Johnson ("Johnson") is entitled to discovery concerning the reasons why  
19 defendant Wells Fargo Bank, National Association ("Wells Fargo") closed her accounts, as this  
20 information is highly relevant to this case. Indeed, this information is relevant because: (1)  
21 Wells Fargo employee Arash Dounel ("Dounel") made defamatory statements to Michael  
22 Kaplan ("Kaplan") regarding the alleged criminal history of Johnson as the basis for the  
23 account closures, and (2) Wells Fargo maintains the truth of Dounel's statements as an  
24 affirmative defense in this litigation. Accordingly, Johnson is entitled to discovery concerning  
25 the bases for Wells Fargo's closures of her accounts and the alleged truth of Dounel's  
26 statements. Although Johnson concedes that she is not entitled to documentation concerning  
27 potential suspicious activity reports ("SAR") that Wells Fargo may have created regarding  
28 Johnson's accounts, she is entitled to discovery of all relevant non-SAR information.

///

1     **1.     The Bank Secrecy Act and other federal laws do not permit Wells Fargo to cloak**  
2     **all of its internal reports and memoranda regarding the closure of Johnson's**  
3     **accounts with a veil of confidentiality.**

4             The primary issue for determination concerning Johnson's Objection to the Discovery  
5     Commissioner's October 19, 2012 Report and Recommendations ("Objection") is the extent to  
6     which defendant Wells Fargo may utilize the Bank Secrecy Act and other federal laws to  
7     withhold the production of otherwise discoverable documents. Contrary to Wells Fargo's  
8     assertions, Johnson is entitled to discovery of all relevant non-SAR information concerning the  
9     closures of Johnson's accounts. The fundamental problem with Wells Fargo's arguments to the  
10    contrary is that it makes no distinction between: (1) undiscoverable documents that Wells  
11    Fargo potentially prepared for the purposes of investigating or drafting a possible SAR against  
12    Johnson, and (2) discoverable documentation concerning general risk management, loss  
13    prevention, account closure, and customer service procedures and communications pertaining  
14    to Wells Fargo's decision to close Johnson's accounts that was independent of its SAR  
15    reporting obligations.

16            Instead of evaluating this important dichotomy of discoverable vs. undiscoverable bank  
17    materials, Wells Fargo baldly alleges that "all of the information pertaining to Wells Fargo's  
18    decision to end its banking relationship was generated as part of its process of complying with  
19    the reporting requirements of the Bank Secrecy Act."<sup>1</sup> However, "[a] bank may not cloak its  
20    internal reports and memoranda with a veil of confidentiality simply by claiming they concern  
21    suspicious activity [in compliance with the Bank Secrecy Act] or concern a transaction that  
22    resulted in the filing of a SAR."<sup>2</sup> Further, SAR protection only applies to the SARs themselves  
23    and not to other reports or documents evidencing suspicious activity.<sup>3</sup>

24            Wells Fargo is attempting to cloak all of its internal reporting and memoranda in this  
25    \_\_\_\_\_

26            <sup>1</sup> See Wells Fargo Bank's Opp'n to Pl.'s Objection to Discovery Commissioner's  
27    October 19, 2012 Report and Recommendations ("Opposition") at 11, on file with this Court.

28            <sup>2</sup> See *Union Bank of California, N.A. v. Superior Ct.*, 130 Cal.App.4th 378, 392 (2005).

<sup>3</sup> See *Gregory v. Bank One, Ind., N.A.*, 200 F.Supp.2d 1000, 1002 (S.D. Ind. 2002).

case with the veil of confidentiality by making the disingenuous claim that it would not investigate suspicious bank activity or make the decision to close Johnson's accounts but-for federal regulation. However, it is a standard business practice for banks to investigate allegedly suspicious activity as a necessary and appropriate measure to protect the bank's own interests apart from federal laws. Further, Wells Fargo fails to cite a single federal law requiring it to close Johnson's accounts, demonstrating that the ultimate decision to close Johnson's accounts was independent of federal law. This is especially true, as Wells Fargo's Prevention Contact Center and Business Direct department drafted letters to Johnson concerning the closures of her accounts in which Wells Fargo indicated that the decisions to close these accounts was based, at least in part, on its own policies, general risk management, and loss prevention efforts, which are independent of its federal reporting requirements. Accordingly, these materials are subject to discovery.

**2. Wells Fargo's remaining arguments in support of its Opposition are without merit.**

Wells Fargo's other arguments in support of its Opposition are without merit. Wells Fargo argues that it has a legal right to terminate its banking relationship with Johnson and that the reasons for terminating this relationship are undiscoverable.<sup>4</sup> However, Wells Fargo's ability to terminate this relationship has no bearing on whether it must disclose the reasons for closing the accounts when: (1) its employee (Dounel) made defamatory statements regarding the alleged criminal history of Johnson as the basis for closing her accounts, and (2) Wells Fargo maintains the truth of these statements as an affirmative defense in this litigation.

Further, Wells Fargo alleges that Dounel did not know the reasons for the account closures and did not make the defamatory comments at issue, thereby making the reasons why Wells Fargo decided to close the accounts irrelevant and undiscoverable.<sup>5</sup> However, when Dounel was asked at his deposition whether he recalled telling Kaplan that Johnson had a criminal background in connection with the closure of the accounts, Dounel avoided the

---

<sup>4</sup> See the Opposition at 7-8.

<sup>5</sup> See *id.* at 6 & 8.

1 question and evasively replied, "I don't believe I would say that about any customer."<sup>6</sup>  
2 Thereafter, Dounel refused to admit or deny making this statement to Kaplan. When asked  
3 whether he stated to Kaplan that Kaplan should hire a private investigator to check up on  
4 Johnson, Dounel again replied, "I, again, believe I would not say that about any client."<sup>7</sup> After  
5 Dounel was asked to clarify his answer, he admitted that he didn't recall whether or not he  
6 made that statement.<sup>8</sup> When asked whether he stated to Kaplan that Johnson must have arrest  
7 warrants outstanding, Dounel replied, "I don't recall."<sup>9</sup>

8 In contrast to Dounel's lack of memory regarding these statements, Kaplan has a vivid  
9 and detailed memory of Dounel making these statements. Further, notwithstanding Wells  
10 Fargo's current attempts to retreat from these statements, Wells Fargo maintained their alleged  
11 truth as an affirmative defense in its answer to Johnson's complaint. Accordingly, the reasons  
12 for Wells Fargo's closure of Johnson's accounts is highly relevant and discoverable in this case.

13 Wells Fargo also claims that the information that Johnson requests in her Objection is  
14 not discoverable because it allegedly encompasses confidential banking information of non-  
15 party bank customers (*i.e.*, Michael Kaplan, who is a joint-account-holder with Johnson on one  
16 of the accounts at issue).<sup>10</sup> However, Kaplan has already executed and provided a third-party  
17 authorization to Wells Fargo permitting it to disclose his banking information in this litigation.  
18 Accordingly, Wells Fargo may not hide behind claims of third-party confidentiality to withhold  
19 discovery to Johnson.

20 Wells Fargo also argues that Johnson's Objection should be denied because it allegedly  
21 improperly seeks confidential and proprietary information regarding an ongoing investigation of  
22

---

23 <sup>6</sup> See the depo. transcript of Arash Dounel at 50:20-25, attached as Exhibit 1.

24 <sup>7</sup> See *id.* at 51:11-52:2.

25 <sup>8</sup> See *id.*

26 <sup>9</sup> See *id.* at 52:3-5.

27 <sup>10</sup> See the Opposition at 15.

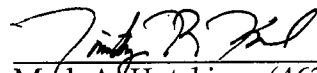
Johnson's accounts.<sup>11</sup> However, the parties are in the process of finalizing a confidentiality agreement that would preclude the parties from utilizing confidential information outside of the context of this litigation, thus eliminating Wells Fargo's fears regarding the disclosure of allegedly confidential information. Wells Fargo's case law citations do not change this result. Indeed, the cases referenced in the Opposition involve claims of misappropriation of trade secrets and confidentiality of a government warrant proceedings, none of which are applicable to this case.<sup>12</sup>

## 2. Conclusion

For the foregoing reasons, Johnson is entitled to discovery 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.

DATED this 31<sup>st</sup> day of January, 2013.

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 Lisa Johnson

---

<sup>11</sup> See *id.* at 14.

<sup>12</sup> See *Clark v. Bunker*, 453 F.2d 1006 (9th Cir. 1972); *Finkel v. Cashman Prof'l, Inc.*, 270 P.3d 1259 (Nev. 2012); *Times Mirror Co. V. United States*, 873 F.2d 1210 (9th Cir. 1989).

**CERTIFICATE OF SERVICE**

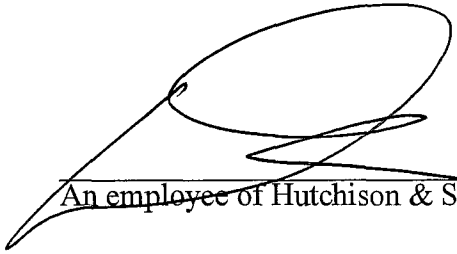
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 31<sup>st</sup> day of January, 2013, I caused the above and foregoing document entitled **PLAINTIFF'S REPLY IN SUPPORT OF HER OBJECTION TO DISCOVERY COMMISSIONER'S OCTOBER 19, 2012 REPORT AND RECOMMENDATIONS** 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

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HUTCHISON & STEFFEN

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A PROFESSIONAL LLC

**EXHIBIT 1**



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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.

**CERTIFIED**

Case No.  
A-12-655393-C

## DEPOSITION OF ARASH DOUNEL

Taken on Thursday, October 25, 2012

At 9:19 o'clock a.m.

At 10080 West Alta Drive, Suite 200

Las Vegas, Nevada

Reported by: Pamela A. Manning, RMR, CCR 226

1 that he's trying to find, you know, and I gave him our  
2 customer service number, that I remember.

3 I told him he should -- that I can't get that  
4 information and maybe he can if he calls this number,  
5 which is -- I normally give out to clients a lot, it's  
6 the 800 number, 800-869-3557, in hopes -- in hopes that  
7 maybe he can get more information from there.

8 Q. BY MR. KISTLER: So you recall -- in addition  
9 to the things you told us, you recall saying to  
10 Mr. Kaplan, you now recall that you gave him a 1-800  
11 number?

12 A. I remember I gave him that -- the number,  
13 I believe. I do it consistently with other clients.  
14 I generally do it for clients I can't -- that fall into  
15 a place where, you know, this happens. We see a lot of  
16 clients.

17 Q. Do you recall telling Mr. Kaplan anything else  
18 at that meeting?

19 A. No.

20 Q. Do you recall telling Mr. Kaplan that  
21 Ms. Johnson must have some type of criminal background?

22 A. No.

23 Q. You don't recall saying that?

24 A. I don't believe I would say that about any  
25 customer.

1 Q. Okay. So it's your -- is it your testimony  
2 that you deny saying that at this meeting?

3 A. I -- I believe I would not say that about any  
4 client.

5 Q. Okay. Can you tell me as you sit here today  
6 that you are certain that you did not say that in the  
7 meeting, "that" being that Ms. Johnson must have some  
8 type of criminal background?

9 A. Sitting here today I can tell you I believe  
10 that I would not say that about any client.

11 Q. Do you recall telling Mr. Kaplan in this  
12 first meeting that Mr. Kaplan should hire a private  
13 investigator to check up on Ms. Johnson?

14 A. I, again, believe I would not say that about  
15 any client.

16 Q. Okay. So are you denying here today that you  
17 said those things to Mr. Kaplan in October 2011 at this  
18 first meeting?

19 A. I'm saying that I don't believe I would speak  
20 like that to any client, to tell them something like  
21 that about hiring an investigator.

22 Q. Do you recall saying any -- any words to that  
23 effect to Mr. Kaplan?

24 A. I don't recall.

25 Q. Okay. Are you denying that you said those

1 things?

2 A. I'm saying I don't recall.

3 Q. Did you tell Mr. Kaplan that Ms. Johnson must  
4 have arrest warrants outstanding?

5 A. I don't recall.

6 Q. Okay. Are you denying that you said that to  
7 Mr. Kaplan at this first meeting in October 2011?

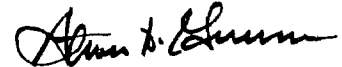
8 A. You know, that one, I would also say that  
9 I believe I wouldn't talk like that about any client.  
10 Especially Ms. Johnson wasn't even there, so I would --  
11 you know, even that -- even more so I wouldn't talk in  
12 any way about someone that's not there even positively  
13 like -- about their accounts, you know, just even about  
14 like their -- something else that I shouldn't say or  
15 whatever, for security purposes.

16 But I would also want to say that I would  
17 never talk like this with clients.. I engender a certain  
18 level of trust for my clients and it's not in my  
19 character.

20 Q. Okay. Do you recall anything else about  
21 that conversation that you had with Mr. Kaplan, the  
22 first conversation that you had with Mr. Kaplan in  
23 October 2011 other than what you've told us?

24 A. Can you be more specific?

25 The conversation -- about the first



CLERK OF THE COURT

ORD  
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Joseph S. Kistler (3458)  
Timothy R. Koval (12014)  
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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

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

Lisa Johnson, brought its Motion for Reconsideration regarding the Court's approval of the Discovery Commissioner's October 19, 2012 Report and Recommendations. The Motion came on for hearing on January 11, 2013. The Court, having read the moving and oppositional papers and having considered the arguments present sets forth as follows:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion for Reconsideration is granted; the Court will consider Plaintiff's November 5, 2012 objection to the Discovery Commissioner's October 19, 2012 Report and Recommendations that was submitted with the motion.

///

///

///

///

HUTCHISON & STEFFEN

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the briefing schedule regarding Plaintiff's Objection is scheduled as follows:

Defendant Wells Fargo's responsive brief is due on or before January 25, 2013;

Plaintiff's reply to Wells Fargo's responsive pleading is due on or before January 31, 2013.

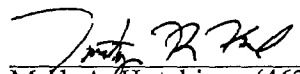
The hearing regarding Plaintiff's Objection to the Discovery Commissioner's October 19, 2012 Report and Recommendations Report is set for February 8, 2013 at the hour of 9:00 a.m.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter will be referred over for mediation during the "mediation marathon" period commencing February 18, 2013.

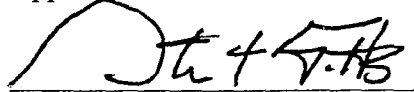
DATED this 4 day of February, 2013.

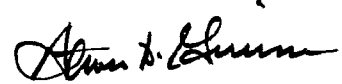
  
DISTRICT COURT JUDGE

Submitted by:

  
Mark A. Hutchison (4639)  
Joseph S. Kistler (3458)  
Timothy R. Koval (12014)  
Peccole Professional Park  
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*Attorneys for Plaintiff*  
Lisa Johnson

Approved as to form and content:

  
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HILLS CENTER BUSINESS CENTER  
Las Vegas, NV 89134  
*Attorney for Defendant*  
Wells Fargo Bank, N.A.



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

LISA JOHNSON,  
  
Plaintiff,  
vs.  
  
WELLS FARGO BANK NATIONAL  
ASSOCIATION,  
  
Defendant.

CASE NO. A655393  
DEPT NO. XXVI

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING**

FRIDAY, FEBRUARY 8, 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.

AA000616

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 8, 2013, 9:19 A.M.

2 \* \* \* \* \*

3 THE COURT: All right. So just for the record this  
4 is case A-12655393, Johnson versus Wells Fargo Bank. Counsel  
5 state their appearances for the record.

6 MR. KISTLER: Good morning, Your Honor. Joseph  
7 Kistler of the law firm Hutchison and Steffen here in Las  
8 Vegas on behalf of Plaintiff, Lisa Johnson. Ms. Johnson is  
9 also present here in the courtroom.

10 THE COURT: Thank you.

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

13 THE COURT: Okay. So welcome back. This is the  
14 objection to the Discovery Commissioner's Report and  
15 Recommendations, and so, Mr. Kistler, it's your objection.

16 MR. KISTLER: Thank you, Your Honor. This is my  
17 objection. We appreciate the Court hearing this important  
18 issue this morning. Your Honor, Ms. Johnson was defamed by  
19 Wells Fargo when Wells Fargo told a joint account holder that  
20 the joint bank accounts were closed based on Ms. Johnson's  
21 unidentified criminal activity.

22 We sued for defamation. Wells Fargo defended in part  
23 alleging truthfulness to the allegedly -- to the defamatory  
24 comments. Your Honor, we sought to discover obviously  
25 relevant documents and other information regarding our claims,

KARR REPORTING, INC.



1 i.e., bank records detailing the reasons for the accounts  
2 being closed, and the bank flatly refused our efforts stating  
3 that certain Federal statutes totally prohibited the release  
4 of all information regarding these accounts irrespective of  
5 the obvious relevancy given the litigation.

6 Now the important issue here before the Court, the  
7 bigger issue, we believe, is defining a private citizen's  
8 rights to access information created about themselves by a  
9 private company when that information affects that private  
10 citizen's financial health.

11 Now, Your Honor, based on the pleadings, the bank has  
12 taken the position of attempting to minimize the facts of this  
13 case -- you know, talking about the joint account holder as a  
14 boyfriend, and this, that or this other -- all of which is  
15 totally irrelevant to what's before Your Honor here today. In  
16 fact, the bank's position is that there are no circumstances  
17 by which they could be compelled to provide information in  
18 this or any other case based upon these Federal statutes.

19 So really for the purposes of this hearing, Your  
20 Honor, even though the -- the defamatory statement is kind of  
21 contested, I took the deposition of the bank official, and he  
22 says, Well, that doesn't sound like something I would say,  
23 very soft denial, but the principle that the bank is taking  
24 here today makes no difference whether it was said, not said,  
25 We, the bank, are absolutely privileged in not providing any

1 information whatsoever concerning this account, no matter how  
2 relevant to the underlying claims that information could be.

3           So for this hearing today we would suggest, given the  
4 bank's position, that the following facts really are not in  
5 controversy for this motion, and that is -- or undisputed for  
6 this motion -- that is that Lisa Johnson and Michael Kaplan  
7 maintained a series of joint accounts with Wells Fargo; that  
8 the joint accounts were closed by Wells Fargo with the initial  
9 explanation given as referenced in our papers, in a letter  
10 from Wells Fargo's Prevention Contact Center and Business  
11 Direct Department stating that the accounts were closed and  
12 the decisions to close these accounts was based, at least in  
13 part, on the bank's own policies, general risk management and  
14 loss prevention efforts.

15           That was the written explanation for the closing of  
16 the accounts. Thereafter, Mr. Kaplan went to a Wells Fargo  
17 branch to transact other unrelated business. While there he  
18 was solicited by Wells Fargo to increase his banking  
19 relationship with Wells Fargo, and his understandable response  
20 was, increase my banking relationship? Well, I just had some  
21 accounts, joint accounts that were closed, Why should I  
22 increase it if I'm having accounts closed?

23           Upon that time, at that moment, the bank said, well,  
24 let's look -- let us look into that and let us -- let us --  
25 let's see what's going on there. That led to a discussion by

1 and between Mr. Kaplan in a private room with a bank employee  
2 whereby the bank employee retrieved a computerized bank record  
3 looking at a computer screen, and Mr. Kaplan was told that he  
4 wasn't the problem, rather Ms. Johnson must have been involved  
5 in criminal activity or had unspecified arrest warrants  
6 outstanding as it was her activities that caused the joint  
7 account closures.

8           Upon Mr. Kaplan's questions following that, the bank  
9 employee gave no further details other than to suggest to him  
10 that Mr. Kaplan should hire a private investigator to check  
11 out Mrs. Johnson's activities. Ms. Johnson has no criminal  
12 record. This lawsuit followed, discovery commenced.

13           We requested bank records regarding Ms. Johnson,  
14 including the reasons for the account being closed, and the  
15 information the bank had, if any, regarding her alleged  
16 criminal acts. The bank responded that all records regarding  
17 Ms. Johnson were non-releasable pursuant to the bank's secrecy  
18 act and the Patriot Act, that's in this litigation.

19           Specifically, in the -- in the reply to our objection  
20 today, the bank states that it has a, quote, Anti-Money  
21 Laundering Program which investigates activities and at times  
22 creates Suspicious Activity Reports -- we refer to them as  
23 SARs -- to be forwarded to the Federal Government.

24           Now very noteworthy, Judge, is there's never been a  
25 statement or an allegation by the bank that the, quote,

1 Anti-Money Laundering Program was ever involved in this.  
2 Rather, their position has been we don't have to tell you  
3 anything whatsoever.

4           It's much like -- it's much like when an  
5 attorney-client privilege is interposed on behalf of a client,  
6 taking the position that the fact that you even met with the  
7 attorney comes under the privilege; therefore, the witness can  
8 be instructed not to say, not to answer: Did you consult with  
9 an attorney on this?

10           We haven't even been -- it's interesting if you look  
11 at their pleading, Your Honor, we don't have -- we have  
12 information, and if we take it at face value from the bank in  
13 their opposition here today, they say they have an Anti-Money  
14 Laundering Program, and they say that that investigates  
15 activities and at times creates Suspicious Activity Reports,  
16 but they don't say that that has anything to do with Ms.  
17 Johnson, that there was ever any reference to an Anti-Money  
18 Laundering Program, that there was ever anything there, that  
19 there was ever anything more than the bank's general risk  
20 management, loss prevention efforts, which was stated in their  
21 letter.

22           Rather, what they've done is they've said we have  
23 this Federal statute that prohibits the release of Suspicious  
24 Activity Reports that are forwarded to a Federal agency, we  
25 have that statute; therefore, we don't have to tell you

1 anything, even whether or not -- much less whether a SAR was  
2 ever prepared or forwarded, which probably is covered under  
3 the Federal statute. We don't even have to tell you that we  
4 did anything.

5 And they haven't told us if they've done anything.  
6 What Mr. Fitts in his -- in his papers has said, we have a  
7 program -- he doesn't say the program was ever used in this  
8 case -- we have a program which investigates activities and at  
9 times creates Suspicious Activity Reports. Be that as it may,  
10 the discovery commissioner erred in agreeing with Mr. Fitts'  
11 position below and we filed this objection.

12 THE COURT: Okay. So that's where we kind of get to  
13 the root of the matter, and that is in order to review a  
14 discovery commissioner's report and recommendations, I need to  
15 be looking for some error of fact or law.

16 MR. KISTLER: Yes, Your Honor.

17 THE COURT: So --

18 MR. KISTLER: And the error that the discovery  
19 commissioner -- that the series of errors that the discovery  
20 commissioner in this particular case [inaudible] was, one, she  
21 apparently didn't understand that there is no controlling  
22 authority on this point in the State of Nevada.

23 Mr. Fitts, the bank below, relied heavily on a  
24 California case, an intermediate appellate court in  
25 California, and that's the Union Bank case, simply to say, oh,

1 well, nothing, nothing is releasable. We are prohibited by  
2 Federal statute; we can't, as much as we'd like to, we can't.  
3 That's a total misreading of the Union Bank -- of the Union  
4 Bank decision.

5           Even if Your Honor were to look to Union Bank, and  
6 even if the discovery commissioner had properly -- if the  
7 discovery commissioner had properly analyzed Union Bank, the  
8 holding at Union Bank is set forth on page 12 of the decision,  
9 the California case, states we agree with the trial court that  
10 the SARs privilege covers draft SARs, the SAR themselves, and  
11 any communication concerning a SAR.

12           However, we also hold that the SAR privilege extends  
13 to documents prepared by a bank, quote, "for the purpose of  
14 investigating or drafting a possible SAR." Not that anything  
15 the bank does, any and all things that the bank does are  
16 privileged and not releasable to any party, but rather the  
17 SAR, the SAR itself, any drafts of the SAR, and documents  
18 prepared by the bank for the purpose of investigating or  
19 drafting a possible SAR, in this California court's opinion,  
20 is -- is privileged.

21           And the California court acknowledged readily that  
22 that doesn't mean that all bank information is not  
23 discoverable. The California court admitted readily that  
24 there's a significant difference of opinion throughout the  
25 different states that have --

1           THE COURT: So you're not saying there is no SAR  
2 privilege, that's established.

3           MR. KISTLER: That's established.

4           THE COURT: It's the question of what does it  
5 protect?

6           MR. KISTLER: Yes, Your Honor. The question of what  
7 does it protect. We can see that under -- under existing case  
8 law, in a majority of courts that have so considered the  
9 issue, that the SAR report itself is not discoverable under  
10 the Federal statutes. There is a significant difference of  
11 opinion as to what, if anything, other than the SAR report  
12 itself, is not producible.

13           There's a -- a very good analysis of the law that we  
14 cited to Your Honor, it's a bankruptcy court decision, not in  
15 this district, but nevertheless, the Witten [phonetic] case is  
16 interesting in analyzing the existing law, and it states, one,  
17 it concedes -- the case concedes that the -- the Patriot Act  
18 and the Bank Secrecy Act and the regulations promulgated  
19 thereunder establish an absolute prohibition on financial  
20 institutions from disclosing to third parties information  
21 about the filing of a SAR.

22           And the case is uniformly recognized that that  
23 statute and the related regulations create the discovery and  
24 everything through privilege that may be invoked by a bank in  
25 order to produce a SAR during the course of civil proceedings.

1 However, while the letter and spirit of the limitation is  
2 served by shielding a SAR filed by a bank, as well as any  
3 documents that refer to a SAR having been filed or refers to  
4 information as being part of a SAR, that's where the privilege  
5 ends.

6 Other bank -- other bank documents covered by a  
7 document request, such as the ones involved in this particular  
8 case, and in our case, are not shielded by the SAR privilege.  
9 Documents such as -- we would say documents such as general  
10 risk management loss prevention efforts as stated in the  
11 bank's -- in the bank's original written explanation to the  
12 account holders that one of the accounts was closed.

13 Those documents clearly are discoverable. We believe  
14 the fact of whether or not Ms. Johnson and this joint account  
15 was referred to the Anti-Money Laundering Program at Wells  
16 Fargo, whether it was referred, whether there was any activity  
17 by that program, we believe that that's discoverable. We  
18 believe the date upon that referral would be discoverable.

19 And then the question -- we think those things are  
20 clearly discoverable. That's -- that's much like asking the  
21 question, Did you consult with the lawyer? Yes. What was the  
22 day you consulted with the lawyer, such and such and such and  
23 such? Was it referred to the money -- Anti-Money Laundering  
24 Program and on what date clearly cannot be under the  
25 privilege, much like an attorney-client privilege, did you



1 meet an attorney, what was the date.

2 THE COURT: So are you looking for an actual document  
3 that would have anything else redacted from it but would leave  
4 the information sought --

5 MR. KISTLER: We believe that any -- any information  
6 or documents in the bank's possession that the bank generated  
7 should be produced with any reference to the investigation for  
8 a SAR, the creation of a draft SAR, or the creation of the  
9 SAR, all of that information should be redacted.

10 And clearly the SAR, if there was one -- we don't  
11 know if there was one or not; there's been no comment by the  
12 bank one way or the other -- again there's been no comment by  
13 the bank that this account was ever referred over to their  
14 Anti-Money Laundering Program, that this account was ever  
15 involved with the creation of a SAR. They haven't taken that  
16 position. They haven't even given us that information, so.

17 THE COURT: So your position is they can't just say  
18 we can't give you anything, they have to say, well, if the  
19 answer is we never referred it to -- for a SAR, then --

20 MR. KISTLER: -- then all the information should be  
21 -- should be obviously discoverable. Now, Your Honor, the  
22 reason this information is relevant in this case is because  
23 the bank's employee made the defamatory comment. If I were  
24 here saying this account was closed and we don't know why and  
25 we want to know why, the argument might be different.

1           I think even then information could be disclosed; the  
2 question is whether or not you have standing to object to a --  
3 the closing of the account. But here, that account was closed  
4 because of criminal activity of the account holder makes this  
5 information absolutely, totally, completely relevant, and then  
6 when they defend on the grounds of truth, it underscores the  
7 relevancy.

8           Clearly, Your Honor, under any other circumstance, if  
9 we didn't have the bank's position concerning the  
10 all-encompassing scope of the Federal statute -- at least  
11 facially only says SARs and information contained in a SAR --  
12 if we didn't have that, this information -- we wouldn't even  
13 be arguing about it.

14           It would be -- it probably would be discoverable,  
15 disclosable by -- by the bank at the 16.1. Clearly obvious,  
16 clearly relevant. And that's why I started out saying you  
17 have to assume that the facts that I gave you all occurred.  
18 Their analysis is not dependent upon whether the statement was  
19 made or not, it doesn't depend on any kind of relationship  
20 between Mr. Kaplan and Ms. Johnson and why that was  
21 interjected, no one knows.

22           That's why we said the principle is what is a private  
23 citizen's rights to find out information about a negative -- a  
24 negative determination by a private institution that affects  
25 them financially. And simply saying, We don't have to give

1 you anything, makes no sense. Why doesn't that make any --  
2 why does that not make any sense?

3 Because, at least according to Mr. Fitts in the paper  
4 -- in his papers, this Anti-Money Laundering Program that they  
5 have, which we were unaware of until that pleading was  
6 received, and we still don't know if it applies to Ms.  
7 Johnson's account, that it has to -- you know, looks into  
8 identity theft and looks into all kinds of other things.

9 What, Your Honor -- what if this is a case of  
10 mistaken identity? Wouldn't an account holder need to know  
11 that's been defamed for criminal activity that you know that?  
12 They've got the wrong Lisa Johnson. They didn't check the  
13 Social Security numbers. You know what? This is -- she's the  
14 victim of identity theft.

15 She has a very real interest in trying to find out  
16 what the explanation for the defamatory comment would be. And  
17 so, again, what we're asking for, Judge, is we're asking for,  
18 one, internal bank documents and reports that were generated  
19 not in the preparation of or the drafting of any SAR, and any  
20 SAR itself, if, in fact, one ever existed.

21 We're asking for all documents with that deletion and  
22 any documents that refer to the drafting of a SAR, or the  
23 information to be contained in a SAR, or any drafts of the  
24 SARs themselves that are referenced, that information should  
25 be redacted.

1           We certainly believe that we -- we have the right to  
2 know what process was followed insofar as whether or not the  
3 bank was lying in its initial written statements, that the  
4 decision to close this account was based on our own policies,  
5 our own general risk management, and our own loss prevention  
6 efforts, i.e., was this Anti-laundering Program ever  
7 consulted, ever involved, and if so, when?

8           THE COURT: And so when -- if the privilege comes  
9 into any of these also preparing drafting and preparing as  
10 they are, I guess I -- I don't understand the process to  
11 understand. Once this document is prepared -- maybe Mr. Fitts  
12 is a better person to answer -- and it goes up the chain; for  
13 example, if it goes up and somebody says, yeah, this really  
14 isn't the kind of thing either that needs to be reported, if  
15 it's just a draft, and they're like, Yeah, we drafted this,  
16 what do you think; no, it doesn't meet the standard.

17           That whole decision-making process and being sent  
18 back, I mean, at some point if there is a result from a SAR,  
19 would you be entitled to know that? That, oh, somebody made a  
20 determination this -- this isn't something that used to go  
21 into the database that the Feds need to know about, for  
22 example.

23           MR. KISTLER: Judge, you know, out of an abundance of  
24 caution, obviously the Federal government, Congress, has tried  
25 to weigh an individual's rights to information certainly about

1 themselves versus the public right of protection, and I would  
2 say that the courts have considered it; the courts that have  
3 considered the issue have said a decision on a SAR is in all  
4 likelihood not discoverable, a draft SAR is not discoverable,  
5 information contained in a SAR is not discoverable, and the  
6 SAR itself is not discoverable.

7 For purposes of this motion we'll concede those  
8 points because there has to be some type of a balance where  
9 the individual's right to know information about themselves  
10 that affects them and can affect them financially balanced  
11 against the public good or the public need and --

12 THE COURT: So -- so the -- what you're looking for  
13 here is at some point apparently something was triggered, what  
14 is it that triggered that? What was the trigger that caused  
15 the net result of Wells Fargo saying we're closing your  
16 account for [inaudible] reasons? What triggered that? If it  
17 was this is being referred for a SAR, it's like, okay, fine,  
18 end of story.

19 MR. KISTLER: Your Honor, we don't even know if  
20 anything was triggered. We'd be willing to bet you that, one,  
21 if we were permitted discovery, I bet you a dollar gets a  
22 donut right now that this account was never sent to the  
23 Anti-Money Laundering Program.

24 I'll bet you a dollar gets a donut that there was  
25 never any investigation and that's -- that's information we're

1 entitled to develop to determine if it was ever even referred  
2 for that because if it wasn't referred for that, then this is  
3 all just fog. This is all just designed to say we can do  
4 whatever we want to do.

5 We can characterize it in written documents as being  
6 something internal to us. We can defame the account holder  
7 and we don't have to not only owe up to that -- own up to  
8 that, we don't have to produce documents so that our judicial  
9 system's traditional method of truth testing, discovery and  
10 cross-examination can occur. We can avoid all of that.

11 THE COURT: Well, and/or is it possible that -- just  
12 be interesting if I could hear the bank is just anytime there  
13 is an inquiry into this we raise the privilege because we  
14 don't want to establish a precedent. It may not be that it  
15 necessarily applies here, but the very fact that it's being  
16 asked for here, we can't respond because as a matter -- we  
17 take a hard line as -- as a institution against producing any  
18 of this. We -- we believe that it is not appropriate for us  
19 to be even disclosing it, so --

20 MR. KISTLER: Yes, Your Honor.

21 THE COURT: -- don't really have anything that's  
22 relevant to you, but we're going to nevertheless raise it  
23 because we feel we have to protect this privilege no matter  
24 what.

25 MR. KISTLER: Yes, Your Honor, and even the

1 California case, again, non-binding in this jurisdiction that  
2 the defendant bank so heavily relies upon, totally rejects  
3 that, totally rejects that. The bank in Union -- and the bank  
4 in Union, the Union Bank case states -- just a second -- that  
5 a bank cannot cloak its internal reports and memoranda by  
6 baldly claiming that they concern suspicious activity under  
7 the Bank Secrecy Act or concerning transactions that resulted  
8 in the filing of a SAR, as Union Bank.

9           So even in the Union Bank case, non-binding to this  
10 jurisdiction, specifically rejects that hard-line everything  
11 is non-discoverable approach. That being said, Your Honor,  
12 that is our position. We believe that it's a -- it's a  
13 strange issue because under any other circumstance this type  
14 of information would be, again, not only clearly relevant and  
15 discoverable, but probably -- it would probably be incumbent  
16 upon the party that possesses that information to  
17 affirmatively present that evidence as part of their initial  
18 16.1 production.

19           THE COURT: Then one final question then, Mr.  
20 Kistler. Then how logistically can this be done in a way that  
21 protects an established statutory Federal privilege from the  
22 interest of a litigant in discovery? How -- is this something  
23 where you would propose some sort of in camera review? I  
24 mean, how is it going to be done?

25           MR. KISTLER: Judge --

1 THE COURT: Are you -- you just --

2 MR. KISTLER: Judge, how -- how do we typically deal  
3 with documents that are deemed privileged? We create a  
4 privilege log. We create a privilege log, and then based upon  
5 the privilege log, depending upon what the privilege log gives  
6 us, the Court can review that log with those documents to  
7 determine, yes, if, in fact, those documents are privileged or  
8 are not privileged.

9 So we think that the privilege should only apply to  
10 SARs, draft SARs, information contained in a SAR, or  
11 references in bank documents to a SAR. Everything else should  
12 be produced. Any references concerning SARs in bank documents  
13 should be redacted. But anything upon which a privilege is  
14 claimed, there must be a privilege log that again permits a  
15 traditional truth-finding mechanism of our civil system to  
16 operate.

17 THE COURT: Okay.

18 MR. KISTLER: And these -- that concept is not alien  
19 to this court, to any other court. If it's privileged, you do  
20 a log, and that's capable of being reviewed.

21 THE COURT: Thank you.

22 MR. KISTLER: Thank you, Judge.

23 MR. FITTS: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. FITTS: And that's a lot to respond to and I will



1 try to do so in an orderly and logical manner. Your Honor,  
2 with respect to the background facts of this case as alleged,  
3 in August of 2011, the bank did indeed send letters to the  
4 Plaintiff and her boyfriend indicating that they had exercised  
5 their right to no longer do business with the Plaintiff.

6 The bank also sent two other letters to the Plaintiff  
7 with respect to a business of which the Plaintiff was the  
8 managing member and the authorized signer on accounts, and  
9 they did indeed indicate that the bank was choosing to no  
10 longer maintain a banking relationship with the Plaintiff.

11 All three of those letters, as set forth in the  
12 briefs, indicate that if the Plaintiff had any questions  
13 regarding this decision, there was a specific number to talk  
14 to specific people who could answer any questions regarding  
15 the bank's decision, and I say that qualified to the extent  
16 that it doesn't involve any privileges or confidential  
17 information.

18 In interrogatory answers the Plaintiff has indicated  
19 that she then made contacts to the bank, not all of them to  
20 that number, though. And so we have evidence that she goes to  
21 other people in the bank other than those to whom the letter  
22 indicated she could contact.

23 The Plaintiff also indicated that those bank  
24 employees could not tell her or did not know the reason for  
25 the closure, and that is correct. The reason for the bank's

1 decision is known only by a relatively few number of people  
2 within the bank, certainly not any employees in a branch here  
3 in Las Vegas or a branch in California.

4 That's just not done, and testimony in this case  
5 confirms that fact, and there's no evidence to the contrary.  
6 After Plaintiff made her efforts, she indicates in her  
7 interrogatory answers that she then asked her boyfriend to  
8 contact the bank himself to find out the reason, and the  
9 record indicates that her boyfriend then contacted various  
10 other employees at branch offices both in Las Vegas and  
11 California, but not the number that was identified on the  
12 letter that she could call if she had questions.

13 And so they're clearly going outside the scope of the  
14 procedure even set forth in the letter. Plaintiff alleges  
15 that in October of 2011, as one of her boyfriend's efforts to  
16 find out the reason why the bank made its decision, that her  
17 boyfriend spoke to an employee in a branch in California, and  
18 that even in their complaint they acknowledge that the  
19 boyfriend said he didn't know the reason why the account was  
20 closed.

21 The bank employee has now been deposed and he has  
22 indicated that to this day he doesn't know the reason why. He  
23 did indicate that it appeared that there was some type of  
24 investigation that led to the decision, but that he has no  
25 other information.

1           The employee states not a soft denial, he  
2 emphatically stated and we set forth in our brief and the  
3 exhibits, that he would never make any comment regarding a  
4 customer with respect to a criminal background or anything  
5 like that, especially if it applied to someone -- if the  
6 comment was made to someone other than that customer his -- or  
7 herself.

8           Now bank employees deal with tens, maybe hundreds of  
9 people on a daily basis, and so if Plaintiff is to argue,  
10 well, this employee cannot remember the -- the exact  
11 conversation with the Plaintiff, that's reasonable and  
12 expected. I don't know anybody that remembers every  
13 conversation, especially when they're dealing with hundreds of  
14 people on a daily basis, and this is a conversation that is  
15 over a year ago.

16           But the employee is emphatic he doesn't know the  
17 reason why, and that is it, and he denies making any comments  
18 regarding a criminal background or anything of the sort.  
19 Those are the facts as alleged and as testified. The question  
20 now becomes is Plaintiff entitled to know the reason for the  
21 Bank's decision.

22           And, Your Honor, we respectfully submit that  
23 Commissioner Bulla was absolutely correct in her decision and  
24 she was correct for a number of reasons. I'd like to address  
25 a few preliminary arguments and then specifically address the

1 Bank Secrecy Act, which Plaintiff has focused on today.

2 But first of all, Your Honor, just with respect to  
3 the applicable standard here that the Court is applying to  
4 make the Court's decision, in this case the Plaintiff has  
5 alleged three claims: One for defamation, one for false  
6 [indiscernible], and then the third is for a declaratory  
7 judgment in the form of an order requiring the bank to state  
8 why it made its decision to no longer maintain a banking  
9 relationship with the Plaintiff.

10 Now that's a claim for relief and if the Plaintiffs  
11 want to obtain a judgment on that, the applicable standard is  
12 the summary judgment standard, but here we're not here on a  
13 summary judgment. We're here because Plaintiff, instead of  
14 filing a motion, a dispositive motion on the third claim for  
15 relief, instead Plaintiff has circumvented that normal  
16 procedure.

17 Now obviously the Plaintiff knows that I assume based  
18 on filing a claim for relief for declaratory judgment, they  
19 know that that's the method they would have to take to get a  
20 decision from Your Honor; but they circumvented that process,  
21 and instead they just sent us discovery requests for us to  
22 tell them the reason why, and they did so in a number of forms  
23 and that's set forth in the brief and in the attached  
24 exhibits.

25 And so we were before Commissioner Bulla on a

1 discovery motion where the standard for discovery is much more  
2 liberal than the strict standard for a dispositive motion.  
3 And so to the extent Your Honor is addressing this with  
4 respect to a standard regarding discovery, we would  
5 respectfully submit that that is an improper standard because  
6 the proper standard to apply is the strict standard for  
7 dispositive motions, not the [indiscernible] standard for  
8 discovery.

9           So we believe that this motion is entirely  
10 procedurally improper based upon the Plaintiff's own pleading.  
11 Second, Your Honor, it is established both in the account  
12 agreement between the bank and the Plaintiff --

13           THE COURT: Well, I'm not sure I understood that  
14 because the standard that I reviewed in the discovery  
15 commissioner's report and recommendation is the standard that  
16 appears in Rule 53 on Masters. They make recommendations; we  
17 accept them. We overturn them if there's an error of fact or  
18 law. It's got to be an error. So that's the standard, I  
19 would reply.

20           MR. FITTS: Well, the error of law can both apply to  
21 the substantive law but also the standard that is applied, and  
22 so with respect to the discovery standard, the discovery  
23 standard is reasonably calculated --

24           THE COURT: Right, to lead to the discovery --

25           MR. FITTS: -- to lead to the discovery of admissible

1 evidence.

2 THE COURT: Right.

3 MR. FITTS: That's far different than the dispositive  
4 motion where you have to have undisputed facts. Here we have  
5 disputed facts and you have to have a judgment that's entitled  
6 as a matter of law, and I'm certainly going to be getting to  
7 that law in just a moment. So there is a different standard  
8 here and we believe -- I mean, the discovery standard seems to  
9 be a much more liberal standard than the standard for a  
10 dispositive motion.

11 THE COURT: I see. Okay.

12 MR. FITTS: The second preliminary point I want to  
13 make is that under both the account agreement between the  
14 Plaintiff and the bank, as well as common law, it's well  
15 established universally that a relationship between a  
16 depositor and a bank is at will.

17 Either side can decide to no longer maintain that  
18 banking relationship for any reason that they decide. I will  
19 acknowledge that the bank does have to provide reasonable  
20 notice if it's going to decide not to maintain the banking  
21 relationship, and certainly there's no issue here. We gave  
22 proper and adequate notice before the accounts were actually  
23 closed.

24 But it's much like if -- if you have someone, Your  
25 Honor, someone that anyone is doing business with at an

1 at-will relationship, we don't have to disclose why we no  
2 longer want to do business with that individual. That's not  
3 required. Now -- and that's established under the common law  
4 and under the account agreement.

5 I also want to just make a third argument with  
6 respect to Federal law other than the Bank Secrecy Act, and  
7 that is that bank documents pertaining to investigations and  
8 account documents that reference non-party bank customers,  
9 that's privileged, and I don't think that that is a dispute  
10 here.

11 I believe Mr. Kistler has acknowledged there may be  
12 information, even if these documents were to be disclosed,  
13 that some of them apply redactions and so forth, but I simply  
14 want to make that clear.

15 Now we get to the Bank Secrecy Act, Your Honor. The  
16 Bank Secrecy Act is sometimes referred to as the Anti-Money  
17 Laundering Act or the Patriot Act, and since the events of  
18 9/11 and the financial crisis of 2008, Congress, and  
19 particularly the Department of Treasury, has taken a  
20 heightened interest in requiring banks to report unusual or  
21 suspicious activities and to encourage banks to comply. The  
22 banks are granted immunity from lawsuits regarding its  
23 compliance with the statutory provisions, and there's a  
24 confidentiality regarding the entire process of complying with  
25 the Bank Secrecy Act.

1           Now the Department of Treasury, specifically the  
2 Office of the Comptroller of Currency, otherwise known as the  
3 OCC, has promulgated a Code of Federal Regulations. They're  
4 authorized to do that under the Bank Secrecy Act, and under  
5 the law those Code of Federal Regulations are binding law.

6           Further, the OCC's own interpretations of its  
7 regulations are binding law and this -- the Code of Federal  
8 Regulations -- Federal Regulations provide that SARs, or  
9 Suspicious Activity Reports, and any other information on the  
10 reports are confidential and they cannot be disclosed, and  
11 this applies regardless of whether or not a SAR has even been  
12 created or submitted.

13           Now as set forth in Exhibit A to Wells Fargo's  
14 opposition to Plaintiff's objection, Wells Fargo's  
15 vice-president Raelynn Stockman indicates that Wells Fargo  
16 Bank has created an Anti-Money Laundering Investigative  
17 Division for the sole purpose of complying with the Bank  
18 Secrecy Act.

19           In other words, this AML Investigative Unit would not  
20 exist but for the requirements of the Bank Secrecy Act. Ms.  
21 Stockman also indicates that all of the information, the  
22 discovery information that the Plaintiffs have requested with  
23 respect to the bank's decision, all of the information and all  
24 of the documents were created by the Anti-Money Laundering  
25 Unit in its efforts to comply with the Bank Secrecy Act, and



1 so that's the testimony here.

2 And at the October 5th hearing Commissioner Bulla  
3 correctly recognized that testimony and indicated that SARs,  
4 drafts of SARs, and any internal documents relating to the  
5 bank's compliance, investigative requirements and duties under  
6 the Bank Secrecy Act, were indeed privileged.

7 And so we get here today and Plaintiff has filed its  
8 objection and Plaintiff has cited two cases, Your Honor, for  
9 the proposition that documents outside of a SAR itself or a  
10 draft of the SAR are not privileged. And, Your Honor, I think  
11 that if the Court, as the Court Shepardizes, or if anyone  
12 Shepardizes those two cases, those are clearly in the  
13 minority position because with respect to the bankruptcy court  
14 case that was just cited, no other court in this land has  
15 relied upon that bankruptcy court decision.

16 And the reason why is this: In 2000 -- I believe it  
17 was 2005, there's the Seminole case of Union Bank of  
18 California versus the Superior Court, and in that case the  
19 issue was similar to this where you had a plaintiff who says,  
20 Listen, only the SAR and a draft of a SAR is privileged, but  
21 nothing else is, and that's essentially the position the  
22 Plaintiffs have taken here.

23 And in that case, Your Honor, the trial court agreed  
24 with the plaintiff, albeit erroneously agreed with the  
25 plaintiff. And in fact, the bank appealed that decision to --

1 to the California Court of Appeals, and at that time the OCC  
2 actually filed an amicus curiae brief, a friend of the court  
3 brief, because it was concerned with the erroneous decision of  
4 the trial court.

5 And in that brief, Your Honor, and it's set forth in  
6 the case law that we have cited, the OCC interpreted its own  
7 Code of Federal Regulations; and there's no other court case,  
8 Your Honor, where the OCC has actually come in and interpreted  
9 its own Code of Federal Regulations with respect to the Bank  
10 Secrecy Act, and that's why I say this case here is, in fact,  
11 the seminal case, and it is, in fact, governing, Your Honor,  
12 and the reason is [inaudible].

13 The OCC regulations have the binding effect of  
14 Federal law. Further, as we've set forth in the briefs, the  
15 OCC's interpretations of its regulations are -- also have the  
16 binding effect of Federal law.

17 And so yes, this is governing law because we're  
18 hearing it straight from the horse's mouth because they were  
19 authorized, the OCC was authorized by Congress as a matter of  
20 Federal law to set forth regulations, and the OCC, as a matter  
21 of law and a matter the Court can take judicial notice, hasn't  
22 interpreted its own Code of Federal Regulations with respect  
23 to the very issue that is here in this case.

24 And that issue is what did the OCC mean by saying in  
25 its Code of Federal Regulations that not only a SAR and a

1 draft of a SAR is privileged, but also supporting information  
2 pertaining to the SAR investigative requirements, what did the  
3 OCC mean by that? And this is what the OCC said. As set  
4 forth in Union Bank of California on page -- it's 130 Cal. Ap.  
5 4th at -- well, at 386, and 387, where Union Bank filed its  
6 brief with the California Appellate Court, and stated its  
7 interpretation of its own regulations as protecting from  
8 discovery not just the SARs, but also the process of preparing  
9 a SAR -- and this is the key language, Your Honor -- as well  
10 as documents generated by a financial institution as part of  
11 its internal process for filing SARs as required by Federal  
12 law.

13 That's the OCC's interpretation and that is binding  
14 law, not only in California, but here in Nevada. Now so --

15 THE COURT: So even answering the question of a SAR  
16 was prepared, but we don't [inaudible] in it, even that is a  
17 violation of the privilege, the mere --

18 MR. FITTS: I can't even --

19 THE COURT: -- the existence of a SAR, the very  
20 existence of a SAR is privileged.

21 MR. FITTS: Yes. In fact, I'm permitted -- I'm  
22 prohibited from even commenting as to whether or not a SAR was  
23 filed or not. I'm prohibited from commenting if one exists,  
24 what the contents of that is, and based on the OCC's own  
25 interpretation of its own regulations, the bank is prohibited

1 from producing any internal documents prepared or generated as  
2 part of its obligations to investigate suspicious activity  
3 under the Bank Secrecy Act.

4 Now this is what the court said, though, Your Honor,  
5 and I want to take specific note. The court did -- counsel  
6 made the comment that the court in California at Union Bank  
7 said that it may not cloak its internal reports and memoranda  
8 with a veil of confidentiality simply by claiming they concern  
9 suspicious activity or concern a transaction that resulted in  
10 a filing of a SAR, but counsel does not read the sentence just  
11 before that.

12 And this again, this is at 130 Cal. Ap. 4th at 392,  
13 and the sentence before that specifically places that comment  
14 in contents -- in context, and it says that that statement  
15 only applies to the bank's procedures that it has in place for  
16 detecting suspicious activity wholly apart from their  
17 procedures for complying with Federal reporting obligations.

18 So, in other words, if the Court -- if the bank has  
19 an investigative decision that's outside the Anti-Money  
20 Laundering Unit, then that could be discoverable, and I'll  
21 certainly acknowledge that. But here we have a bank  
22 vice-president who actually made the decision, and she has  
23 submitted an affidavit to Your Honor indicating that all the  
24 information that was relied upon to make the decision came  
25 from the bank's Anti-Money Laundering Investigative Unit, and

1 that that unit would not exist but for the Federal law  
2 requiring the bank to comply with the Bank Secrecy Act.

3 THE COURT: Okay. I think -- I guess what I'm trying  
4 to figure out here, and I think this was Mr. Kistler's point,  
5 is that -- and I think that's what the Union Bank court was  
6 saying is that who makes the decision? Who says this is going  
7 to be cloaked by a privilege? Does the bank get to say, which  
8 is what I think that -- the Union Bank court was cognizant of  
9 and said what you need to be careful about is that a bank  
10 should not cloak its internal reports or memoranda with a veil  
11 of confidentiality simply by claiming they concern suspicious  
12 activity, because there might be other things totally  
13 unrelated, business activity that would trigger a decision to  
14 close.

15 So the question is, does the bank get to say it's  
16 cloaked? I'm going to [inaudible] it's -- I'm going to tell  
17 you that it is. Or is there some mechanism like which it's  
18 possible to have some outside independent person say, yes,  
19 okay, I see how this is connected, it's privileged, it's --  
20 it's barred.

21 Do we just accept -- I'm not saying that we shouldn't  
22 be accepting the word of somebody who signed an affidavit  
23 saying this is true, but is there some mechanism by which  
24 there can be some -- some confidence on the part of somebody  
25 seeking this information that, okay, a third party's looked at

1 it, a third party says it's true, that this -- there is this  
2 privilege that is attached, I'm not entitled to this, fine, I  
3 accept it.

4 MR. FITTS: Yes, and I -- I understand that question  
5 and I'll try to answer that.

6 THE COURT: Because I think that's the concern that  
7 -- that -- that the court was saying and I -- I took from --  
8 I'm not sure I agree entirely with Mr. Kistler, but I did take  
9 his point as a valid point, which is that at some point you  
10 have to say, Here's a privileged log; the privilege we're  
11 claiming is this statutory privilege. You can't just say, I'm  
12 not going to answer it because I -- if I answer it, I have to  
13 admit there's a privilege.

14 MR. FITTS: Yes.

15 THE COURT: And I -- I understand your argument that  
16 you're not allowed to even say there's -- there's a SAR, but  
17 to me, I'm not sure how that works.

18 MR. FITTS: And I think those are important questions  
19 and I -- it was my intent to get all of that.

20 THE COURT: Okay.

21 MR. FITTS: So let me discuss that because I do think  
22 that's really important and I think that's a fair question.  
23 For the bank just to say at any time, Hey, we have the Bank  
24 Secrecy Act, we're not going to give you anything --

25 THE COURT: We're not -- we're not going to answer

1 your discovery.

2 MR. FITTS: -- I don't think the bank can do that and  
3 I don't think -- I'm not taking that position and the bank  
4 hasn't taken that position, but I do think what's required is,  
5 you know there's a -- there is a discovery process that's  
6 available, and Plaintiffs have engaged in a little bit of that  
7 with respect to written discovery.

8 They basically said, Give us all the information,  
9 whether it's policies or -- I mean, I'm paraphrasing. They  
10 have about ten different -- 13 different interrogatories, and  
11 they ask the same question in different ways, and basically  
12 they just want all information. I'm going to their discovery  
13 information.

14 I understand Mr. Kistler has taken a slightly  
15 different position today with respect to the Bank Secrecy Act.  
16 And our response is, is there's nothing outside of what was  
17 generated with respect to the bank's Anti-Money Laundering  
18 Investigative Unit which falls under the protection of the  
19 Bank Secrecy Act. There's nothing else there that was relied  
20 upon to make this decision, and we have essentially stated  
21 that in our discovery responses.

22 Now if they wanted to probe that more, okay, they can  
23 take the deposition of this bank employee, which they did.  
24 And what did the bank employee say? I don't know why, I don't  
25 know the reason why, nobody's told me that. We've even,

1 therefore, come forth with an affidavit from the bank's  
2 vice-president saying, Listen, we have this Anti-Money  
3 Laundering Unit, we've reviewed your discovery responses with  
4 respect to your request why the bank made its decision, and  
5 all of your requests are based on information generated by the  
6 bank's Anti-Money Laundering Unit, and all that information  
7 was generated in order to comply with the Bank Secrecy Act.

8           So the bank has stated under oath it has no other  
9 information. Now I suppose they could take the -- Ms.  
10 Stockman's deposition if they want to do that.

11           THE COURT: And I guess --

12           MR. FITTS: But before they get -- before they start  
13 making allegations that there's something else out there, it  
14 can't just be speculation.

15           THE COURT: Okay. So I guess if that's what's in the  
16 transcript Commissioner Bulla was -- was saying is that she  
17 recognizes the dichotomy that this creates because if an  
18 affirmative defense is going to be asserted by the bank, the  
19 bank has to prove it's affirmative defense or it's stricken.

20           And I think that's -- Mr. Kistler's point was at some  
21 point in time that affirmative defense, how are they going to  
22 establish that? Simply to say -- I mean -- and I think that  
23 -- and this is where I keep running up against this statement,  
24 a bank may not cloak it's internal reports and memoranda with  
25 a veil of confidentiality simply by claiming they concern some



1 suspicious activity.

2 At what point does the bank have to say, Okay, it's  
3 -- it's confidential, we can't answer any questions? So we  
4 realize that this places us in a position where we have some  
5 information that we are not going to be able to use in our  
6 defense and our defense may fail.

7 And I think that Commissioner Bulla's point was,  
8 well, at that point then you file a motion and it's a  
9 dispositive motion. I'm assuming that's why you started out  
10 when you started out, Mr. Fitts, with, you know, that this  
11 is --

12 MR. FITTS: Right.

13 THE COURT: -- you know, because the problem we have  
14 here is you can't say we had a valid reason, although I guess  
15 you're saying we didn't defame her; but on the other hand I  
16 think Mr. Kistler's point is if you've got a defense, the  
17 defense being truth, and the truth is something that's  
18 privileged, how do you -- how do you prove that?

19 MR. FITTS: Well, let me -- I don't mean to  
20 interrupt, Your Honor.

21 THE COURT: You can't prove it, can you?

22 MR. FITTS: I can answer that in two parts, Your  
23 Honor. This --

24 THE COURT: I know we're not [inaudible] get to that  
25 today, but I guess I'm just trying to understand.

1           MR. FITTS: The -- the alleged defamatory statement  
2 was made by a bank employee in California, and that bank  
3 employee, based on his own testimony and based on other  
4 evidence, he doesn't know why the bank made its decision. And  
5 so we --

6           THE COURT: Wait a minute.

7           MR. FITTS: He does not know, Your Honor.

8           THE COURT: Stop right there. Here's my question,  
9 then. It's one thing to say the bank employee did not defame  
10 her.

11          MR. FITTS: Right.

12          THE COURT: We did not commit the defamation, so put  
13 that aside. That's not the defense. If we're talking about  
14 the defense of truth, if the bank employee says, okay, maybe I  
15 said -- I'm just [inaudible] hypothetical, maybe the bank  
16 employee says, Well, yeah, I said that but I don't know why  
17 the bank thought there was criminal activity. It's true, it's  
18 there, there's criminal activity to make up, there's criminal  
19 activity, so I assumed that was correct and I said it, but I  
20 don't know why, so it was true. You can't then say, We don't  
21 have to say what they did --

22          MR. FITTS: Well, I want to get --

23          THE COURT: -- because -- because -- because the  
24 employee thought it was true, he was just reporting what he --  
25 and he didn't know why, so therefore it's confidential and we

1 don't have to tell you, I mean, you -- that's specious.

2 MR. FITTS: Your Honor, if I understand Your Honor  
3 correctly, we're dealing with some alleged statements by a  
4 bank employee --

5 THE COURT: Right.

6 MR. FITTS: -- that are wholly apart and different  
7 from the information or the compliance efforts of the  
8 Anti-Money Laundering Unit, and so the statements, the alleged  
9 statements by the bank employee, there's no connection between  
10 the two. There's absolutely no connection between the two.

11 And so if they want to dig further into the alleged  
12 statements of this bank employee upon which they've alleged  
13 defamatory statements were made, you know, have at it. But  
14 there's no connection between what the bank employee allegedly  
15 said and -- or knows and what the information was generated by  
16 the bank's Anti-Money Laundering Unit. There's no connection  
17 there.

18 THE COURT: Okay. Well, we're probably --

19 MR. FITTS: My second part of the answer, though, is  
20 this.

21 THE COURT: Well, we're probably getting too deep  
22 into the actual facts of the case, but...

23 MR. FITTS: Right, but my other -- the other -- my  
24 other part of my answer to this is, Your Honor, is regardless  
25 of what I've just said there, what Commissioner Bulla said,

1 well, regarding the affirmative defense, that's a matter for a  
2 separate motion.

3 If they want to file a motion to strike the  
4 affirmative defense of truth, they can do that, but it -- but  
5 that doesn't affect the fact that there is an unwaiverable  
6 Federal statute here that says this information is privileged  
7 and there are penalties --

8 THE COURT: And so -- so I guess we've gotten too far  
9 into, I guess, the actual merits of it. Your position is --

10 MR. FITTS: Yeah, I think the affirmative defense is  
11 really a red herring right here --

12 THE COURT: The privilege is --

13 MR. FITTS: -- because if they want to file a  
14 separate motion, have at it, on the affirmative defense, but  
15 that has nothing to do as to whether or not the information  
16 that was generated by the Anti-Money Laundering Unit --

17 THE COURT: Assuming it was.

18 MR. FITTS: -- is, in fact, privileged. How do I  
19 prove a negative, Your Honor?

20 THE COURT: Right. It -- there --

21 MR. FITTS: And their arguments are speculative.

22 THE COURT: There is an Anti-Money Laundering Unit,  
23 we can't tell you whether anything that came out of that  
24 Anti-Money Laundering Unit did or did not lead to the  
25 decision? Is that your position?

1 MR. FITTS: I'm sorry?

2 THE COURT: Is that we can't tell -- all we can tell

3 you there's an Anti-Money Laundering Unit?

4 MR. FITTS: Yes.

5 THE COURT: We cannot tell you whether anything that

6 came out of that unit led to a decision to close your account?

7 MR. FITTS: No, that's not what I'm saying. I'll

8 read from the affidavit of Raelynn Stockman; it's Exhibit H.

9 THE COURT: Okay.

10 MR. FITTS: To our opposition and it starts with --

11 MR. KISTLER: I think that's Exhibit A as in aunt.

12 MR. FITTS: Well, A --

13 THE COURT: Oh, A.

14 MR. FITTS: -- to our opposition, but it's also H to

15 our opposition to the motion to compel.

16 THE COURT: Okay. Yeah, here -- here -- here it's A.

17 MR. FITTS: Yes.

18 THE COURT: Because H is the --

19 MR. FITTS: Yes, I'm sorry for any --

20 THE COURT: -- actual discovery.

21 MR. FITTS: -- confusion on that.

22 THE COURT: Thank you.

23 MR. FITTS: But --

24 THE COURT: Ms. Stockman. Okay. Got it.

25 MR. FITTS: Okay. We go through, we set the

1 foundation, paragraph four, Consistent with the reporting  
2 requirements of the Bank Secrecy Act, the bank has created the  
3 Anti-Money Laundering Investigative Unit. The purpose of this  
4 investigative division is to insure compliance with the  
5 requirements of the Bank Secrecy Act.

6 And then paragraph five, Consistent with the Act,  
7 Wells Fargo set up various policies, procedures, controls that  
8 are kept confidential. And, of course, that's consistent with  
9 Federal law. I mean, we're required under Federal law to do  
10 just what Ms. Stockman said. We are required to set up this  
11 program.

12 We are required to have some type of program in place  
13 to look into suspicious or unusual banking activities.

14 Paragraph six, In this legal action, Plaintiff has served  
15 interrogatories and requests for production of documents which  
16 seek the disclosure of information generated by the AML  
17 Investigative Division, including policies, procedures,  
18 internal memoranda and other written materials.

19 This information was generated as a direct result of  
20 Wells Fargo's purpose of fulfilling its reporting obligations  
21 under the Bank Secrecy Act. Consistent with the purposes and  
22 provisions of the Bank Secrecy Act, Wells Fargo considers this  
23 requested information to be confidential.

24 This information also pertains to an ongoing  
25 investigation of Wells Fargo and believes the disclosure would

1 compromise its investigative efforts, cooperative efforts with  
2 law enforcement officials, and the purposes of the reporting  
3 requirements in the Bank Secrecy Act. That's exactly what the  
4 OCC stated in its amicus curiae brief in the California Union  
5 Bank case.

6 THE COURT: Well, okay. Did it -- policies,  
7 procedures, internal memoranda. Okay. So policies -- where  
8 does the -- where does the OCC state policies and procedures  
9 are protected?

10 MR. FITTS: Well, it's, in fact, even cited in the  
11 case law that the Plaintiffs have cited. This is at 29 Cal --  
12 this is in the Union Bank of California.

13 THE COURT: Okay. 29 Cal 3d 894.

14 MR. FITTS: 29 Cal 3d at -- let's see -- where are we  
15 here? Looks like it's 903. And the bank goes through the --  
16 the legislative background how Congress has mandated that each  
17 institution establish anti-money laundering programs,  
18 including internal policies, procedures and controls, and then  
19 later that same paragraph, a bank's internal procedures may  
20 include the development and use of preliminary reports subject  
21 to various quality control checks before the bank prepares the  
22 final SAR that we'll be filing. Revealing these preliminary  
23 reports, the equivalent of draft SARs, would disclose whether  
24 or not a SAR was prepared.

25 THE COURT: The reports.

1 MR. FITTS: And then it -- I think there was another  
2 reference, and I apologize, Your Honor. Let's see here. And  
3 then on page 398 it talks about the SAR privilege protects not  
4 just the SAR but the process of preparing the SAR and, in  
5 fact, I think it's the Gregory [phonetic] case which  
6 Plaintiffs have cited has also stated the -- the SAR policy  
7 and procedures are also protected.

8 This wasn't a specific point I think that was a  
9 target in the brief. I think they were arguing that policies  
10 and procedures outside the Bank Secrecy Act were disclosed,  
11 but I can certainly --

12 THE COURT: Well, I'm just trying to understand what  
13 it is Ms. Stockman says she -- she wants to assert a privilege  
14 to. I'm not clear, because I think --

15 MR. FITTS: Everything --

16 THE COURT: -- I don't even think that Mr. -- that  
17 Mr. Kistler disputes that the SAR is privileged.

18 MR. FITTS: Well, this is --

19 THE COURT: That anything that goes into drafting the  
20 SAR is privileged.

21 MR. FITTS: -- this is what -- this is what the bank  
22 said in -- or the court said in response to -- in its decision  
23 in California Union Bank and this is based upon what the  
24 OCCs --

25 THE COURT: I don't -- I'm talking about what is Ms.



1 Stockman saying is privileged. What is Ms. Stockman saying --  
2 I -- I am --

3 MR. FITTS: All --

4 THE COURT: -- I am invoking my privilege?

5 MR. FITTS: All of the -- all of the information  
6 generated by the bank's Anti-Money Laundering Investigative  
7 Unit.

8 THE COURT: Including the fact that, in fact, that's  
9 what triggered any investigation, that this was done through  
10 that division, even the fact --

11 MR. FITTS: Yes, but I -- I do agree that there is an  
12 exception, and I want to -- I was going to get to this a few  
13 moments ago, Your Honor. You know when the court in  
14 California Union Bank said, you know, you can't cloak your  
15 response by just saying these are protected documents.

16 THE COURT: Right.

17 MR. FITTS: Well, the sentence just before that, the  
18 court said, well, that applies to documents that are wholly  
19 separate and distinct from the Bank Secrecy Act Investigative  
20 Program, and so...

21 THE COURT: Well, what specifically what they said,  
22 the court says financial institutions may have risk management  
23 procedures in place for detecting suspicious activity wholly  
24 apart from their procedures for complying with Federal  
25 reporting obligations.

1 MR. FITTS: Right.

2 THE COURT: That's what it says.

3 MR. FITTS: Right. And that's what I -- that's --  
4 that's what I -- I mean, that's what I thought I was arguing,  
5 Your Honor. And so the court has stated, then, Listen, we  
6 have two different types of information, then, that may  
7 pertain to unusual activity, and this is on page -- let's see  
8 -- this is on page 29 Cal 3d at -- looks like it's 902.

9 And so the court says, Okay -- the court says, okay,  
10 what comprises, then, this supporting documentation with  
11 respect to a SAR? And the court says, okay, there's two  
12 different types of information; one is privileged and one is  
13 not. And the court says, first of all, there's documents that  
14 are created in the ordinary course of business, such as  
15 transactional and account documents, such as wire transfer,  
16 statements, checks, deposit slips, and the court says these  
17 are the type of documents generated in the ordinary course of  
18 business, and the court said these are not protected under the  
19 Bank Secrecy Act because they would exist regardless of  
20 whether the Bank Secrecy Act existed.

21 And we agree, Your Honor, and so -- and we've already  
22 disclosed that information. In fact, that information should  
23 be in Plaintiff's own possession because --

24 THE COURT: Okay.

25 MR. FITTS: -- if there are checks written, she would

1 have signed them.

2 THE COURT: Okay. I'm trying to narrow down here,  
3 Mr. Fitts, what is it the bank is saying is protected? Under  
4 -- in this case they specifically say --

5 MR. FITTS: It's a SAR.

6 THE COURT: -- the second category of documents  
7 representing drafts of SARs or other work product or  
8 privileged communications that relate to the SAR itself, these  
9 are not to be produced because they would disclose whether a  
10 SAR has been prepared or filed.

11 MR. FITTS: Right.

12 THE COURT: So anything that would even disclose  
13 whether a SAR has been prepared is privileged.

14 MR. FITTS: Yes.

15 THE COURT: Okay. I just want to clarify that.

16 MR. FITTS: I'm sorry. I just took it as a given. A  
17 SAR, if one exists, is privileged.

18 THE COURT: Right.

19 MR. FITTS: Any drafts of a SAR, if one exists, or if  
20 one doesn't exist, even if there was a draft, that's  
21 privileged, and any other documents, investigative documents  
22 or internal memoranda with respect to an investigation by --  
23 under the Bank Secrecy Act, regardless of whether or not a SAR  
24 was actually filed or not or prepared, that's privileged.

25 THE COURT: Okay. So this is why I was -- what I was

1     trying --

2             MR. FITTS: I'm sorry if I misunderstood.

3             THE COURT: Maybe I wasn't real clear.

4             MR. FITTS: I apologize.

5             THE COURT: Here's the thing. I specifically asked  
6 Mr. Kistler, what is it you're looking for? He said, well, a  
7 privilege log. Typically when a privilege is asserted we get  
8 a privilege log. My point here is, your position is we can't  
9 even do a privilege log because if we do a privilege log and  
10 we say the privilege we're claiming is this --

11            MR. FITTS: Right.

12            THE COURT: -- you're disclosing a SAR was prepared?

13            MR. FITTS: If -- yes, because if we say in a  
14 privilege log that's normally required in Nevada, we have to  
15 state, well, who created it, who did it go to, what is the  
16 date, what's the subject matter.

17            THE COURT: So the very information Mr. Kistler  
18 suggested could be -- everything else could be redacted but we  
19 need to know the date, who, and that it was -- triggered that.  
20 Your position is the very fact that a SAR was created, that's  
21 what triggers the privilege.

22            MR. FITTS: No.

23            THE COURT: There you go.

24            MR. FITTS: I'm not saying that at all because I  
25 can't comment on whether a SAR was created or not.

1           THE COURT: In a specific -- in any specific case, I  
2 understand that.

3           MR. FITTS: Right. What I can say is the bank has a  
4 program that it has implemented pursuant to the Bank Secrecy  
5 Act, and to implement that program it set up an Anti-Money  
6 Laundering Unit Investigative Division; and what we're saying  
7 is that that unit would not exist but for the compliance --  
8 the bank's compliance -- efforts to comply with the Bank  
9 Secrecy Act. And under what the OCC has said, and under what  
10 the case law has said, everything that is generated by that  
11 Anti-Money Laundering Investigative Unit that is set up for  
12 the purpose of complying with the Bank Secrecy Act, that is  
13 privileged.

14           And the reason why is because if that type of  
15 information then becomes available, well, guess what? That  
16 compromises the entire Bank Secrecy Act because then the bank  
17 has to disclose its investigative methods and tools and  
18 processes, and that undermines the entire purpose, and it  
19 undermines the cooperative effort between the bank and Federal  
20 regulators.

21           And that's why the court said in California Union  
22 Bank if you go -- if, you know, we're creating a circle here  
23 of information that cannot -- that is privileged, that is the  
24 SAR, if one exists, a draft of the SAR, and any of the  
25 investigative documents that were generated as a result of the

1 bank's efforts to comply with the Bank Secrecy Act. Because  
2 if you -- if you -- if you puncture that protective wall, then  
3 you start disclosing all of the investigative procedures, all  
4 of the tools, and that information would likely lead someone  
5 to also finding out whether or not a SAR was filed.

6 THE COURT: Okay. Well then, here's the problem that  
7 we have.

8 MR. FITTS: Yes.

9 THE COURT: How do you differentiate between -- as  
10 the court in the California -- the Union Bank of California  
11 case did, from risk management procedures in place for  
12 detecting suspicious activity wholly apart from those for  
13 complying with Federal reporting obligations, where do you --  
14 where do you make that line and say that's discoverable, this  
15 isn't?

16 And who makes that decision? Or, as has been  
17 apparently alleged here by Ms. Stockman, that because we have  
18 this process in place, we can't answer anything. That's the  
19 way I read her affidavit.

20 MR. FITTS: What she is saying is that all of the  
21 information that the bank used to make its decision was  
22 information generated by the bank's Anti-Money Laundering  
23 Unit.

24 THE COURT: Okay.

25 MR. FITTS: And what else can she say, Your Honor?

1           THE COURT: So where -- where the requests for  
2 production for the information sought by the Plaintiff is  
3 provide all documents concerning the red flags that were in  
4 the accounts associated with Ms. Johnson and the ongoing  
5 reviews of the account relationship because I -- and, again,  
6 we keep getting into the whole merits of it, which I think  
7 we've gotten too far into it --

8           MR. FITTS: Maybe so, maybe so.

9           THE COURT: -- because [inaudible] it's about, is how  
10 do you defend this if you say it's privileged? We don't have  
11 to defend it because it's privileged? Is that your defense --

12          MR. FITTS: I --

13          THE COURT: -- is that we don't have to defend, it's  
14 privileged?

15          MR. FITTS: I suppose we could provide you with  
16 everything that the bank's AML Investigative Unit generated  
17 and Your Honor can look at them yourself.

18          THE COURT: No, you're not getting my point.

19          MR. FITTS: There's nothing else there, Your Honor.  
20 I mean, Raelynn Stockman is the decision maker. She made the  
21 decision and she stated right here. All of the information  
22 that went into that decision was the information provided by  
23 the AML Investigative Unit, there's nothing else.

24          THE COURT: Okay.

25          MR. FITTS: And so --

1 THE COURT: So like you -- because -- because the  
2 information that I base my -- my decision on is privileged, I  
3 don't have to tell you why I made my decision.

4 MR. FITTS: That's right, she doesn't.

5 THE COURT: And so I mean it's your position there is  
6 no -- like I said, we're getting basically to the merits, but  
7 that you can't attack our decision because it's privileged.

8 MR. FITTS: That's right. And in fact, we take the  
9 point even if the Bank Secrecy Act didn't exist, we don't have  
10 to say why we closed an account. Why do we have to do that?

11 THE COURT: So we --

12 MR. FITTS: If someone comes up to me, come --

13 THE COURT: And that's where we're getting, like I  
14 said, into the merits right here.

15 MR. FITTS: -- if I'm doing business with someone at  
16 my law firm and they're supplying paper, and I say I don't  
17 want to go with you anymore, am I not required to tell them  
18 why? I don't have to.

19 THE COURT: Okay. I think that we're getting, like I  
20 said, way too far --

21 MR. FITTS: I mean, there's -- if they want -- if  
22 they want --

23 THE COURT: -- from the purpose.

24 MR. FITTS: -- to assert a claim for defamation, have  
25 at it. Have at it. And if they want to file a motion



1 regarding an affirmative defense of truth, we can address  
2 those issues there. But what I'm saying, Your Honor, and what  
3 the law is saying is we don't have to tell them why we make a  
4 decision not to do business with them. We don't have to tell  
5 them that. What -- what legal right do they have to that?

6 THE COURT: That -- okay.

7 MR. FITTS: Aside from the Bank Secrecy Act.

8 THE COURT: That's not what we're here -- that's not  
9 what we're here -- we're here --

10 MR. FITTS: That's what our position is and that's --

11 THE COURT: -- about the Bank Secrecy Act. We do not  
12 have to disclose anything further than I can't answer your  
13 questions because we have this Anti-Money Laundering Unit and  
14 it -- it therefore cloaks the decision process in a privilege.

15 MR. FITTS: Our position is this: This is an at-will  
16 relationship. The bank doesn't have to --

17 THE COURT: We're not here about the merits. We're  
18 here about discovery, so --

19 MR. FITTS: That's right, and we don't -- and as a  
20 matter of law, we don't have to tell anybody why we don't want  
21 to do business with them. Moreover, under the Bank Secrecy  
22 Act, we're privileged -- we're prevented under Federal statute  
23 from disclosing information, and if they want to take Raelynn  
24 Stockman's deposition and say, What information did you rely  
25 upon in making the decision? Well, she'll state what she

1 stated in her affidavit. What else is there? Are they going  
2 to say you're lying? Well, that's just speculation. I mean,  
3 where are we going here?

4 THE COURT: Well, I'll tell you where we're going  
5 because the whole point is --

6 MR. FITTS: They have no right to this information.  
7 Ms. Stockman has said the information she relied upon was  
8 information generated by the Anti-Money Laundering Unit.

9 THE COURT: Okay.

10 MR. FITTS: And all that information is protected.

11 THE COURT: Okay. That information is protected.

12 Then any affirmative defenses that rely on the protected  
13 information, how do you prove it? Because if --

14 MR. FITTS: We can -- that's -- Your Honor, we can  
15 address that for a separate motion. That's not before --  
16 that's not in the motion here today.

17 THE COURT: Okay. All right. Great. Fine.

18 MR. FITTS: That's a separate entire decision. In  
19 fact, Commissioner Bulla said to them during the hearing,  
20 that's a separate issue that needs to be filed in the form of  
21 a substantive motion, not a discovery motion. And, Your  
22 Honor, we're here today on a discovery motion and that's why I  
23 said at the very beginning, they're trying to mix and confuse  
24 the issues.

25 THE COURT: So -- so the issue being, did the

1 commissioner make an error of fact or law?

2 MR. FITTS: Absolutely not.

3 THE COURT: Your position is no. She did not.

4 MR. FITTS: Absolutely not.

5 THE COURT: Thank you. Sit down. Okay. Fine.

6 Thank you. Mr. Kistler.

7 MR. FITTS: May I --

8 THE COURT: No, I'm done.

9 MR. FITTS: Well, there are some other --

10 THE COURT: Nope, we're done. We're done. We're  
11 done. We're done. Briefly, Mr. Kistler. We've already been  
12 doing this [inaudible].

13 MR. KISTLER: I promise -- I promise you we'll be  
14 brief. I think Your Honor understands the bowl of Jell-O that  
15 I'm trying to litigate with at this point.

16 THE COURT: Right.

17 MR. KISTLER: All we're trying to do, Your Honor, is  
18 use the traditional truth-testing methods that our rules  
19 permit.

20 THE COURT: Right.

21 MR. KISTLER: All we're doing is asking for relevant  
22 information. I -- I would -- I would suggest, Your Honor, if  
23 you -- this document declaration was referred to repeatedly.  
24 She doesn't say that she is the one that made the decision to  
25 look for it; it's not there. She doesn't say that that's all

1 the information we have.

2 She says Plaintiffs have requested information here,  
3 she doesn't say -- she -- she says everything is privileged.  
4 She doesn't say that everything that we've requested is -- she  
5 says Plaintiff has served interrogatories which seek  
6 disclosure of information related to the AML Investigation.

7 THE COURT: Right.

8 MR. KISTLER: She doesn't say there's anything else  
9 out there. She doesn't say, Even though this was set up to  
10 report to the Federal government, somehow I made the decision  
11 based upon that investigative report to close the accounts.  
12 She doesn't say any of those things. What the declaration  
13 doesn't say is as telling as what it does say.

14 Again, without belaboring the point, I would just  
15 ask, Judge, that -- that all information regarding bank  
16 documents, information regarding my client, investigations  
17 other than SARs, drafts of SARs, references to a SAR, or  
18 documents that are included or attached to a SAR, all other  
19 documents should be -- should be discoverable, should be  
20 produced.

21 Any of the references to a SAR, any document -- or  
22 document containing a SAR should be redacted, and any claim of  
23 privilege other than for the SAR, draft of a SAR, references  
24 to a SAR, or documents contained in a SAR, any claim of  
25 privilege should require a privilege log so that our truth-

1 testing methods can be employed in this case as they should be  
2 employed obviously within the rules of every case. With that  
3 I'll sit down.

4 THE COURT: Okay. Now given what the discovery  
5 commissioner ruled in her -- in her report and recommendation,  
6 I -- I can't say that she made an error as to the existence of  
7 this privilege. The privilege is what it is and I -- I do  
8 think the Union Bank case states the privilege, and that's why  
9 I kept saying, you know, we're getting too far into the whole  
10 -- the whole issue of just logically how can they possibly  
11 hope to ever prove a defense if they're going to say, well, I  
12 don't have to tell you because it's privileged.

13 Well, it may be privileged, but how do you defend  
14 defamation by hiding behind a privilege? You can't. There's  
15 no defense here. So they're kind of painting themselves into  
16 a corner. That's not our problem here today. The problem  
17 here today is how do you interpret this privilege? It is a  
18 very, very rigid privilege and it's a very -- it's a big  
19 protection.

20 So, you know, I guess my -- my concern here is that I  
21 don't see how short of -- I appreciate the argument that there  
22 should at least be a privilege log saying we're not going to  
23 respond to this for the following privilege. But and this is  
24 the weird thing, is -- is by invoking the privilege, are you  
25 violating the privilege? I guess that's one of the points I

1 was trying to make, is that it sounds to me like --

2 MR. KISTLER: Exactly.

3 THE COURT: -- the very invocation of the privilege  
4 violates the privilege if you take it to it's logical extreme.

5 MR. KISTLER: Exactly. We don't --

6 THE COURT: How --

7 MR. KISTLER: We don't even have to tell you that  
8 there ever was an investigation because if there was an  
9 investigation, which we're neither confirming or denying, it  
10 would be privileged; therefore, the mere fact that whether  
11 there was or wasn't is privileged --

12 THE COURT: Right.

13 MR. KISTLER: -- we don't have to -- so it's the  
14 greatest -- it's the greatest neither confirm nor deny ever.

15 THE COURT: Right. I think so --

16 MR. KISTLER: We violate the privilege by telling you  
17 that there was no investigation, it makes no sense.

18 THE COURT: By telling you that we can't tell you  
19 there was an investigation.

20 MR. KISTLER: We can't tell you -- we can't tell you  
21 -- yeah, we violate the privilege by --

22 THE COURT: -- that they never say there was or was  
23 not and --

24 MR. KISTLER: Exactly.

25 THE COURT: -- which is where Mr. Fitts is going to

1 come up and say he cannot say there was or was not.

2 MR. KISTLER: Was --

3 THE COURT: He can't comment.

4 MR. KISTLER: He can neither confirm --

5 THE COURT: He is -- and it should be noted he has  
6 rigidly adhered to that.

7 MR. KISTLER: We can neither confirm nor deny.

8 MR. FITTS: Your Honor.

9 MR. KISTLER: It's the perfect --

10 THE COURT: With all -- with all due respect.

11 MR. KISTLER: Just a minute.

12 THE COURT: Go ahead.

13 MR. FITTS: I stated I could not comment as to  
14 whether there was a SAR.

15 THE COURT: Right.

16 MR. FITTS: I have stated on numerous occasions we  
17 have an investigative unit that generated documents.

18 THE COURT: Right.

19 MR. FITTS: I did not say I could not confirm or deny  
20 whether our AML unit conducts investigations.

21 THE COURT: Right.

22 MR. FITTS: I didn't say that. I said that I cannot  
23 confirm or deny whether a SAR was filed.

24 THE COURT: Right. Okay. And that's --

25 MR. FITTS: That's in accordance with Federal law.

1 THE COURT: Okay. Okay. Thank you. I think what we  
2 need --

3 MR. FITTS: I'm sorry, Your Honor, if I'm getting a  
4 little bit --

5 THE COURT: I think what we need, Mr. Fitts, and I  
6 think Mr. Kistler is correct on this, is we need something  
7 that defines because I -- I think even the Union Bank case  
8 says "financial institutions may have risk management  
9 procedures in place for detecting suspicious activity wholly  
10 apart from procedures for complying with Federal obligation."  
11 How do we parse that?

12 MR. FITTS: Okay.

13 THE COURT: And so the question is, we have the  
14 affidavit --

15 MR. FITTS: Okay.

16 THE COURT: -- but the typical procedure in Nevada is  
17 a privilege log, and I think that they're entitled to know we  
18 are invoking the privilege, where -- and where that line is.  
19 I think they're telling [inaudible], I think it's -- it's  
20 something that goes to the discovery commissioner. I would  
21 certainly suggest it could be in camera.

22 MR. FITTS: May I? Every policy and procedure that  
23 the bank has that's not a part of the AML unit, we disclose.

24 THE COURT: No, I'm not saying that.

25 MR. FITTS: Because I --



1 THE COURT: I'm saying that in response to the  
2 discovery request, if they're saying -- if you have -- if you  
3 raise a privilege as to a discovery request --

4 MR. FITTS: Yes.

5 THE COURT: -- is it related to a SAR in any way?

6 MR. FITTS: Well, I can't say that. I'm prevented by  
7 Federal law.

8 THE COURT: See, that's the problem.

9 MR. FITTS: No, that's not -- that's not -- that's a  
10 misinterpretation of the law, Your Honor.

11 THE COURT: No, I --

12 MR. FITTS: Yes, it is.

13 THE COURT: Okay. How do you invoke a privilege by  
14 saying I can't invoke a privilege? It's ridiculous.

15 MR. FITTS: Your Honor, there's a privilege there.

16 THE COURT: Right.

17 MR. FITTS: Are you saying that invoking the  
18 privilege violates the privilege?

19 THE COURT: Yes, to me that's what it sounds like  
20 you're saying.

21 MR. FITTS: Okay. So -- so, okay, so why didn't the  
22 court in all these cases just say, Hey, Bank, you violated the  
23 privilege because you invoked the privilege?

24 THE COURT: That's what I'm saying.

25 MR. FITTS: Well, that's not what the courts say. We

1 have a privilege--

2 THE COURT: They -- okay, I think the problem is  
3 we're getting too far apart from --

4 MR. FITTS: Maybe so, Your Honor. I -- I --

5 THE COURT: What's the actual --

6 MR. FITTS: The reason why I'm a little bit adamant  
7 here --

8 THE COURT: Mr. Fitts, shut up.

9 THE MARSHAL: Please don't interrupt the judge.

10 MR. FITTS: This is just an important issue, Your  
11 Honor, Federal law, and I -- I just feel like --

12 THE COURT: Mr. Fitts, will you please shut up?

13 MR. FITTS: I'll be quiet.

14 THE COURT: With all due respect. Thank you, sir.

15 Here's my -- here's where we've gotten too far apart. What's  
16 the actual discovery they're looking for? Typically in Nevada  
17 if you're going to assert a privilege, you do a privilege log  
18 and say I can't answer this, it is privileged. Here's the  
19 privilege.

20 The discovery commissioner says, okay, it's  
21 privileged. She didn't allow for that in this -- in this case  
22 and I -- the way I interpret what Mr. Kistler really wanted  
23 here is a privilege log. I think that -- that's the net of  
24 this is at least we're entitled to know what the privilege is  
25 under which we're being denied access to this information.

1           And if what I -- this is why I said, to me, it sounds  
2 like the reason why we don't have a privilege log is that the  
3 very act of invoking the privilege would be a violation of the  
4 privilege.

5           MR. FITTS: I understand what Your Honor is saying.

6           THE COURT: If that's what you're saying, that's just  
7 silly, and I don't think that's what the court says, and I  
8 think the court says there are documents that may be  
9 discoverable that are investigative documents --

10          MR. FITTS: With all due respect, Your Honor --

11          THE COURT: -- that are not cloaked.

12          MR. FITTS: And I apologize, Your Honor, if I  
13 misunderstood that.

14          THE COURT: Okay.

15          MR. FITTS: Please forgive me.

16          THE COURT: So that's -- that's what I'm saying. At  
17 some point, are they entitled to know documents exist, they  
18 are privileged, we absolutely do not have to give them to you.  
19 And I understand how passionately the bank protects and holds  
20 this privilege. I understand that this is -- this is Federal  
21 law. It cannot be violated. I'm sure there are all sorts of  
22 sanctions --

23          MR. FITTS: There's penalties, and that's --

24          THE COURT: -- if the bank -- if the bank were to  
25 violate it, and you do not want to violate it. You've been

1 very careful to not violate it. But my question is, it seems  
2 to me that there is some way to respond to discovery that says  
3 this is investigative and the -- the discovery commissioner,  
4 or whoever could look at it and say, okay, I don't think it  
5 goes to the SAR. I think it's discoverable. This is not.

6 This is -- this is absolutely irrevocably cloaked,  
7 and she didn't allow that, and I guess that's the thing that's  
8 confusing to me is why she didn't -- why she just said  
9 everything's privileged, and to me that just seemed, you know,  
10 not our normal practice in this state. And so I guess my  
11 question is, why does this privilege -- does the very act of  
12 -- that's my question: Does the very act of invoking the  
13 privilege violate the privilege such that there's just no way  
14 you can do discovery? That doesn't seem logical to me and I  
15 don't think that's what the court in Union Bank said. Now --

16 MR. FITTS: Can I speak?

17 THE COURT: Now you respond to that, yes.

18 MR. FITTS: Can I first say, Your Honor, it's an  
19 important issue. I think where I did not understand what  
20 you're saying is that by invoking a privilege you violate the  
21 privilege. I think what I understand Your Honor is saying now  
22 is by submitting a privilege log you can violate the  
23 privilege.

24 I don't think the mere fact that invoking the  
25 privilege violates the privilege, but I think what now that

1 what I'm hearing you say is that I made the argument that  
2 while -- with respect to a privilege log, if we get into the  
3 details that some courts require, that could, in fact --

4 THE COURT: Right.

5 MR. FITTS: -- disclose information that could lead  
6 someone to --

7 THE COURT: Being able to determine.

8 MR. FITTS: -- well, learn -- learn what our  
9 investigative methods and tools are --

10 THE COURT: Right.

11 MR. FITTS: -- and so forth, so, Your Honor --

12 THE COURT: And that's why I think the OCC was saying  
13 when -- on page 391, where they said the very working  
14 documents cannot be produced, should not be produced because  
15 they would disclose whether a SAR has been prepared or filed.  
16 So that's why they said anything that goes into preparing it.

17 MR. FITTS: Yeah.

18 THE COURT: So Mr. Kistler's suggestion that we  
19 should have redacted documents that give us dates and such,  
20 no, I mean, you can't even get that.

21 MR. FITTS: Right.

22 THE COURT: If something has any relation to a SAR  
23 that would trigger even the disclosure that, yes, here's the  
24 SAR, it's not disclosed, it can't be. So my -- my question  
25 is, How do you then invoke the privilege without violating it

1 because that's what it seems like the OCC is saying.

2 MR. FITTS: I mean, I can try to put -- and please  
3 forgive me, your Honor, I -- with all -- I've never been told  
4 to shut up in court and so if I'm not --

5 THE COURT: I'm -- I'm sorry.

6 MR. FITTS: I gotcha. I gotcha, and I apologize to  
7 your bailiff, but I just did not understand what you're  
8 talking about here. It's the privilege log that I think  
9 you're saying now is that if the -- if the bank --

10 THE COURT: Right.

11 MR. FITTS: You're saying if the bank invokes the  
12 privilege vis-a-vis a privilege log, okay, now I understand  
13 what Your Honor is saying.

14 THE COURT: Because to me it --

15 MR. FITTS: I can try, you know --

16 THE COURT: It's odd that the discovery commissioner  
17 didn't even --

18 MR. FITTS: I understand. I understand.

19 THE COURT: -- suggest that. She just said, No, it's  
20 all privileged, you don't have to disclose anything.

21 MR. FITTS: I understand.

22 THE COURT: And to me, they're entitled to know what  
23 the privilege is that doesn't allow them to know what this  
24 information is.

25 MR. FITTS: Yeah, I -- and that's a good question,

1 Your Honor, because the courts have just said SARs, drafts --

2 THE COURT: Right.

3 MR. FITTS: -- and policies and procedures and  
4 internal documents. I guess I can prepare a privilege log  
5 that --

6 THE COURT: Right.

7 MR. FITTS: -- I guess would --

8 THE COURT: That would go to the discovery  
9 commissioner. I mean, it -- because the issue is --

10 MR. FITTS: And I guess even if she wants an in  
11 camera review of an ongoing investigation, I guess we can give  
12 those -- in fact, I think I offered that to her.

13 THE COURT: I don't think she wanted it. I think she  
14 made it very clear --

15 MR. FITTS: I don't blame her.

16 THE COURT: -- that she -- she doesn't want to see  
17 it.

18 MR. FITTS: But what I'm saying is that, you know we  
19 have -- we're just --

20 THE COURT: I'm looking at these responses here.

21 MR. FITTS: If a deposition of Ms. Stockman needs to  
22 be taken, we'll certainly produce her. I mean, it's just very  
23 hard --

24 THE COURT: Okay.

25 MR. FITTS: -- it's just very hard for us, Your

1 Honor, where --

2 THE COURT: Right.

3 MR. FITTS: -- where we feel like we can make a  
4 business decision, we have a right to make one. If they want  
5 to --

6 THE COURT: Well, that's a -- the business judgment  
7 rule is an entirely different issue.

8 MR. FITTS: No, no, I'm not talking about business  
9 judgment rule. I'm talking about the right not to do business  
10 with someone.

11 THE COURT: Okay. Fine. But I'm just saying here  
12 that that -- just picking your response to request number one,  
13 it probably seeks privileged information particularly by  
14 attorney-client privilege and work product; also seeks  
15 privileged confidential bank supervisor material, confidential  
16 business proprietary information. Further, duplicative, et  
17 cetera. Not calculated to lead to the discovery of admissible  
18 evidence.

19 And you know, that's another problem that we have,  
20 Mr. Kistler, is that, you know, I'm not sure it's admissible  
21 because of this privilege. I mean, it -- it -- really, it's  
22 an incredibly unusual privilege, but I guess the -- and what  
23 -- what I think she was trying to say was give them all the  
24 ongoing regular bank documents and I -- and I think that  
25 that's consistent with what they said in this Union Bank case,



1 that any of your regular banking activity, discoverable.

2       There's no question. Transfers, statements, checks,  
3 deposit slips, et cetera, discoverable. But that's why I  
4 specifically asked, and you said, well, a privilege log,  
5 that's usually what we get; we usually get something that  
6 tells us we're not responding to your discovery here because  
7 it's privileged. What's the nature of the privilege?

8       And that's where I got into this whole problem is can  
9 they even invoke this privilege because the case does seem to  
10 say that anything that would even admit or disclose that, yes,  
11 there is an -- an investigation, if you follow the OCC to its  
12 logical conclusion --

13       MR. KISTLER: Judge, we don't --

14       THE COURT: -- it's undisclosable. I mean, that's --

15       MR. KISTLER: I'm sorry. We don't need a privilege  
16 log --

17       THE COURT: Crazy.

18       MR. KISTLER: We don't need a privilege log for a  
19 document range for a SAR. We don't need a privilege log that  
20 would include a document range for a draft SAR. We don't need  
21 a -- a document range for privilege claim for, you know,  
22 documents that are incorporated or included in the SAR.

23       If a privilege is being claimed over anything else,  
24 then we believe that a privilege log should be provided so  
25 that there can be judicial review if necessary to determine

1 the propriety of that claim.

2 THE COURT: And I'm sure -- it sounds like what the  
3 discovery commissioner is trying to do is say any factual  
4 documents be turned over, and I think that's what the Union  
5 Bank says, turn over the factual documentation, the regular,  
6 ongoing transactions. They may give rise to suspicious  
7 conduct, but they got to be turned over because they're  
8 regular business, but -- ordinary course of business  
9 documents, and I think that that's what she was trying to say.

10 But the second category is this -- this category of  
11 drafts of the SAR, other work product or privileged  
12 communications relating to the SAR not produced because they  
13 would disclose whether a SAR has been prepared or filed.  
14 That's -- that's where I -- I'm like, well, then how do you  
15 even claim it because if you can't even disclose a SAR has  
16 been prepared or filed, how do you even assert that privilege?

17 MR. KISTLER: That's -- that's the bank's problem,  
18 Judge, in terms of pursuing an affirmative defense of truth.

19 THE COURT: Right.

20 MR. KISTLER: What we know, Judge, is that in the  
21 letters closing these accounts, Wells Fargo says that we  
22 closed these accounts based upon our risk assessment process.  
23 They don't talk about money laundering. They don't talk about  
24 anything else.

25 THE COURT: Right.

1           MR. KISTLER: And so and quite frankly, we didn't go  
2 after SARs, we didn't go after this, that or this other, we  
3 just said, What's your risk assessment process.

4           THE COURT: Correct.

5           MR. KISTLER: What -- you know, why, why did you say  
6 the defamatory statements that we claim were true? What's the  
7 risk assessment process that backs that up?

8           THE COURT: Right.

9           MR. KISTLER: And we get all this saying we can't  
10 tell you because of Federal law, which is if you -- if you  
11 interpret -- if you interpret the bank's position, they never  
12 have to give anything no matter how relevant it is other than  
13 the most rudimentary documents which, by the way, should have  
14 been produced at 16.1, weren't produced until we moved to  
15 compel bank account records, things of that.

16           THE COURT: Okay. Fine. Well, you got that, and  
17 that's -- that's -- I think that's consistent with Union Bank,  
18 the underlying, the factual documents, the transactional  
19 documents, that gets produced. No problem. But I guess I --  
20 I can appreciate your argument that you need a -- you need a  
21 privilege log.

22           We need to know at what point they are saying this is  
23 cloaked by the privilege, whether, in fact -- and can they do  
24 that without saying that a SAR was ever actually generated? I  
25 don't think they have to answer that question. I think that

1 is privileged. Was a SAR the trigger for -- was -- was the  
2 process of preparing a SAR the trigger for closing this  
3 account? I think they've got a good argument to say we don't  
4 have to answer that because I think that's privileged.

5 But are you entitled to know that the privilege under  
6 which they are claiming we can't answer that is -- is the  
7 statute, and that's -- that's the problem that they run into  
8 with this statute. I mean, if you take it to it's logical  
9 extreme, merely asserting this privilege violates this  
10 privilege.

11 MR. KISTLER: Judge, they're using -- they're using  
12 that as a sword, not a shield.

13 THE COURT: Right.

14 MR. KISTLER: They really are, and even the  
15 California court was sensitive to -- because, of course,  
16 the --

17 THE COURT: Right.

18 MR. KISTLER: -- bank's easiest course is to say we  
19 don't have to do nothing because it's all encompassing.

20 THE COURT: Right.

21 MR. KISTLER: That's the easy route, but that's not  
22 what the rules --

23 THE COURT: Right.

24 MR. KISTLER: -- of this jurisdiction and discovery  
25 of this jurisdiction --

1           THE COURT: The privilege is very -- well, no, the  
2 privilege is really pretty broad and I don't know --

3           MR. KISTLER: But it's not --

4           THE COURT: -- that our court would look at this  
5 privilege any differently and say it's anything more.

6           MR. KISTLER: It's broad, but it's not exhaustive.

7           THE COURT: Right. And so I guess that's --

8           MR. KISTLER: And so what we're trying to determine  
9 is when the privilege is claimed, is that an appropriate claim  
10 of privilege or should those documents be produced anyway and  
11 the log will tell us that.

12          THE COURT: Right. Okay. Here's my problem with  
13 that, though. I'm not convinced that -- I mean, this is such  
14 a broad [inaudible] privilege, and there is a rationale,  
15 there's a national public policy behind it that I recognize  
16 and I know is passionately defended by the bank. Mr. Fitts  
17 has demonstrated how passionately they take this privilege.  
18 This is something they will not violate. I get it.

19          But at some point do they have to tell you that's  
20 something we can't answer, and the reason we can't answer it  
21 is this privilege? Because, like I said, if you follow this  
22 line of reasoning that the OCC has asserted in their -- this  
23 little excerpt from their amicus brief is asserting the  
24 privilege violates it because we're not supposed to tell you  
25 that there's even one that exists.

1 MR. KISTLER: Yeah, well, that -- I mean --

2 THE COURT: That's --

3 MR. KISTLER: With all respect, Your Honor, again,  
4 that's a government agency talking about --

5 THE COURT: Right.

6 MR. KISTLER: -- you know, and of course, the  
7 government agency is going to say whether -- it's not law, but  
8 whether -- whether their position concerning the sweep of  
9 their -- of the statute or the regulation, they're always  
10 going to claim --

11 THE COURT: Right.

12 MR. KISTLER: -- that the sweep is 100 percent.

13 THE COURT: Right.

14 MR. KISTLER: They always do. Every agency always  
15 does because they're turf conscious and they're protecting  
16 their little fiefdom there.

17 THE COURT: Okay. Here's --

18 MR. KISTLER: Your Honor's job is something  
19 different, and that is to balance what our rules permit and  
20 what justice permits for us to be able to professionally try  
21 this case on the issues that are relevant.

22 THE COURT: Okay. Well, here's -- here's the thing.  
23 If the issue is did the commissioner make an error of fact or  
24 law, I don't think she made an error of either. I think she  
25 interpreted it properly, but I think that they're -- the one

1 problem I have here is that she did it in a way that doesn't  
2 permit the plaintiff to know what is the protection of this  
3 communication, under what -- on what grounds is it protected  
4 specifically? And that's why I said, I don't think you can  
5 interpret this as narrowly as the OCC would ask us to.

6 I think that the way the California court interpreted  
7 it is good, and I don't think you really dispute that, but I  
8 just think that this -- this extension that you -- we can't  
9 even tell you what it is just doesn't make any sense.

10 I think you're entitled to know we can't answer this  
11 because we have processes in place that are in compliance with  
12 this Federal statute and anything that we say that would  
13 answer this would possibly implicate privileged information we  
14 can't answer, period. We're not going to.

15 I think you're entitled to know that we're asserting  
16 the privilege because I -- the affidavit's so vague I don't  
17 know specifically what it is that they assert the privilege  
18 to. I may not disagree. That was my point was I may not  
19 disagree with it, that it's privileged. I would 100 percent  
20 -- I mean, this is a really strict privilege --

21 MR. KISTLER: And that's what a privilege --

22 THE COURT: -- and I -- and the commissioner, I  
23 think, was very sensitive to that, but the thing that she  
24 didn't do here is say, But the Plaintiff is entitled to know  
25 that it's that privilege. And -- and why, and it may be

1 because you have to parse out, as I think the California bank  
2 did, said, Look, this isn't all-encompassing; you can't just  
3 cloak everything in it. Routine things are -- and I think she  
4 specifically said that given the ongoing business documents,  
5 and given the discovery responses, but the problem was she  
6 didn't then say "and anything that's privileged you need to  
7 assert the privilege specifically," which normally in this  
8 state you would do.

9 And that's why I said -- I mean, is the very act of  
10 invoking the privilege a violation of the privilege? That's a  
11 really extreme position to take and I -- and I think that's  
12 what the OCC says, and I just, you know, I respect their  
13 position, but I don't think even the California court adopted  
14 it.

15 I don't see that they adopted that as the -- as the  
16 whole -- the scope is so big we don't even have to tell you  
17 that there's a SAR. I don't think they said that. I think  
18 they said you have to invoke the privilege and it protects  
19 everything. Once that privilege is invoked, it's an iron  
20 curtain, it's out; and that's where we get into the next issue  
21 which is how does this affect the defense of the case?

22 I mean, it's going to -- I mean, that's a whole  
23 different problem for us. But yeah, I don't -- I don't  
24 understand why -- why there was no requirement of a specific  
25 invocation, and that's why I think when Mr. Fitts said, well,



1    yeah, take her deposition, okay, if you do, at what point is  
2    that privilege specifically invoked?

3               And I think it needs to be specifically invoked and  
4    you're entitled to know this is protected under the statute.  
5    We can't answer it and, you know, I think you're entitled to  
6    the information. If they assert the privilege, I guess at  
7    some point in time somebody's got to then make the decision.

8               As you said, is it in fact protected by the privilege  
9    or is it the exception that it looks like the court carved out  
10   entirely separate and apart from procedures for complying with  
11   the Federal statute, and they specifically note, and that's  
12   what the commissioner is right; she didn't make an error.

13              I mean, I don't see that she made an error, but the  
14   thing I don't understand is why there was no requirement that  
15   the privilege be --

16              MR. KISTLER: Asserted.

17              THE COURT: -- asserted specifically.

18              MR. KISTLER: Typically, Your Honor --

19              THE COURT: And that's what I just didn't see in her  
20   affidavit, I mean --

21              MR. KISTLER: Two points --

22              THE COURT: If you're arguing that the very  
23   invocation of the privilege violates the privilege, then, you  
24   know, that's one thing and I -- I think that's -- I don't  
25   understand it, but --

1           MR. KISTLER: Typically, Your Honor, what -- what I  
2 would suggest is that the privilege log include the date, the  
3 author, the recipient, the date range, and the privilege  
4 asserted, that's all that would be necessary. The day, the  
5 author, the recipient, the date range, and the privilege.

6           THE COURT: Right, and see that's, again, that's a  
7 problem --

8           MR. KISTLER: I don't see how that could possibly  
9 be --

10          THE COURT: I'm not sure that's -- so I think that  
11 that's why it needs to go back to the discovery commissioner  
12 to lay out -- and maybe Mr. Fitts could provide her some in  
13 camera documents to show because, you know, I have a concern  
14 that even disclosing dates and -- dates and names might  
15 violate it, it really might.

16          But if it's -- and that's why it's -- it's so -- it's  
17 such a weird privilege that even disclosing -- like, that's  
18 what I kept saying, the very act of invoking it would violate  
19 it the way it's written. It's very strange and I -- and that  
20 can't be what was intended.

21          MR. KISTLER: I --

22          THE COURT: I don't think it was, but I'm not  
23 convinced that all that information is discoverable, that it  
24 may be that there is a different way to tailor it. I -- let  
25 me just, documents from this page to this page, I mean,

1 normally that would -- that would be a typical privilege law  
2 in Nevada, I would agree with you.

3 MR. KISTLER: So --

4 THE COURT: But I'm not sure that it would actually  
5 address this problem.

6 MR. KISTLER: So the Court's order is to remand back  
7 to the discovery commissioner to determine the --

8 THE COURT: -- scope of the privilege law.

9 MR. KISTLER: Scope of the privilege law. Okay.  
10 Would you like --

11 THE COURT: Because I think -- I think they're  
12 entitled to know what documents the privilege is asserted as  
13 to, but I'm -- you know, just because of the kind of documents  
14 they are, I don't know. It's -- I haven't seen them, of  
15 course, so I don't know. Can you even disclose even that  
16 information?

17 MR. KISTLER: Your Honor, would you like for me to  
18 take the first --

19 THE COURT: Mr. Fitts, I think, would like to be  
20 heard in some final comment on this, and then we'll discuss  
21 how it's going to go back to the discovery commissioner  
22 because --

23 MR. KISTLER: Very well, Your Honor.

24 MR. FITTS: Thank you, Your Honor. I'm still having  
25 a little bit of an issue understanding the comments that the

1 -- the privilege was not invoked in response to the  
2 interrogatories?

3 THE COURT: Right.

4 MR. FITTS: In response to the request for production  
5 of documents, we -- we specifically invoked the privilege.

6 THE COURT: I understand that, but typically the  
7 issue here would be we're not going to -- it's one thing to  
8 say we're not going to answer this because there's a  
9 privilege. It's another thing to say we have a document, it's  
10 Bates pages one and five, one through five, we're not going to  
11 give it to you because of this privilege.

12 MR. FITTS: That part I understand, Your Honor, I  
13 apologize.

14 THE COURT: So a specific -- see, that's why I was  
15 saying that is it the very fact of invoking the privilege that  
16 violates the privilege? If it is, you can't -- your position  
17 is you can't even say I have a document here in front of me,  
18 I'm not going to give it to you, it's three pages, as Mr.  
19 Kistler says he would like to know; it's from -- it's from Ms.  
20 Stockman to somebody else, and it's three pages long and it's  
21 dated this date, but I'm not going to give it to you because  
22 that's privileged.

23 MR. FITTS: Yeah, okay.

24 THE COURT: That's the problem I have is that, you  
25 know, what -- what information is privileged?

1 MR. FITTS: And Your Honor --

2 THE COURT: If you can just say I have a document,  
3 it's three pages long, I'm not giving it to you because it's  
4 privileged, or do you have to disclose the person, the  
5 recipient -- the author, the recipient and the date.

6 MR. FITTS: And, Your Honor, I -- I apologize if I  
7 misunderstood, but I didn't see the focus of the objection or  
8 the reply as requesting for a privilege log.

9 THE COURT: Okay. Well, that's why I specifically  
10 asked Mr. Kistler.

11 MR. FITTS: So that's why I was --

12 THE COURT: And when he specifically said --

13 MR. FITTS: That's why I was --

14 THE COURT: -- at least a privilege log, and to me,  
15 that's the thing I didn't see here is she just gave a blanket  
16 protection and I didn't understand why.

17 MR. FITTS: Yeah, I mean --

18 THE COURT: I -- like I said, I don't say that she's  
19 wrong, I don't think that she was wrong in interpreting it.

20 MR. FITTS: That was part of my confusion, Your  
21 Honor, and frustration, so I apologize. I thought that the  
22 statements were made that we didn't invoke the privilege. We  
23 have.

24 THE COURT: Right. No, I was just looking at these  
25 discovery responses where it's just, you know, we're not --

1 we're not going to answer it, and that's why typically in any  
2 other kind of a case --

3 MR. FITTS: Well, maybe I can --

4 THE COURT: -- you would be required at a minimum to  
5 say why you don't have to answer it, what it is that's  
6 protected by the privilege.

7 MR. FITTS: I do know we cited the privilege in our  
8 responses. I do know there were supplemental responses,  
9 initial responses specifically to, you know, what did the  
10 employee say and he was on medical leave and so we -- I didn't  
11 even have communication with him, so.

12 THE COURT: Right.

13 MR. FITTS: So we couldn't state why. And then we --

14 THE COURT: And a lot of these people, their stuff  
15 may not be privileged because I think that's part of the whole  
16 thing is if the guy was deposed, he says, Well, I don't know  
17 why that stuff was in there, he may not have any information;  
18 but to the extent that this particular -- that any particular  
19 privilege is being invoked, they're entitled to know and  
20 usually you get that.

21 In any other kind of a case you would get -- I'm not  
22 going to give you -- think of -- you know, a patent case,  
23 We're not going to give it to you because it's protected by,  
24 you know, it's confidential, and it's, you know, 29 pages and  
25 it's the blueprints for our secret invention. Okay. But at

1 least you know you got blueprints for a secret invention;  
2 you're entitled to know that much.

3 That's why, like I said, I think the commissioner  
4 should tell you what she wants in a privilege log because it  
5 is such a weird privilege. It's not like -- it's really, it's  
6 unlike any other privilege, Mr. Fitts, I understand that.

7 MR. FITTS: And I can't tell you how sorry I am to  
8 have offended the Court.

9 THE COURT: You didn't offend me. It's just like  
10 wait a minute, we've gotten too far off the topic.

11 MR. FITTS: And I -- and I -- yes, and I understand  
12 that now, but -- and I hope the Court will understand that  
13 this is such an important privilege --

14 THE COURT: I understand.

15 MR. FITTS: -- we don't comply to it, there can be  
16 sanctions.

17 THE COURT: That's why I want very clear --

18 MR. FITTS: I don't want to be part --

19 THE COURT: That you -- you didn't say --

20 MR. FITTS: I don't want to be --

21 THE COURT: -- you -- you didn't say anything --

22 MR. FITTS: I don't want to be a target --

23 THE COURT: -- anything that could expose you, Mr.  
24 Fitts, or --

25 MR. FITTS: Okay.

1 THE COURT: -- your client.

2 MR. FITTS: And --

3 THE COURT: You've been very, very careful, and I  
4 understand how assiduously the bank defends this, and that's  
5 why I said to Mr. Kistler I think that this is an issue, this  
6 is a hill to die for for the bank.

7 MR. FITTS: Yeah.

8 MR. KISTLER: Your Honor --

9 THE COURT: They really -- they will defend this to  
10 the end, I understand that.

11 MR. KISTLER: We also --

12 MR. FITTS: Could I make just a --

13 THE COURT: But they're entitled to a little bit of  
14 information.

15 MR. FITTS: Yeah, and, Your Honor, I -- I thought I  
16 did address this before the discovery commissioner, and I'm  
17 happy to go back, I'm happy to work with Mr. Kistler.

18 THE COURT: Right.

19 MR. FITTS: You know, the bank's not in the business  
20 to offend customers.

21 THE COURT: Right.

22 MR. FITTS: I mean, we don't want to offend anybody,  
23 but we have a -- I mean, we're kind of stuck in the middle.

24 THE COURT: Right.

25 MR. FITTS: We have this very stringent requirement



1 and, I mean, so there's no -- there's -- there's nothing ill  
2 will here at all, but I do want to just make for the record  
3 that on page 12 of our opposition to the motion to compel --

4 THE COURT: Is that the underlying motion?

5 MR. FITTS: Yes.

6 THE COURT: I didn't fully [inaudible].

7 MR. FITTS: It's on page 12, footnote three. We did  
8 address the privilege log issue, although I -- I -- my memory  
9 may not serve me perfectly, but I didn't know that a privilege  
10 log was --

11 THE COURT: Right.

12 MR. FITTS: -- at the heart of their argument.

13 THE COURT: And I don't think it was...

14 MR. FITTS: But I do -- but I went through the  
15 thought process of --

16 THE COURT: [Inaudible] about it.

17 MR. FITTS: -- yes, I know a privilege log is the  
18 normal procedure.

19 THE COURT: Right.

20 MR. FITTS: And so in footnote three of our  
21 opposition counter-motion, I did inform the discovery  
22 commissioner that the reason we haven't done a privilege log  
23 is, you know, I don't want to be walking the edge of some  
24 Federal statute and have Federal regulators knocking on my law  
25 firm door saying, Mr. Fitts, why did you do this.

1           So as a caution, I just stated to the Court that, you  
2 know, going through a privilege log to identify the author,  
3 recipients, and a summary of the documents, that -- that can  
4 open up a can of worms and I'm concerned --

5           THE COURT: Right, and that's why -- that's why --

6           MR. FITTS: -- and so I said --

7           THE COURT: -- I'm specifically not ordering --

8           MR. FITTS: Okay.

9           THE COURT: -- the terms of the privilege log. The  
10 discovery commissioner didn't order it and that's where I --  
11 the only thing I think they're entitled to know with -- some  
12 information that we -- there is a document, we are not  
13 disclosing it, it is privileged, and I -- and it's -- it's --

14          MR. FITTS: I don't -- I don't really have a problem  
15 with that, Your Honor.

16          THE COURT: But the thing is I'm not going to say you  
17 have to put author, recipient, summary, and -- I think we need  
18 to go back to the discovery commissioner and figure out how  
19 you can draft a privilege log that doesn't violate the  
20 privilege, because that was my whole point. How can you even  
21 -- if you logically follow this privilege to -- to its full  
22 extent, even saying we're invoking this privilege would  
23 violate it if you follow the OCC to its extreme.

24          And that's the problem is nobody wants to set the  
25 bank up, nobody wants to see Mr. Fitts up or his firm up for

1 having violated this just to comply with discovery.

2 MR. KISTLER: Judge, I hate to throw cold water on  
3 this, but there's another explanation, you know, we defamed  
4 these people and we're stonewalling discovery in this.

5 THE COURT: Right.

6 MR. KISTLER: You know, [inaudible].

7 THE COURT: That gets to a different issue and that's  
8 Mr. Fitts's point is --

9 MR. KISTLER: [Inaudible.]

10 THE COURT: -- then just file a dispositive motion  
11 and we may not be able to defend it.

12 MR. KISTLER: Aw, shucks, gee whiz.

13 THE COURT: That's [inaudible] problem.

14 MR. KISTLER: We don't want the cops showing up at my  
15 door. That's all very nice, but, Your Honor, my client has  
16 been defamed --

17 THE COURT: Right.

18 MR. KISTLER: -- and the bank is refusing to give any  
19 information concerning that.

20 THE COURT: That's a different --

21 MR. KISTLER: The other side of the story, just to  
22 throw cold water on the, gee, we wish we could.

23 THE COURT: But what we have to figure out, Mr.  
24 Kistler, is at what point are they -- is there some -- some  
25 facts that you might be entitled to because they're just

1 transactional facts --

2 MR. KISTLER: I get that.

3 THE COURT: -- versus are there facts that are  
4 privileged that they don't have to disclose. Then we know  
5 what evidence do they -- can they actually provide because  
6 just saying a blanket privilege, I don't think that the Union  
7 Bank case says you can just invoke a blanket privilege.

8 MR. KISTLER: Right.

9 THE COURT: And I -- respectfully, I read Ms.  
10 Stockman's affidavit as just throwing up a [inaudible] and  
11 saying it's all privileged.

12 MR. KISTLER: Right.

13 THE COURT: I don't know what was privileged, and  
14 that's what I think that we -- in order to parse this out and  
15 determine because I'm assuming you're going to have a motion,  
16 well, Mr. Fitts will have to say, We can't provide that, it's  
17 privileged, okay, it is, versus, Well, they should have told  
18 us, you know, the reason, you know. Here's like 97 suspicious  
19 transactions, here are the canceled checks from, you know --  
20 you know, that's transactional, which you're entitled to know,  
21 and that's -- this case, I don't -- it -- it doesn't say  
22 there's a blanket privilege.

23 It says there are some things that are transactional,  
24 the bank can't cloak everything, but it's -- anything that is  
25 cloaked, it's -- it's just -- it's rigid. It cannot be

1 invaded and --

2 MR. KISTLER: That is the platform [inaudible].

3 THE COURT: I -- that's why I -- like, I am not  
4 comfortable saying here's what I think you should put in a  
5 privilege log. I -- I would -- I don't know, that's why I  
6 just -- I did not understand why the privilege was just  
7 accepted and not examined, and I think that you're entitled to  
8 examine the privilege and say we -- we contest that this would  
9 -- this should be disclosed.

10 I mean, she gave -- she said that she's given you  
11 everything that was transactional, but I just -- other --  
12 there's no evidence of the privilege. There's no -- no place  
13 where we can say specifically this piece of paper that is not  
14 being produced because of this privilege.

15 I think you're entitled to that, and I think the idea  
16 that merely invoking the privilege would violate it, you know,  
17 maybe that is the position of the bank, and of a rigid  
18 regulator. It doesn't make any sense to me. I think you're  
19 entitled to know what -- as to -- as to -- any -- any  
20 discoverable information that it cannot be disclosed because  
21 of this -- it is absolutely protected by this privilege,  
22 you're entitled to know that.

23 MR. KISTLER: And so the mechanism, Your Honor, in  
24 your view is to remand back to the discovery commissioner to  
25 determine the proper scope of a privilege log?

1 THE COURT: How we -- how we can craft the privilege  
2 log that will allow the plaintiff to know that there is  
3 information upon which the bank relied that they cannot tell  
4 him and it doesn't get into the whole issue of we don't have  
5 to do business with you if we don't want to.

6 They could -- they could discontinue anybody's bank  
7 account, I suppose, but if they're saying we did it for a  
8 specific reason, but, oh, by the way, we can't tell you what  
9 it is, I think you're entitled to know that too.

10 MR. KISTLER: Okay.

11 THE COURT: That there was something there that  
12 happened that triggered this; we can't tell you what it is  
13 because that's privileged.

14 MR. KISTLER: Okay. So the -- so, Your Honor, the  
15 remand back to the discovery commissioner, not to [inaudible]  
16 but it's designed to -- the remand is to --

17 THE COURT: Please have Mr. Fitts review it before  
18 you --

19 MR. KISTLER: I will, of course I will -- designed to  
20 determine the scope of a privilege log --

21 THE COURT: That would not be in violation.

22 MR. KISTLER: Log that would not be in violation of  
23 the statute.

24 THE COURT: Of the statute.

25 MR. KISTLER: That's designed to -- to show what

1 information, if any, exists that the privilege issue is being  
2 claimed over.

3 THE COURT: Right. If there is -- if there is -- are  
4 documents -- other -- what kind of information specifically is  
5 being claimed. Just to say we're not going to answer it  
6 because there's a privilege, I don't think Nevada recognizes  
7 that kind of invocation of a privilege.

8 MR. KISTLER: Very well, Your Honor. I'll draft --

9 THE COURT: Okay. And, Mr. Fitts, anything further?

10 MR. KISTLER: And I'll send --

11 THE COURT: I apologize again for losing my temper.

12 MR. FITTS: That's okay. I probably --

13 THE COURT: -- I wanted to get this thing wrapped up.

14 MR. FITTS: I probably deserved it, Your Honor. Just  
15 so I understand, Your Honor is basically affirming  
16 Commissioner Bulla's decision that the Bank Secrecy Act  
17 applies to a SAR --

18 THE COURT: Right.

19 MR. FITTS: -- if one exists.

20 THE COURT: I think she -- I think her interpretation  
21 of it was absolutely correct.

22 MR. FITTS: A draft of a SAR and any other --

23 THE COURT: Right.

24 MR. FITTS: -- internal information generated --

25 THE COURT: She -- what she specifically did --

1 MR. FITTS: -- in connection --

2 THE COURT: -- she granted in part and denied in part  
3 both counter motions, and I don't see that there was any error  
4 in her interpretation of what the privilege applied to. My  
5 concern is that the plaintiff was not given an opportunity to  
6 know that the privilege -- what the privilege specifically  
7 being -- [inaudible] privilege was specifically being invoked  
8 because when I look at the discovery responses it was just  
9 invoked as to everything, and how would you know that  
10 specifically it's this privilege as to this piece of  
11 information? I do think they're entitled to some knowledge.

12 MR. FITTS: Yeah, and I guess --

13 THE COURT: But the -- but the question I have is --  
14 that's why I wasn't --

15 MR. FITTS: I wish I could say more. I guess I'm --  
16 I'm restrained --

17 THE COURT: Right.

18 MR. FITTS: -- a little bit to say what I know and  
19 maybe part of the issue here is I'm aware of certain things  
20 and I -- and when I hear other comments I'm basing that on  
21 what I know --

22 THE COURT: Right.

23 MR. FITTS: -- versus what others --

24 THE COURT: What's --

25 MR. FITTS: -- do not know.



1 THE COURT: Right.

2 MR. FITTS: But we do not have an objection as to  
3 producing documents, you know, as to ordinary course,  
4 transactional documents.

5 THE COURT: Yeah.

6 MR. FITTS: Anything like that.

7 THE COURT: Right.

8 MR. FITTS: I mean, we've never objected.

9 THE COURT: Right. And I --

10 MR. KISTLER: Well, actually, he did object and we  
11 had to move to compel.

12 THE COURT: Right, and she granted it, she granted  
13 it.

14 MR. KISTLER: And we were successful, she [inaudible]  
15 to compel, so, you know, Mr. Fitts is again --

16 THE COURT: She granted in part and denied in part,  
17 and that's why I said --

18 MR. KISTLER: [Inaudible], gee whiz.

19 THE COURT: -- I -- I was not saying that I felt that  
20 her report and recommendation was -- that there was any error.  
21 I was simply saying that as to the privilege -- and maybe this  
22 is something that wasn't really -- really clear -- that as to  
23 the privilege that there needs to be some specificity when  
24 that privilege is being invoked because it's a very specific  
25 privilege. It's -- it provided huge protection to the bank,

1 but when it's invoked, you need to know that it's being  
2 invoked here.

3 MR. KISTLER: I understand, Your Honor.

4 THE COURT: And I, like I said, I'm not disagreeing,  
5 and I think you're entitled to test it, as you said. We had  
6 an argument about it. Is there -- the very fact that we have  
7 procedures, are you entitled to know that? Probably you're  
8 not entitled to know what their procedures are, but you're  
9 entitled to know they have them, and so here's a -- here's a  
10 -- here is our manual on this kind of investigation, it's 2000  
11 pages. We're not giving it to you because it's our business  
12 secret, it's how we do these investigations, we don't have to  
13 produce it.

14 MR. KISTLER: Judge --

15 THE COURT: They're probably right.

16 MR. KISTLER: I understand the Court's ruling and  
17 I'll prepare a draft and submit it [inaudible].

18 THE COURT: Yeah. It's just I think that they're  
19 entitled to know specifically when this privilege is being  
20 invoked.

21 MR. KISTLER: Very well, Your Honor.

22 THE COURT: Because I -- this is all going to result  
23 in some kind of a motion and we need to know, well, you know,  
24 that's not privileged, we can't produce it.

25 MR. KISTLER: Right.

1           THE COURT: It is privileged, not privileged,  
2 whatever.

3           MR. FITTS: I have a great deal of respect for Your  
4 Honor. Thank you very much. I apologize for  
5 misunderstanding, I apologize.

6           THE COURT: I understand that this is a very, as I  
7 said, it's a hill to die for for the bank. It's that kind of  
8 a -- an issue, it's an important issue in this industry, which  
9 is heavily regulated and they cannot violate it; but I do  
10 think that at a minimum, the Plaintiff is entitled to know  
11 specifically when the privilege is invoked.

12          MR. KISTLER: Thank you, Your Honor.

13          THE COURT: Because I just -- I felt that the  
14 implication of it was too blanket, and I understand, I don't  
15 think she's wrong in what she said legally it applies to, but  
16 I didn't understand why you weren't entitled to at least know  
17 specifically this document.

18          MR. KISTLER: Very well, Your Honor.

19          THE COURT: Normally you would. Okay.

20          MR. KISTLER: Thank you, Judge.

21          THE COURT: So it's otherwise referred back to the  
22 discovery commissioner. We just give her that little referral  
23 back form. So you can do an order saying it's going to be  
24 referred back, but we do have a form that refers things back  
25 to the discovery commissioner. It's right here. So we'll

1 fill out the form saying we're sending it back for a very  
2 limited purpose, to determine the scope of the privilege log.

3 MR. KISTLER: Thank you.

4 THE COURT: Because I don't disagree with her in how  
5 she interpreted the privilege.

6 MR. FITTS: We probably want to get a transcript. Do  
7 you have a form here that --

8 THE COURT: Okay.

9 MR. FITTS: I won't go past this --

10 THE COURT: Are you done with that?

11 MR. FITTS: I've been beaten up enough today.

12 THE COURT: Sorry, Mr. Fitts. Didn't want to scare  
13 you. I just wanted to say something.

14 MR. FITTS: It's good for me, Your Honor.

15 THE COURT: Okay.

16 THE CLERK: Email or fax?

17 MR. FITTS: Okay.

18 THE CLERK: Thank you.

19 MR. FITTS: Thanks so much.

20 THE COURT: Because we've got two more things on.

21 (Proceedings concluded at 11:22 a.m.)  
22  
23  
24  
25

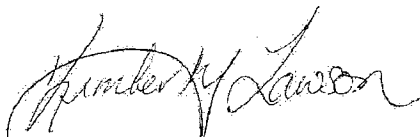
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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