

<p style="text-align: right;">Page 77</p> <p>1 Wells, so my hands are kind of tied. That was about it 2 with Richard. 3 Q. What firm is Mr. Bryan with? 4 A. Lionel Sawyer. He's been there since he left 5 the senate. He joined them after he stepped down from 6 U.S. Senate. 7 Q. Why did you tell Mr. Bryan that Wells Fargo had 8 closed the accounts for no reason? 9 A. Because I got a letter. I hadn't done 10 anything. To my knowledge there was nothing that Lisa 11 had done. You suddenly get a letter that says we're 12 closing your account, risk assessment, and your first 13 reaction is what the heck did I do? 14 I didn't do anything. I know every check I've ever 15 written in my life basically. I didn't write anything. 16 I didn't do anything wrong. And the joint checking was 17 under my Social Security number, which made it more 18 puzzling, because effectively it was closing me. It 19 wasn't even on Lisa's Social Security number. That one 20 was under my Social Security number. 21 I remember the day I opened it with Lisa at the 22 Wells Fargo branch over on Eastern, and I still remember 23 the day we walked in there. She was opening a yoga 24 school, and I went to help her with things. And so I was 25 telling Richard I didn't do anything.</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Because my point to Richard -- 2 Q. I'm asking you why did you jump to the 3 conclusion that there was no reason for the closure, 4 because -- 5 A. It said -- 6 Q. -- you have no personal knowledge regarding 7 whether or not there was a reason, do you? 8 A. It said risk assessment. The account -- just so 9 we can be clear -- 10 Q. Well, I'm just asking you a question. 11 A. I understand, Stewart. Let me be clear because 12 I'm not sure you're clear on one point. 13 The joint account that they closed was under my 14 personal Social Security number, Michael Kaplan's 15 personal Social Security number. Lisa's Social Security 16 number was not on that account. They closed that 17 account. Said risk assessment; we're closing this 18 account. 19 And so in my conversation with Richard, as I said I 20 know him going back to when I first joined the attorney 21 general's office. Actually, Bob List had hired me in the 22 attorney general's office and then Richard -- 23 Q. Did I ask you about Bob List? 24 A. You're asking me about -- 25 Q. Did I ask you about Bob List?</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. You don't know why Wells Fargo decided to close 2 the accounts, do you? 3 A. No, I don't. 4 Q. So you don't know whether or not there is a 5 reason either? 6 A. Whether I did anything wrong? 7 Q. No. That's not what I asked you. 8 A. But that was my testimony. I did nothing wrong. 9 Q. I'm asking you why did you tell Mr. Bryan that 10 Wells Fargo closed the accounts for no reason? 11 A. Because I did nothing wrong and I told him 12 that. His comment to me was, gee, Mike, maybe they got 13 you guys mixed up with somebody else. 14 Q. But you told me in answer to the question that I 15 asked you a few minutes ago that you told Mr. Bryan that 16 Wells Fargo closed the accounts for no reason. 17 A. Yes, I did. 18 Q. How do you know they didn't have a reason? 19 A. They haven't said one at this point. 20 Q. So you, then, just assumed that there isn't a 21 reason because they haven't told you the reason? 22 A. Since. 23 Q. Is that right? 24 A. Unless you're saying I did something wrong -- 25 Q. No, I didn't ask you about --</p>	<p style="text-align: right;">Page 80</p> <p>1 A. You're asking me about -- 2 Q. Did I ask you about Bob List? 3 A. I don't want to debate this. 4 Q. I don't either. I just want you to answer my 5 question. 6 A. Just ask a question, Stewart. She's trying to 7 take this down. 8 Q. Did I ever ask you about Bob List? 9 A. No. 10 Q. Then why are you telling me about Bob List? 11 A. Because I'm trying to explain Richard Bryan. 12 You're asking me why I said no reason, and my point was 13 explaining Richard Bryan and my relation with Richard 14 Bryan going back to Bob List. And the bottom line is I 15 was explaining that so you can understand the context 16 when I called up the man that I've known for 35 years and 17 tell him I did nothing wrong; these people are closing my 18 account. Now you can understand it better. 19 Q. My question to you was why did you tell 20 Mr. Bryan that Wells Fargo Bank closed the accounts for 21 no reason? 22 A. Once again, Stewart, I'm answering this best -- 23 Q. Why did you say that? 24 A. Because I've done nothing wrong. So if I've 25 done nothing wrong and they closed my account --</p>

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1 Q. Is that your complete answer?
2 A. Yes.
3 Q. Okay. Was Lisa a joint account holder on the
4 account?
5 A. Yes.
6 Q. She was an authorized signer on the account?
7 A. Yes.
8 Q. So just because you don't know the reason why
9 the account was closed doesn't mean that there was no
10 reason.
11 A. If you say so.
12 Q. So what you told Mr. Bryan was incorrect?
13 A. No, it wasn't.
14 Q. Well, you told him there was no reason the
15 account was closed when you didn't know whether or not
16 there was with a reason, did you?
17 A. Just so you can understand, I read Richard
18 Bryan -- Senator Bryan, excuse me. I read Senator Bryan
19 what the letter said, and he was baffled, and if you've
20 ever had discussions with Richard, you know --
21 Q. Did I ask you if Mr. Bryan was baffled?
22 A. Ask me the context of a question and what I
23 said --
24 Q. I'm just asking you why --
25 A. I don't know. You want the answers, Stewart.

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1 Q. I just want to know why you said, told
2 Mr. Bryan -- I didn't ask you about Mr. Bryan's
3 reaction. I asked you why would you tell Mr. Bryan that
4 Wells Fargo Bank closed the account for no reason when --
5 A. Because that's what I believe.
6 Q. -- when you didn't know whether or not --
7 A. Stewart --
8 Q. -- there was a reason?
9 A. Stewart --
10 Q. Why did you tell him something you didn't have
11 personal knowledge about?
12 A. To the best of my knowledge that's what I
13 believed. That's what I told a friend of mine who I
14 consider a friend after 35 years working for him, helping
15 him with his gubernatorial and senate campaign. I
16 consider him a friend, and the bottom line is I had a
17 discussion with him. You're asking me about who I spoke
18 to. I'm merely relaying to you.
19 Q. And this is after you had called the 1-800
20 number and were told that the reason was confidential?
21 A. And I told Richard Bryan that as well. Exactly
22 what they said.
23 Q. Which is different than saying there was no
24 reason?
25 A. You can draw your own conclusion.

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1 Q. Is that your complete answer?
2 A. Yes.
3 Q. Is this how you go about forming your judgments
4 and your criticism by making judgments based upon things
5 you have no personal knowledge of?
6 MR. KISTLER: Objection. Argumentative.
7 Q. (By Mr. Fitts) Is this an example of how you go
8 about your life making judgments and your criticism?
9 A. Stewart --
10 Q. Is this an example?
11 A. Is this an example of you how conduct
12 depositions, Stewart? It's really pathetic. It's really
13 pathetic.
14 Q. Do you want to answer the question?
15 A. Yeah. I'll give an observation today. I think
16 you're doing a pathetic job.
17 Q. That's not my question, is it? My question to
18 you is, is are your statements to Mr. Bryan an example of
19 how you go about making conclusions and judgments about
20 other entities, namely, Wells Fargo, when you really
21 don't know why Wells Fargo did what it did?
22 MR. KISTLER: Object to the form of the question
23 and it's argumentative.
24 Q. (By Mr. Fitts) Is that an example of how you go
25 about, normally go about making judgments?

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1 A. Stewart --
2 Q. Is it yes or no?
3 A. I can't answer your question. I'm sorry.
4 Q. Well, is what you have told me today true?
5 A. Which part? What are you asking?
6 Q. Your testimony today.
7 A. Everything I said today is true.
8 Q. Okay. I think you've answered the question.
9 Thank you. What else did you do after calling Mr. Bryan?
10 A. Let's see. I spoke to Dirk Ravenholt.
11 Q. When did you speak to Dirk Ravenholt?
12 A. I don't know that I can tell you the exact
13 dates, Stewart, as I sit here today, but I spoke to Dirk
14 Ravenholt.
15 Q. Did you end up retaining Dirk with respect to
16 the closure of the Wells Fargo accounts?
17 A. Yes.
18 Q. And did you retain Dirk on behalf of Lisa
19 Johnson as well?
20 A. I believe on both our behalfs at that point
21 because of the joint accounts.
22 Q. Okay. And so in retaining Dirk you were also
23 acting on behalf of Lisa?
24 A. I suppose, yes.
25 Q. Did Lisa know that?

<p>Page 85</p> <p>1 A. I believe we had discussions of it, yes.</p> <p>2 Q. She gave you her authority to retain counsel on</p> <p>3 her behalf?</p> <p>4 A. I believe so.</p> <p>5 Q. Anyone else after Dirk Ravenholt?</p> <p>6 A. Yeah. Let's see. I put --</p> <p>7 Q. I'm just talking between the time period of</p> <p>8 August 2011 when the closure letters were received, up</p> <p>9 from that time up to August 6th, 2011, when you went into</p> <p>10 the Malibu branch.</p> <p>11 A. August 6th?</p> <p>12 Q. October. I'm sorry. October 6th.</p> <p>13 A. I'm just trying to clarify. Did you say August</p> <p>14 6th or October 6th?</p> <p>15 Q. No. October 6th, 2011, when I believe that's</p> <p>16 the date you went into the Malibu branch and had a</p> <p>17 discussion with Mr. Dounel, so that's the time period I'm</p> <p>18 asking you about.</p> <p>19 A. You know, I had a number of other conversations,</p> <p>20 and I don't know sitting here today if I can tell you if</p> <p>21 it was a week before, a week after, around that same time</p> <p>22 frame.</p> <p>23 Q. Fair enough. So have you told us everything</p> <p>24 that you or Lisa Johnson did that you recall between</p> <p>25 August of 2011 when you received the closure letters and</p>	<p>Page 86</p> <p>1 October 6th, 2011, when you had a conversation with</p> <p>2 Mr. Dounel?</p> <p>3 A. As I said to you, there were a lot of other</p> <p>4 conversations with Wells Fargo, and I'm telling you as I</p> <p>5 sit here today it could have been prior to meeting</p> <p>6 Mr. Dounel. It could have been right after. I don't</p> <p>7 know. So if you'd like me to tell you about those other</p> <p>8 discussions, I'll be happy to, but I want to make sure</p> <p>9 you understand I can't -- it could have been happened</p> <p>10 prior to then. It could have happened a week or two</p> <p>11 after. I don't know as I sit here today.</p> <p>12 Q. And I appreciate that. I just wanted to make</p> <p>13 sure you told us everything that you do recall that</p> <p>14 occurred during that time period.</p> <p>15 A. Well, there were a number of other</p> <p>16 conversations.</p> <p>17 Q. If there were some other things that,</p> <p>18 conversations you had that you're not sure of, we can</p> <p>19 talk about that. But I want to ask, just make sure that</p> <p>20 I know of the things that you do definitely recall</p> <p>21 between August of 2011 and October 6th.</p> <p>22 A. I put a call in to the president of Wells Fargo</p> <p>23 Bank. Mr. Clausen, I believe, is his name.</p> <p>24 Q. Do you know when you made that call?</p> <p>25 A. I don't as I sit here. I probably can try and,</p>	<p>Page 87</p> <p>1 you know, review things to figure out the exact date.</p> <p>2 Q. Did you actually speak with Mr. Clausen?</p> <p>3 A. What happened is I had spoken to his assistant,</p> <p>4 slash, secretary and told her about the problems and</p> <p>5 asked for him to get back to me, but I did not actually</p> <p>6 speak to him.</p> <p>7 Q. Anyone else that you recall speaking to?</p> <p>8 A. As I said, they were all within, you know, that</p> <p>9 three-, four-week period of either end of September or</p> <p>10 end of October. So right in that time frame I spoke to a</p> <p>11 number of people. I spoke to a Rachel Roma, Roma</p> <p>12 something, R-o -- I apologize. I can't quite spell the</p> <p>13 name, but I have her and I know I have some things from</p> <p>14 her where I had emails to her. She was somehow in charge</p> <p>15 of their compliance or something for Wells Fargo. At</p> <p>16 some point I did have discussions with her.</p> <p>17 Q. And was this on the telephone?</p> <p>18 A. Yes.</p> <p>19 Q. And can you tell us what that discussion was?</p> <p>20 A. Basically, the same things I've described. It</p> <p>21 was basically saying we've received these letters, trying</p> <p>22 to understand it, and she said I'm sorry I can't tell you</p> <p>23 anything more.</p> <p>24 And I said you sure you don't have the wrong --</p> <p>25 confused on there. She said, nope, we're absolutely</p>	<p>Page 88</p> <p>1 positive. And I said this is ridiculous. You won't tell</p> <p>2 us why. You know, I still think you must have us</p> <p>3 confused. And she would not give me any further answer.</p> <p>4 And I know I have some emails, notes, or letters. I know</p> <p>5 I have that that I can provide to you, Stewart.</p> <p>6 Q. Okay. Thank you. Anyone else that you spoke</p> <p>7 with?</p> <p>8 A. Prior to the beginning of October? Because</p> <p>9 there was lot of things after October.</p> <p>10 Q. Well, I know that you're not sure. We're</p> <p>11 getting kind of in an area where you're not sure if it</p> <p>12 was before October 6th or after, so I understand that.</p> <p>13 A. And October 6th, I remember the date</p> <p>14 specifically, you know, because that day we were going --</p> <p>15 we were in California. We were going that night to see</p> <p>16 Glen Campbell perform. I've never seen him, and I knew</p> <p>17 it was his last concert tour because of his Alzheimer's,</p> <p>18 so I was really looking forward to that.</p> <p>19 Q. All right. Anyone else you recall speaking to</p> <p>20 around that period whether it's before October 6th or a</p> <p>21 little bit after?</p> <p>22 A. I spoke to my banker, Robert Martin, at BNY</p> <p>23 Mellon about this. Now, that may have been after the</p> <p>24 October 6th, but I'm not sure, but I had lengthy</p> <p>25 discussion with Robert Martin.</p>
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1 Q. What did you -- he's in Henderson?
2 A. Green Valley, yes.
3 Q. Okay. And why did you call him?
4 A. He's my primary banker, and I've known him for a
5 lot of years and know he's been in banking. He's
6 president of BNY Mellon on Private Wealth, and knowing he
7 used to be with B of A that he may be able to help me
8 figuring out why they're closing accounts.
9 Q. And what was the conversation you had with
10 Mr. Martin?
11 A. Mr. Martin said he was baffled. We talked about
12 did he know anybody over there and he said he was good
13 friends with Clausen, the president, that they'd known
14 each other, because I guess guys that are top of these
15 banks all know each other it seems like, and that he'd be
16 happy to make a call to him to see if he could help me.
17 Q. What did you tell Robert Martin regarding the
18 closure of the accounts that at least you were aware of?
19 A. I believe I read him -- I may have also e-mailed
20 him a copy of the letter. I believe I read it to him,
21 but as I said, I may have e-mailed it. I'm not sure.
22 Q. And so did you contact Robert Martin regarding
23 all three accounts that had been closed?
24 A. I believe -- I mean obviously I was concerned
25 with specifically the one that had my name on it that was

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1 affecting me directly. But I'm sure I told him that they
2 closed other accounts too. I'm 98 percent sure that I
3 did.
4 Q. And you had Lisa's authority to talk to
5 Mr. Martin regarding --
6 A. I told her that I was going to talk to him about
7 it, that I felt very close to him. And as I said, I have
8 a lot of faith and confidence in him. And, as I said,
9 he's my primary banker.
10 Q. So she authorized you to do that --
11 A. Yes.
12 Q. -- on her behalf?
13 A. Yes.
14 Q. Anything else you remember about what you
15 discussed with Mr. Martin?
16 A. Well, Mr. Martin subsequently called me back and
17 told me he had a conversation with Mr. Clausen.
18 Q. Did you, did you authorize Mr. Martin to call
19 Mr. Clausen?
20 A. Yes.
21 Q. So you were authorizing Mr. Martin to call
22 Mr. Clausen on behalf of you and Lisa?
23 A. Certainly on behalf of me. I believe I probably
24 said Lisa. But, you know, as I said, definitely on my
25 behalf.

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1 Q. And what did Mr. Martin say when he --
2 A. Phoned me back?
3 Q. -- called you back?
4 A. He said he spoke to Mr. Clausen, that
5 Mr. Clausen wasn't sure of the exact reasons. Bob felt
6 Mr. Clausen was kind of trying to distance himself from
7 having be deposed but that Mr. Clausen made the comment
8 to Mr. Martin that it must have been really serious, you
9 know, for them to take the action that that letter called
10 for and that he wasn't sure why. But Clausen's comment
11 to Mr. Martin was I wonder if Lisa could even get on an
12 airplane and fly with whatever this is.
13 I told Mr. Martin -- and I know I can figure out the
14 exact date I had the conversation because I told
15 Mr. Martin Lisa and I had just returned from a trip to
16 Canada where her parents live, and so we go up there once
17 or twice a year, and we had just returned from Canada,
18 and I know that she was able to get on a plane. We went
19 through immigration and there was not a problem.
20 Q. Could you get that date for us and we'll leave a
21 blank in your deposition and you can insert that date?
22 A. Yeah. I mean I'm sure I can figure out my
23 calendar date return from Canada.
24 Q. Thanks.
25 INFORMATION TO BE SUPPLIED:

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1 A. Unfortunately I don't have a pen, so maybe you
2 can just give me, one of you guys, of what -- because
3 you're asking me for several things so that I don't
4 forget and I'm not taking notes.
5 Q. Fair enough. How should I -- can I communicate
6 that to you visa-a-vis correspondence to Mr. Kistler?
7 A. That's fine. If you want to email me, feel
8 free, Sid -- or Sid. Stewart.
9 Q. You can call me --
10 A. They both start with s.
11 Q. What did you call me?
12 A. S. I started to call you, I started to call you
13 Sid.
14 Q. Oh, I thought you -- okay. I thought you called
15 me Stew, and that's okay. You can call me Stew. But you
16 can call me Sid too.
17 MR. KISTLER: You can call Joseph.
18 MR. FITTS: Okay.
19 THE WITNESS: And I'm just Michael, so mine is
20 simple. No middle name. That's it.
21 MR. KISTLER: Mr. Kaplan, I'll offer for you to
22 send email to him directly just so the record is clear.
23 THE WITNESS: And if you'd like my email
24 address, I'll be happy to give it.
25 Q. (By Mr. Fitts) Why don't I just send you a

<p>Page 93</p> <p>1 letter, would that be all right, to your address here?</p> <p>2 A. That would be fine. if you want to email, if</p> <p>3 you want quicker, since nobody uses snail mail anymore,</p> <p>4 just ask the post office.</p> <p>5 Q. Just me, huh? That might be the best way for me</p> <p>6 is just to use written correspondence.</p> <p>7 A. I was almost reading his notes over there.</p> <p>8 Q. Yeah, looks like we have ten minutes before the</p> <p>9 tape runs out, so we'll --</p> <p>10 A. Use longer tapes.</p> <p>11 Q. It's two hours instead of one. So we'll keep</p> <p>12 that in mind here.</p> <p>13 Okay. So we've talked about that you had a</p> <p>14 conversation with Robert Martin. Anyone else you recall</p> <p>15 that you spoke with?</p> <p>16 A. I think that was it prior to that October 6th</p> <p>17 date.</p> <p>18 Q. Okay.</p> <p>19 A. If we're using that as kind of a cutoff time.</p> <p>20 Q. All right. Do you recall what you and Lisa did</p> <p>21 between or after you had the conversation with Mr. Dounel</p> <p>22 on October 6th and the time that Lisa filed this lawsuit</p> <p>23 on January 26th of 2012?</p> <p>24 A. When you say what we did --</p> <p>25 Q. Yeah, did you talk to anybody else?</p>	<p>Page 95</p> <p>1 A. It's m-o-r-r-i-s. No. Greg Morris is my estate</p> <p>2 and trust attorney.</p> <p>3 Q. Oh, I'm sorry. I'm sorry. I heard you wrong.</p> <p>4 And what did you, what did you discuss with Greg?</p> <p>5 A. I had told him about the letters and --</p> <p>6 Q. The closure letters?</p> <p>7 A. The closure letters and the total frustration of</p> <p>8 getting the run around at everyone. He was puzzled by</p> <p>9 it. He told me to contact some people that he knew at</p> <p>10 Wells Fargo, a gentleman by the name of Chad Maze who was</p> <p>11 in their private wealth department at Wells Fargo, and so</p> <p>12 I followed up with -- I spoke with Chad.</p> <p>13 Q. Okay. Then after you spoke with Chad Maze, who</p> <p>14 did you speak with?</p> <p>15 A. Well, in addition to speaking to Chad, he</p> <p>16 suggested meeting with him and his boss for lunch, so I</p> <p>17 met the two of them for lunch.</p> <p>18 Q. Who was Chad's boss? I'm aware of some emails</p> <p>19 that talk about Andy Knoll.</p> <p>20 A. That's the name.</p> <p>21 Q. Is that what it is?</p> <p>22 A. It might have been the two of them.</p> <p>23 Q. Anybody else?</p> <p>24 A. I think that's it.</p> <p>25 Q. You mentioned Jennifer --</p>
<p>Page 94</p> <p>1 A. A lot of people.</p> <p>2 Q. Okay. Why don't you tell us who you talked with</p> <p>3 or anything else you did regarding trying to, you know,</p> <p>4 find out why the accounts were closed or anything</p> <p>5 relating to a closure of the accounts?</p> <p>6 A. I called a number of -- I called a number of</p> <p>7 people at Wells Fargo, and I can pull out the specifics</p> <p>8 of the people that I spoke to. I know, as I said</p> <p>9 earlier, my testimony I spoke to Jennifer --</p> <p>10 Q. Jennifer?</p> <p>11 A. -- I want to say Scoffe. I don't recall how her</p> <p>12 last name is. Scafe. I may be off, but I know out of</p> <p>13 San Francisco, and she was counsel for Wells Fargo, and I</p> <p>14 know I communicated with her out of total frustration.</p> <p>15 I know I spoke further with Dirk Ravenholt, who</p> <p>16 basically I know he sent a couple of letters to Wells</p> <p>17 Fargo. I spoke several times to Greg Morris, my estate</p> <p>18 and trust attorney asking his help.</p> <p>19 Q. Could you spell Mr. Morris's name for us for the</p> <p>20 record? Is it M-o-r-r-i --</p> <p>21 A. S-e. Wait a second. Now you got me.</p> <p>22 Q. That's what I don't know.</p> <p>23 A. I apologize, and Greg would kill me, but let me</p> <p>24 double check.</p> <p>25 Q. He's a state senator did you say?</p>	<p>Page 96</p> <p>1 A. Yes.</p> <p>2 Q. -- in San Francisco, my understanding, at least</p> <p>3 for the court reporter's benefit is her name is spelled</p> <p>4 S-c-a-f-e.</p> <p>5 A. I was close.</p> <p>6 Q. Is that --</p> <p>7 A. Sounds right. I said Scoffe or Scafe. I was</p> <p>8 close.</p> <p>9 Q. I just want to make sure we're talking about,</p> <p>10 I'm understanding --</p> <p>11 A. Yes.</p> <p>12 Q. -- who you're talking about. Okay. Do you</p> <p>13 recall what your conversation with Jennifer was?</p> <p>14 A. Yeah. I had told her that I'd been trying to</p> <p>15 get answers as to why the accounts were closed. I was</p> <p>16 very frustrated. I had even told her that I really need</p> <p>17 to get this resolved.</p> <p>18 This was after the incident with Dounel, and I told</p> <p>19 her I've got to get to the bottom of this. I said, you</p> <p>20 know, look, what happens if -- Lisa is my partner, my</p> <p>21 other half. What happens if I want to run for public</p> <p>22 office now that I have some freedom? What happens if I</p> <p>23 want to run for congress or political office? Wells is</p> <p>24 basically saying this lady that I lived with for all</p> <p>25 these years is a bad person. You know, I'm going to run</p>

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1 for -- what do I have to do? Do I have to go to the
2 press to try and get this brought out?
3 She said, gee, Mr. Kaplan -- and this part I do
4 remember specifically. She said I would think you
5 wouldn't want to go to the press if you're worried about
6 all that. I said but if I'm going to run for public
7 office, I'd like to find out now as opposed to running
8 for public office. If I or Lisa are bad people, I don't
9 want to start throwing my hat into the ring and now
10 someone say look what these people did.
11 And she said there's not much I can really do to
12 help. You know, she said -- you know, I said isn't it
13 possible your people make mistakes? She said no, they
14 never make mistakes. Something to that effect.
15 And I sent a follow-up letter to her, which if you
16 don't have, as I said, I'll be happy to provide a copy,
17 but it did go to your -- I don't know what her title is.
18 I know it's counsel and know she's based in San
19 Francisco, and -- but I did write her another lengthy
20 letter outlining everything and asking for her help.
21 I don't practice law and haven't for a long time. I
22 keep my licenses active, but I know one thing basic
23 because I'm a businessman for 30-odd years that everyone
24 should always try to work things out before having to
25 file lawsuits.

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1 I'll never forget an attorney that I knew in
2 Honolulu years ago said an attorney has failed to do his
3 job if people have to file lawsuits, and I thought it was
4 a brilliant comment, and I've always taken that to
5 heart.
6 So I basically was pleading with Jennifer can we try
7 and meet -- as a matter of fact, if you don't have it, I
8 will be happy to provide you the copy of that letter
9 because I know I do have it. And the final thing was I
10 wrote her in the bottom of the letter I will be happy to
11 fly up at our expense, both Lisa Johnson and myself, sit
12 down with you to try and hammer this out. It's important
13 prior to having to file a legal action.
14 And I was pretty -- I was being pretty serious. She
15 lives in San Francisco. To not even take a meeting with
16 somebody who is pleading saying we don't want to spend
17 money, we don't want to clog up the court system, and
18 somebody didn't even want to meet with us, what was the
19 harm in meeting with us if I was willing to fly up on my
20 own?
21 Q. So if Lisa was prohibited from telling you why
22 the accounts were closed, you feel that she should have
23 met with you anyway?
24 A. I'm sorry. I don't understand.
25 MR. KISTLER: Objection. Form of the question.

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1 Q. (By Mr. Fitts) Okay. If Lisa, if Lisa told
2 you --
3 MR. KISTLER: Object to the form of the
4 question. You're saying if Lisa, if Lisa told you.
5 MR. FITTS: Oh, I'm sorry. Thank you.
6 THE WITNESS: That's why I didn't understand.
7 Okay. I was not sure what I wasn't understanding.
8 Didn't make sense.
9 MR. FITTS: Yeah, you're right. So I'm sorry.
10 I apologize.
11 Q. (By Mr. Fitts) If Jennifer had told you that
12 there was nothing she could do, you still wanted to meet
13 with her?
14 A. Yes, I did. And by the way, before I forget,
15 there are a couple other people that I met with as well
16 with Wells.
17 Q. Oh, okay. Do you want to tell me who they are
18 so we don't forget?
19 A. Yeah. And I can tell you the exact date on this
20 because Dounel had said to me subsequent with all the
21 emails going back and forth that, hey, Mr. Kaplan, you
22 can go into any Wells Fargo bank and open up accounts and
23 there's not a problem.
24 So on November 8th, and I remember the date
25 specifically because my mom passed away on November 8th

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1 In 1979, so November 8th is kind of a sentimental day to
2 me. I went into the Rainbow Sahara Wells Fargo branch,
3 which I think is my main branch, you know, rarely go into
4 it. But in any case, I went in that day. I brought
5 copies of the letters. I met with this lady -- and I'm
6 going to try to get this name right. This is from
7 memory. Josita Freeman, I think, is her last name, but I
8 met with her.
9 And I went into that branch, met with her. I
10 brought the letters and said -- she was a kind lady that,
11 you know, met with me. And I said, look, I got these
12 letters. This is ridiculous. Then I'm told by one of
13 the Wells guys in Malibu that I can come into any branch
14 and open an accounts. I'm not trying to hide anything
15 from you guys. What do I need to do, ma'am?
16 She reads the letter. She takes me back to a desk.
17 She says let's call the 800 number on here. She called
18 them with me and her sitting on speaker phone, and they
19 basically said to her we can't tell you why. And then
20 they went further and said that Lisa is not eligible to
21 open any accounts there. And then they went the next
22 step and said Mr. Kaplan is not eligible to open any
23 accounts with us either.
24 So I asked Josita, I said wait. The lady is saying
25 I'm not eligible to open an account. I have a checking

Page 101

1 account with you guys. They're always bugging me,
2 because I told her how they're always bugging me to open
3 another savings account. So she asks the lady on the 800
4 number what about Mr. Kaplan? Is he eligible to open any
5 other accounts?
6 The lady on the 800 number said nope, Mr. Kaplan is
7 not eligible to open any other accounts. We are leaving
8 his one account that he's had here for years, but he's
9 not eligible to open any further accounts.
10 MR. FITTS: Thank you. I know we're this close
11 to the end of the recording, so I think it would be a
12 good time to break.
13 THE WITNESS: Okay.
14 MR. FITTS: All right. We'll go off the record
15 right now.
16 THE VIDEOGRAPHER: This is end of disk No. 1.
17 We're going off the record at 10:18 a.m.
18 (Break was taken.)
19 THE VIDEOGRAPHER: This is disk No. 2 to the
20 videotaped deposition of Michael Kaplan. We're on the
21 record at 11:12 a.m.
22 MR. FITTS: This is Stewart Fitts for Wells
23 Fargo Bank. We've had a discussion for, gee, almost an
24 hour now off the record, and just generally I believe
25 what the parties have agreed to do is suspend the

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1 deposition of Mr. Kaplan at this time so that the parties
2 can explore sitting down with the mediator within the
3 next two weeks to see if this matter can be resolved.
4 Mr. Kistler, have I accurately stated that in
5 the generalist of terms?
6 MR. KISTLER: That's a correct statement of our
7 discussion.
8 MR. FITTS: And, Mr. Kaplan, anything -- have I
9 said anything incorrect with respect to trying to sit
10 down within two weeks to try to resolve this?
11 THE WITNESS: I think the only thing I would add
12 is that what was discussed was whoever mediator that,
13 whoever from Wells Fargo shows up has all pertinent
14 documents and everything in their file with them so that
15 nobody says I don't have this with me to discuss.
16 MR. FITTS: And that's something I'm certainly
17 going to do my level best in good faith to see if that
18 can be accomplished.
19 THE WITNESS: Okay.
20 MR. FITTS: Okay. With that, we'll go off the
21 record.
22 THE VIDEOGRAPHER: This is the end of disk No.
23 2. It concludes the videotaped deposition of Michael
24 Kaplan taken on August 30th, 2013. We're going off the
25 record at 11:14 a.m.

Page 103

REPORTER'S CERTIFICATE

1
2 STATE OF NEVADA }
3 COUNTY OF CLARK } ss.
4 I, CHRISTINE M. JACOBS, a certified shorthand
5 reporter for the state of Nevada, do hereby certify:
6 That I reported the deposition of the witness,
7 MICHAEL KAPLAN, commencing on August 30, 2013, commencing
8 at the hour of 8:19 a.m.
9 That prior to being examined, the witness was by me
10 duly sworn to testify to the truth, the whole truth, and
11 nothing but the truth;
12 That I thereafter transcribed my said shorthand
13 notes into typewriting and that the typewritten
14 transcription of said deposition is a complete, true and
15 accurate transcription of my said shorthand notes taken
16 down at said time. That review of the transcript was
17 requested.
18 I further certify that I am not a relative or
19 employee of an attorney or counsel involved in said
20 action.
21 IN WITNESS WHEREOF, I have hereunto set my hand
22 in my office in the County of Clark, State of Nevada,
23 this 3rd day of October 2013. *Christine M. Jacobs*
24 CHRISTINE M. JACOBS, CCR 455
25

Page 104

DEPOSITION ERRATA SHEET

1
2
3 Assignment No. 533831
4 Case Caption: JOHNSON vs. WELLS FARGO BANK N.A.
5
6
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25

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have
read the entire transcript of my deposition taken in the
captioned matter or the same has been read to me, and the
same is true and accurate, save and except for changes
and/or corrections, if any, as indicated by me on the
DEPOSITION ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under oath.
Signed on the ____ day of _____, 2013.

MICHAEL KAPLAN

Page 105	
1	DEPOSITION ERRATA SHEET
2	Page No. _____ Line No. _____ Change to: _____
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4	Reason for change: _____
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21	_____
22	Reason for change: _____
23	_____
24	SIGNATURE: _____ DATE: _____
25	MICHAEL KAPLAN

Page 106	
1	DEPOSITION ERRATA SHEET
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20	Reason for change: _____
21	Page No. _____ Line No. _____ Change to: _____
22	_____
23	Reason for change: _____
24	SIGNATURE: _____ DATE: _____
25	MICHAEL KAPLAN

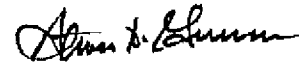
EXHIBIT 4

EXHIBIT 4

ORIGINAL

1 DCRR
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.

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

12 LISA JOHNSON, a Nevada resident,
13
14 Plaintiff,
15
16 v.
17 WELLS FARGO BANK, NATIONAL
18 ASSOCIATION; DOES 1 through X,
19 inclusive; and ROE CORPORATIONS,
20 1 through X, inclusive
21
22 Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

DISCOVERY COMMISSIONER'S
REPORT AND
RECOMMENDATIONS ~~RE:
DISCOVERY LOG AND IN CAMERA
REVIEW OF DOCUMENTS~~

DISCOVERY HEARING DATE:

April 19, 2013

APPEARANCES:

1. Plaintiff Lisa Johnson:

Timothy R. Koval, Esq.
HUTCHISON & STEFFEN

2. Defendant Wells Fargo Bank, N.A.

Stewart C. Fitts, Esq.,
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

I.

FINDINGS

1. On August 31, 2012, Plaintiff Lisa Johnson ("Plaintiff") filed a Motion to Compel.
2. On September 26, 2012, Defendant Wells Fargo ("Wells Fargo") filed an Opposition to Plaintiff's Motion to Compel and a Countermotion for Protective Order.
3. On October 5, 2012, the Discovery Commissioner conducted a hearing on Plaintiff's Motion to Compel and on Defendant's Countermotion for Protective Order.
4. On October 19, 2012, the Discovery Commissioner signed a Report and Recommendation which granted in part and denied in part Wells Fargo's Counter-Motion for Protective Order. Further, this Report and Recommendation granted in part and denied in part Plaintiff's Motion to Compel. This Report and Recommendation provided, in part, the following:
 - a. Wells Fargo is not be required to disclose the reasons why it closed Plaintiff's accounts, as this information is protected under the Bank Secrecy Act and other federal law authorities;
 - b. Plaintiff is precluded from conducting discovery regarding the reasons why Wells Fargo closed Plaintiff's accounts; and
 - c. Wells Fargo is required to provide copies of all records pertaining to the accounts of Plaintiff that are the subject of this action, except that Wells Fargo is not required to provide any documents pertaining to the reasons why Wells Fargo closed Plaintiff's accounts.
5. On November 5, 2012, Plaintiff filed an objection to the Discovery Commissioner's Report and Recommendation regarding the scope of the protections afforded by the Bank Secrecy Act.
6. On February 8, 2013, the District Court Judge conducted a hearing on Plaintiff's Objection to the Discovery Commissioner's October 19, 2012 Report and Recommendations.

1 7. On March 7, 2013, the District Court Judge entered an Order affirming the Discovery
2 Commissioner's October 19, 2012 Report and Recommendations. The Order also remanded this
3 discovery matter to the Discovery Commissioner for the purpose of determining the scope of a
4 privilege log that would not violate the provisions of the Bank Secrecy Act. *The Court further*

5 *ordered that the Commissioner review an appropriate privilege log of the*
6 8. On March 12, 2013, the Discovery Commissioner conducted a hearing on the *privilege*
7 privilege log issue. At this hearing, the Discovery Commissioner requested that Wells Fargo submit *documents*
8 a privilege log in a form similar to that which was considered by the federal court in *Cotton v.*
9 *PrivateBank and Trust Company*, 235, F. Supp.2d 809, 816 (N.D.Ill. 2002).

10 9. On March 26, 2013, Wells Fargo submitted a privilege log to the Discovery
11 Commissioner and to Plaintiff's counsel.

12 10. On April 9, 2013, Wells Fargo submitted an amended privilege log to the Discovery
13 Commissioner and to Plaintiff's counsel. On this same date, Wells Fargo also submitted the
14 documents referenced in the amended privilege log to the Discovery Commissioner for *in camera*
15 review.
16

17 11. At a hearing on April 19, 2013, the Discovery Commissioner informed the parties
18 that she had reviewed: (a) the transcript of the February 8, 2013 hearing that was conducted by the
19 District Court Judge; (b) Wells Fargo's privilege log and the amendment thereto; and (c) had
20 conducted an *in camera* review of the documents referenced in Wells Fargo's privilege log and the
21 amendment thereto.
22

23 II. RECOMMENDATIONS

24 After reviewing the pleadings and papers on file herein, the briefs and documents submitted
25 by the parties, and arguments of counsel, and with good cause appearing, the Discovery
26 Commissioner issues the following recommendations:
27

28 ...

1 IT IS HEREBY RECOMMENDED that the privilege log, and the amendment thereto,
2 submitted by Wells Fargo be deemed proper and adequate under the confidentiality provisions of the
3 Bank Secrecy Act (31 U.S.C. § 5311 *et. seq.*) and related federal regulations and case law.

4 IT IS FURTHER RECOMMENDED that the documents identified in Wells Fargo's privilege
5 log and in the amendment thereto (which documents have been reviewed *in camera* by the Discovery
6 Commissioner) be deemed confidential and protected under the provisions of the Bank Secrecy Act
7 (31 U.S.C. § 5311 *et. seq.*) and related federal regulations and case law. The Discovery
8 Commissioner reiterates that:
9

10 1. Documents which constitute a Suspicious Activity Report ("SAR"), if any SAR
11 exists, and/or the policies and procedures that are created to prepare a possible SAR are confidential
12 and protected. Further, any documents that are prepared in conjunction with investigating or drafting
13 a SAR (if one exists) or possible SAR are confidential and protected.
14

15 2. Factual supporting documentation that accompanied a SAR, if one exists, or possible
16 SAR, which have been prepared in the ordinary course of business are not protected. Specifically,
17 Plaintiff's bank records which have been created in the ordinary course of business are discoverable.
18 If Plaintiff requests that these ordinary bank records be produced, Wells Fargo will not be required
19 to identify which documents, if any, accompanied the investigation of a SAR (if one exists) or
20 possible SAR. Pursuant to NRCP 34(d), Plaintiff is required to pay the reasonable cost of copying
21 these type of ordinary bank records for purposes of disclosure.
22


23 3. Bank records of customers other than Plaintiff are not discoverable without the
24 consent of that customer. In this regard, the records pertaining to the joint-account which Plaintiff
25 opened at Wells Fargo with Michael Kaplan are discoverable inasmuch as Mr. Kaplan has signed
26 a written consent authorizing the disclosure of these records.
27

28 ...

1 IT IS FURTHER RECOMMENDED that Plaintiff's August 31, 2012 Motion to Compel is
2 DENIED with respect to the production of documents identified in Defendant's privilege log and
3 the amendment thereto, and any SAR-related information pertaining to these documents. .

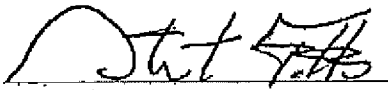
4 IT IS FURTHER RECOMMENDED that Defendant's September 26, 2012 Counter-Motion
5 for Protective Order is GRANTED with respect to the non-production of the documents identified
6 in Defendant's privilege log and the amendment thereto, and any SAR-related information pertaining
7 to these documents.

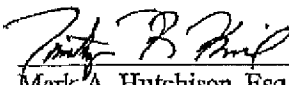
8 DATED this 1 day of May, 2013. .

9
10
11 
12 DISCOVERY COMMISSIONER

13 Submitted by:
14 SMITH LARSEN & WIXOM

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

17 
18 Kent F. Larsen, Esq.
19 Nevada Bar No. 3463
20 Stewart C. Fitts, Esq.
21 Nevada Bar No. 5635
22 Hills Center Business Park
23 1935 Village Center Circle
24 Las Vegas, Nevada 89134
25 Attorneys for Defendant
26 Wells Fargo Bank, N.A.

27 
28 Mark A. Hutchison, Esq.
Nevada Bar No. 4639
Joseph S. Kistler, Esq.
Nevada Bar No. 3458
Timothy R. Koval, Esq.
Nevada Bar No. 12014
Peccole Professional Park
10080 West Alta Drive, Suite 200
Attorneys for Plaintiff Lisa Johnson

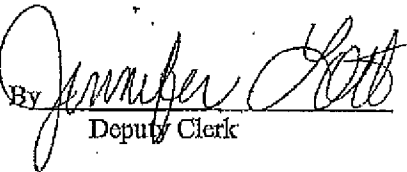
NOTICE

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 _____, 2013.

X Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the 7 day of may 2013.

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,

~~X~~ 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

~~X~~ 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 _____, 2013, at _____ a.m.

DATED this 20 day of May, 2013.


DISTRICT JUDGE

NOEJ

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

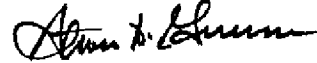
Email: kfl@stwlaw.com

scf@stwlaw.com

Attorneys for Defendant

Wells Fargo Bank, N.A.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,

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

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that the attached Discovery Commissioner's Report
and Recommendations was entered by the Court on the 21st day of May, 2013.

DATED this 20 day of June, 2013.

SMITH LARSEN & WIXOM

/s/ Stewart C. Fitts

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.

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on this 20 day of June, 2013, 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
1835 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5003

A-12-655393-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct

COURT MINUTES

April 19, 2013

A-12-655393-C Lisa Johnson, Plaintiff(s)
vs.
Wells Fargo Bank National Association, Defendant(s)

April 19, 2013 9:00 AM Discovery Conference

HEARD BY: Bulla, Bonnie

COURTROOM: RJC Level 5 Hearing Rm

COURT CLERK: Jennifer Lott

RECORDER: Richard Kangas

PARTIES Fitts, Stewart C Attorney for Deft
PRESENT: Koval, Timothy R. Attorney for Pltf

JOURNAL ENTRIES

- Mr. Koval confirmed the absence issue was addressed. Upon Judge Sturman's request, Commissioner reviewed the privilege log and documents in camera. COMMISSIONER RECOMMENDED, Commissioner UPHELD her prior ruling; documents (SAR reports and/or policies and procedures) created to prepare the SAR reports are PROTECTED; factual supporting documentation (a Company's SAR) prepared in the ordinary course of business are not privileged, and must be produced; the Bank does not have to identify which documents if any accompanied an SAR, or if any existed. Arguments by counsel. COMMISSIONER RECOMMENDED, everything REMAINS PRIVILEGED as ordered; Pltf's Motion to Compel, and for Award of Attorney Fees is DENIED; Deft's Motion for Protective Order is GRANTED. Mr. Fitts prepare recommendation; Mr. Koval approve form and content; submit report within ten (10) days of this hearing, otherwise, counsel will pay a CONTRIBUTION for failure to comply; status check SET; Mr. Fitts must appear if report is not timely submitted.

5/24/13 11:00 a.m. Status Check: Compliance

FILED

RECEIVED

RECEIVED

PRINT DATE: 04/22/2013

Page 1 of 1

Minutes Date: April 19, 2013

AA000873

CERT

Kent F. Larsen, Esq.

Nevada Bar No. 3463

Paul M. Haire, Esq.

Nevada Bar No. 5656

SMITH LARSEN & WIXOM

1935 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

Email: kfl@slwlaw.com

pmh@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 I through X,
inclusive; and ROE CORPORATIONS, I
through X, inclusive,

Defendants.

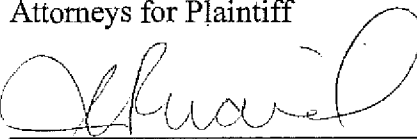
CASE NO.: A-12-655393-C

DEPT NO. XXVI

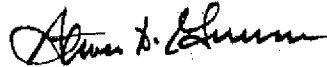
**CERTIFICATE OF SERVICE OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT****Date: January 8, 2014****Time: 9:00 a.m.**

I HEREBY CERTIFY that on this 26th day of November, 2013, a true copy of the foregoing Defendant's Motion for Summary Judgment was served via U.S. Mail, postage prepaid, to the following:

Mark A. Hutchison, Esq.
Joseph S. Kistler, Esq.
Timothy R. Koval, Esq.
Peccole Professional Park
10080 West Alta Dr., Suite 200
Las Vegas, Nevada
Attorneys for Plaintiff



an employee of Smith Larsen & Wixom



CLERK OF THE COURT

1 **OPP**

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: jkistler@hutchlegal.com
13 Email: tkoval@hutchlegal.com

14 *Attorneys for Lisa Johnson*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 LISA JOHNSON, a Nevada resident,

18 Plaintiff,

19 vs.

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

24 Defendants.

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

) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT'S MOTION FOR**
) **SUMMARY JUDGMENT**

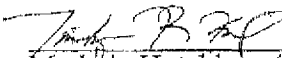
) **Date of Hearing: January 8, 2014**

) **Time of Hearing: 9:00 a.m.**

25 Plaintiff Lisa Johnson ("Plaintiff" or "Johnson") opposes defendant Wells Fargo Bank,
26 National Association's ("Wells Fargo's" or "Defendant's") motion for summary judgment.
27 This opposition is made and based upon NRCP 56, the following memorandum of points and
28 authorities, the declarations of Lisa Johnson and Michael Kaplan, the pleadings and papers on
file herein, and any oral argument to be heard by the Court.

29 DATED this 16th day of December, 2013.

30 HUTCHISON & STEFFEN, LLC



31 Mark A. Hutchison (4639)
32 Joseph S. Kistler (3458)
33 Timothy R. Koval (12014)
34 Peccole Professional Park
35 10080 West Alta Drive, Suite 200
36 Las Vegas, NV 89145

37 *Attorneys for Lisa Johnson*

1 **OPP**

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: jkistler@hutchlegal.com
13 Email: tkoval@hutchlegal.com

14 *Attorneys for Lisa Johnson*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 LISA JOHNSON, a Nevada resident,

18 Plaintiff,

19 vs.

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

24 Defendants.

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

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

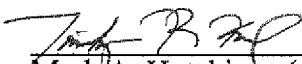
Date of Hearing: January 8, 2014

Time of Hearing: 9:00 a.m.

25 Plaintiff Lisa Johnson ("Plaintiff" or "Johnson") opposes defendant Wells Fargo Bank,
26 National Association's ("Wells Fargo's" or "Defendant's") motion for summary judgment.
27 This opposition is made and based upon NRCP 56, the following memorandum of points and
28 authorities, the declarations of Lisa Johnson and Michael Kaplan, the pleadings and papers on
file herein, and any oral argument to be heard by the Court.

DATED this 16th day of December, 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

1 **POINTS AND AUTHORITIES**

2 **1. Introduction.**

3 Johnson and Michael Kaplan ("Kaplan") – her long-term partner – maintained a joint
4 bank account at Wells Fargo. Inexplicably, Wells Fargo decided to close this joint account as
5 well as other Wells Fargo accounts that Johnson maintained through her company, Guitarfile,
6 LLC. Thereafter, Kaplan went to a Wells Fargo branch of his own accord to cash a check, at
7 which time Wells Fargo representative Arash Dounel ("Dounel") and another Wells Fargo
8 representative solicited Kaplan to open a new bank account. Kaplan asked why they would
9 solicit him to open a new account when it recently closed his joint account with Johnson. As
10 the conversation progressed, Dounel indicated that Wells Fargo closed the joint account
11 because of Johnson and falsely stated to Kaplan that Johnson must have been in jail or have
12 arrest warrants outstanding. Further, Dounel recommended that Kaplan hire a private
13 investigator to uncover Johnson's alleged prior criminal conduct for himself. Thereafter,
14 Kaplan confronted Johnson with Dounel's accusations, all of which are demonstrably false.

15 Dounel's false statements to Kaplan about Johnson led her to file suit against Wells
16 Fargo for defamation, false lights, and declaratory relief. This case is stacked for trial on
17 January 13, 2013, which is less than one month from the date of this filing. Trial is necessary to
18 resolve several factual issues regarding Johnson's claims, including without limitation:

- 19 1. Whether Dounel's statements to Kaplan regarding Johnson's alleged criminal
20 history were factual in nature and whether Dounel implied the existence of
21 undisclosed defamatory facts that placed Johnson in a false light.
- 22 2. Whether Kaplan communicated with Dounel solely on his own behalf, which
23 would preclude a finding that Kaplan was Johnson's agent.
- 24 3. Whether Dounel's comments were privileged, as alleged by Wells Fargo.
- 25 4. Assuming *arguendo* that a privilege may attach, whether Dounel had knowledge
26 that his statements to Kaplan regarding Johnson's alleged criminal history were
27 false or were made with reckless disregard as to their truth, which would support
28 a finding of malice for purposes of precluding Wells Fargo from claiming its

communications as privileged.

5. Whether Wells Fargo disclosed Johnson's alleged criminal history to other third-parties aside from Kaplan for purposes of the false light publicity requirement.

These genuine issues of material fact preclude summary judgment.

2. Factual background.

In or about 2003 or 2004, Johnson and Kaplan – her long-term partner – established a joint account at Wells Fargo.¹ On August 18, 2011, Wells Fargo sent Johnson and Kaplan a letter stating that Wells Fargo would be closing their joint account.² Johnson received other letters from Wells Fargo stating that Wells Fargo would be closing a Visa Business Card account and operating account that she maintained at Wells Fargo in the name of Guitarfile, LLC, as well.³ Wells Fargo stated in one of the letters that it was closing Johnson's Visa Business Card account with Guitarfile, LLC because "[b]ank policy excludes lending to certain types of businesses."⁴ Johnson was the only authorized signer on the Guitarfile, LLC accounts.⁵ Johnson contacted Wells Fargo multiple times to ascertain why Wells Fargo closed the accounts, all to no avail.⁶

Thereafter, on October 6, 2011, while Kaplan was in Southern California, he went into a

¹ See the declaration of Lisa Johnson at ¶ 2, attached as Exhibit 1; *see also* the declaration of Michael Kaplan at ¶ 2, attached as Exhibit 2.

² See the letter from Wells Fargo to Johnson and Kaplan dated August 18, 2011 (Lisa J. 006), attached as Exhibit 3; *see also* Exhibit 1 at ¶¶ 3-4; Exhibit 2 at ¶ 3.

³ See the letters from Wells Fargo to Johnson dated August 15, 2011 & August 18, 2011 (Lisa J. 007-08), attached as Exhibits 4 & 5; *see also* Exhibit 1 at ¶¶ 5-6.

⁴ See Exhibit 4; *see also* Exhibit 1 at ¶ 7.

⁵ See the deposition transcript of Lisa Johnson at 35:10-12, attached as Exhibit 6; *see also* the declaration of Timothy Koval at ¶ 3, attached as Exhibit 7; Exhibit 1 at ¶ 8.

⁶ See the second amended answer to interrogatory no. 1, attached as Exhibit 8; Exhibit 1 at ¶ 9.

Wells Fargo branch located in Malibu, California (the "Malibu Branch") to cash a check.⁷ Johnson did not: (1) go with Kaplan to the Malibu Branch that day;⁸ (2) ask Kaplan to go to the Malibu Branch; (3) ask any Malibu Branch employees why Wells Fargo closed her accounts; or (4) request that Kaplan ask any Malibu Branch employees why Wells Fargo closed her accounts.⁹ As Kaplan and Johnson planned to attend a concert later that evening, Kaplan intended to withdraw money for concert purchases.¹⁰ Kaplan had no intention of discussing his joint account closure – or any other accounts closures – at that time.¹¹ Nevertheless, after Kaplan approached a Wells Fargo teller to cash the check, and as the teller was cashing the check, she looked at Kaplan's account balance and stated that he was leaving too much money in his account.¹² The teller stated to Kaplan that he should have Wells Fargo open a new savings account for him.¹³ Kaplan was bewildered as to why a Wells Fargo representative would ask him to open a new account when Wells Fargo recently closed his joint account.¹⁴ Accordingly, Kaplan asked the teller why she would solicit him to open a new account in light of the joint account closure.¹⁵

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⁷ See Exhibit 2 at ¶ 4.

⁸ See Exhibit 6 at 66:3-9.

⁹ See Exhibit 6 at 65:12-16 (Johnson stating that "I think [Kaplan] went in [to the Malibu Branch] to do a simple banking transaction. I'm not sure why, if it was a deposit or what."); see also Exhibit 1 at ¶ 11; Exhibit 2 at ¶ 5.

¹⁰ See Exhibit 2 at ¶ 6.

¹¹ See *id.*

¹² See *id.* at ¶ 7.

¹³ See *id.* at ¶ 8.

¹⁴ See *id.* at ¶ 9.

¹⁵ See *id.*

1 At that point, the teller brought over Dounel – another Wells Fargo employee – who
2 introduced himself as the teller’s manager.¹⁶ Dounel then brought Kaplan to his desk, at which
3 point Kaplan proceeded to tell Dounel about Wells Fargo’s joint account closure letter.¹⁷
4 Dounel then asked Kaplan about his background, in response to which Kaplan told Dounel that
5 he had sold his business a few years earlier.¹⁸ Dounel also asked Kaplan about his banking
6 relationships, to which Kaplan provided information to Dounel regarding his other bank
7 accounts.¹⁹

8 Dounel then asked if Kaplan had the joint account closure letter with him.²⁰ Kaplan
9 responded that he did not have the letter, as he did not go into the Malibu Branch to discuss that
10 account.²¹ However, Kaplan stated to Dounel that Johnson probably had a copy of the letter.²²
11 Kaplan and Dounel then called Johnson and spoke with her.²³ Dounel asked Johnson to e-mail
12 him the closure letter, which Johnson agreed to do.²⁴ Johnson did not request that Kaplan ask
13 Dounel why Wells Fargo closed Kaplan’s and her joint account or her two Guitarfile, LLC
14 accounts.²⁵ Although Johnson stated in her deposition that she was aware that Kaplan was
15 discussing the joint account closure and that Kaplan had her authority to inquire into the
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17

18 ¹⁶ See *id.* at ¶ 10.

19 ¹⁷ See *id.*

20 ¹⁸ See *id.* at ¶ 11.

21 ¹⁹ See *id.*

22 ²⁰ See *id.* at ¶ 12.

23 ²¹ See *id.*

24 ²² See *id.* at ¶ 13.

25 ²³ See Exhibit 6 at 66:15-17; Exhibit 1 at ¶ 12; Exhibit 2 at ¶ 14.

26 ²⁴ See Exhibit 1 at ¶ 13; Exhibit 2 at ¶ 14.

27 ²⁵ See Exhibit 1 at ¶ 15; Exhibit 2 at ¶ 15.

1 closure,²⁶ she never requested that Kaplan ask Dounel about the account closures nor did
2 Kaplan state that he would make any inquiries on her behalf or otherwise take any action on her
3 behalf at the Malibu Branch.²⁷ According to Johnson, “[i]t’s also [Kaplan’s] account, so he has
4 the authority to check [the joint account] himself.”²⁸

5 After Johnson e-mailed Dounel the letter, Kaplan observed Dounel reading the letter,
6 then looking at something on his computer.²⁹ According to Dounel, he identified Kaplan on his
7 computer and had Kaplan’s account profile screen up to see Kaplan’s accounts.³⁰ Dounel
8 testified that Kaplan told him that Kaplan’s closed account was a joint account with Johnson, so
9 Dounel looked for the joint account on his computer.³¹

10 After Dounel looked at his computer, he stated to Kaplan that Johnson must have been
11 in jail or have arrest warrants.³² Kaplan stated to Dounel that he must be mistaken, to which
12 Dounel replied that Kaplan was a person of means and that he should hire a private investigator
13 to thoroughly investigate Johnson.³³ Dounel stated, “that’s what I would do if it were me.”³⁴
14 This was very upsetting to Kaplan, as it appeared that Dounel was making these remarks to
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17 ²⁶ See Exhibit 6 at 67:1-7.

18 ²⁷ See Exhibit 1 at ¶ 15; Exhibit 2 at ¶¶ 15-16.

19 ²⁸ See Exhibit 6 at 67:6-7; Exhibit 1 at ¶ 16.

20 ²⁹ See the depo. transcript of Arash Dounel at 41:4-7, attached as Exhibit 9 (Dounel
21 stating that Kaplan’s “complaint was that he had a closed account, and I had checked it up on
22 the computer, I looked his account up, and there it said it was closed, so.”). According to
23 Dounel, he also contacted a “Banker Connection” representative whom stated that the joint
account was closed due to an “investigation.” See *id.* at 43:11-44:9; see also Exhibit 2 at ¶ 17.

24 ³⁰ See Exhibit 9 at 41:17-22.

25 ³¹ See *id.*

26 ³² See Exhibit 2 at ¶¶ 17-18.

27 ³³ See *id.* at ¶ 19.

28 ³⁴ See *id.*

1 Kaplan based on what Dounel saw on his computer.³⁵

2 Dounel then brought an additional Wells Fargo employee to his desk and introduced
3 Kaplan to her as being in Wells Fargo's private wealth department.³⁶ The two Wells Fargo
4 representatives then discussed with Kaplan the prospect of opening new accounts with Wells
5 Fargo.³⁷ Again, Kaplan stated that he did not understand how they could be talking about
6 opening a new account if they just closed his joint account.³⁸ Dounel then stated that the
7 closure was because of Johnson – not Kaplan.³⁹ Kaplan then stated that he needed to leave to
8 get ready for the concert that evening.⁴⁰

9 Upset by Dounel's accusations against Johnson, Kaplan then approached Johnson about
10 these accusations and began questioning her in that regard.⁴¹ Kaplan explained Dounel's
11 comments to Johnson and then asked Johnson, "[w]hat's going on?"⁴² Johnson was utterly
12 shocked and offended by Dounel's accusations.⁴³ Johnson responded to Kaplan by stating that
13 Dounel's accusations were outrageous and that Johnson had never had any run-ins with the law
14 (aside from a single speeding ticket).⁴⁴

15 ///

18 ³⁵ See *id.* at ¶ 20.

19 ³⁶ See *id.* at ¶ 21.

20 ³⁷ See *id.*

21 ³⁸ See *id.* at ¶ 22.

22 ³⁹ See *id.*

23 ⁴⁰ See *id.*

24 ⁴¹ See Exhibit 6 at 49:15-21; Exhibit 1 at ¶ 17; Exhibit 2 at ¶ 23.

25 ⁴² See Exhibit 6 at 70:13-21, Exhibit 1 at ¶ 18; Exhibit 2 at ¶ 23.

26 ⁴³ See Exhibit 6 at 71:13-17; Exhibit 1 at ¶ 19; Exhibit 2 at ¶ 24.

27 ⁴⁴ See Exhibit 6 at 71:6-12 & 72:17-19; Exhibit 1 at ¶ 20; Exhibit 2 at ¶ 25.

1 Kaplan – still upset by Dounel’s accusations – then made various statements and asked
2 multiple questions to Johnson such as, “is there stuff I need to know about or worry about[?]”⁴⁵
3 Johnson then became defensive and essentially stated to Kaplan, “I have nothing to hide.”⁴⁶
4 Dounel’s statements caused tremendous stress and strain on Johnson’s and Kaplan’s personal
5 relationship.⁴⁷

6 Approximately two weeks after Dounel made his defamatory statements to Kaplan,
7 Dounel communicated with Kaplan and attempted to apologize for stating that Johnson must
8 have been in jail or had arrest warrants.⁴⁸ Kaplan responded that Dounel’s comments had upset
9 him and caused significant stress between Johnson and Kaplan.⁴⁹ Kaplan stated to Dounel that
10 if he wanted to apologize, then he should send Kaplan an apology letter.⁵⁰

11 Dounel then stated that he would re-open Kaplan’s and Johnson’s joint account.⁵¹
12 Notwithstanding Dounel’s statement, Wells Fargo subsequently – and inexplicably – refused to
13 open a joint account for Johnson and Kaplan.⁵² Thereafter, Kaplan communicated with Dounel
14 about Wells Fargo’s bewildering refusal to open the joint account, in response to which Dounel
15 stated that he could not help Kaplan.⁵³ Kaplan also inquired into Dounel’s apology letter to
16 him, to which Dounel responded, “I have sent the letter to my management and our legal
17 department cannot allow me to send an official letter of apology. I hope the apology that I have
18

19 ⁴⁵ See Exhibit 6 at 73:2-13; Exhibit 1 at ¶ 21; Exhibit 2 at ¶ 26.

20 ⁴⁶ See Exhibit 6 at 73:2-13; Exhibit 1 at ¶ 22; Exhibit 2 at ¶ 27.

21 ⁴⁷ See Exhibit 6 at 100:3-9; Exhibit 1 at ¶ 23; Exhibit 2 at ¶ 28.

22 ⁴⁸ See Exhibit 2 at ¶ 29.

23 ⁴⁹ See *id.* at ¶ 30.

24 ⁵⁰ See *id.*

25 ⁵¹ See *id.* at ¶ 31.

26 ⁵² See *id.* at ¶ 32.

27 ⁵³ See *id.* at ¶ 33.

1 given you thus far verbally can suffice”⁵⁴

2 Kaplan subsequently spoke to Robert Martin (“Martin”) – Kaplan’s banker at BNY
3 Mellon – and advised Martin of Wells Fargo’s actions.⁵⁵ Martin responded that he was friends
4 with Kirk Clausen – Wells Fargo’s president – and that he would contact the president.⁵⁶
5 Martin then responded to Kaplan that Clausen advised him that Johnson was involved in “some
6 serious activity” that caused Wells Fargo not to do business with her.⁵⁷

7 Kaplan then contacted, among others, attorney Greg Morris (“Morris”) regarding the
8 Wells Fargo issue.⁵⁸ Morris then introduced Kaplan to Chad Maze (“Maze”) from Wells
9 Fargo’s private wealth department.⁵⁹ Maze stated to Kaplan that he would follow up on the
10 situation.⁶⁰ Upon information and belief, Maze then checked with his colleagues at Wells
11 Fargo and then responded to Kaplan that he was not sure what had happened, but that he
12 wanted to do business with Kaplan.⁶¹ Kaplan then advised Maze that he wanted to open a joint
13 account with Johnson with an initial balance of \$3 million to \$4 million, to which Maze
14 responded that Wells Fargo would not do any business with Johnson and that Kaplan could not
15 include her on any account with Wells Fargo.⁶² Maze wrote to Kaplan, “[u]nfortunately, yes the
16 account would not be accepted if [Johnson] was associated with it. Of course you could open
17

18 ⁵⁴ See the e-mail from Dounel to Kaplan dated December 1, 2011 at Lisa J. 0045 (Lisa
19 J. 0040-45), attached as Exhibit 10; *see also* Exhibit 2 at ¶¶ 34-35.

20 ⁵⁵ *See* Exhibit 2 at ¶ 36.

21 ⁵⁶ *See id.*

22 ⁵⁷ *See id.*

23 ⁵⁸ *See id.* at ¶ 37.

24 ⁵⁹ *See id.*

25 ⁶⁰ *See id.*

26 ⁶¹ *See id.* at ¶ 38.

27 ⁶² *See id.* at ¶ 39.

1 an account in your name, or the name of your trust, but including [Johnson] could not be one of
2 the options.”⁶³

3 Thereafter, Johnson filed suit against Wells Fargo for defamation, false light, and
4 declaratory relief.⁶⁴ As discovery commenced, Wells Fargo refused to disclose any documents
5 concerning Johnson’s and Kaplan’s joint account until Kaplan executed and returned a
6 notarized third-party authorization permitting Wells Fargo to disclose these documents in this
7 litigation.⁶⁵

8 **3. Legal standard for summary judgment.**

9 NRCP 56 requires the entry of summary judgment only when the pleadings, depositions,
10 discovery responses, and any affidavits submitted, considered in the light most favorable to the
11 party opposing summary judgment, show that there is no genuine issue as to any material fact
12 and that the moving party is entitled to judgment as a matter of law.⁶⁶ A genuine issue of
13 material fact is one where the evidence is sufficient for a reasonable jury to return a verdict for
14 the nonmoving party.⁶⁷ The mere existence of some alleged factual dispute between the parties
15 or the slightest doubt as to the facts will not defeat an otherwise properly supported motion for
16 summary judgment – but there must be no genuine issue of material fact.⁶⁸ The substantive law
17 identifies which facts are material.⁶⁹ Disputes over facts that might affect the outcome of the
18

19
20 ⁶³ See the e-mail from Maze to Kaplan dated November 30, 2011 at Lisa J. 0048 (Lisa
J. 0048-53), attached as Exhibit 11; *see also* Exhibit 2 at ¶¶ 40-41.

21 ⁶⁴ See the complaint, on file.

22 ⁶⁵ See Wells Fargo’s initial disclosures pursuant to NRCP 16.1, attached as Exhibit 12;
23 *see also* Exhibit 7 at ¶ 5.

24 ⁶⁶ See NRCP 56(c); *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029 (Nev. 2005); *Anderson*
25 *v. Baltrusaitius*, 113 Nev. 963, 964-65 (1997); *Maine v. Stewart*, 109 Nev. 721, 726 (1993).

26 ⁶⁷ See *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993).

27 ⁶⁸ See *Wood*, 121 P.3d at 1030.

28 ⁶⁹ *Id.*

1 suit under the governing law will properly preclude the entry of summary judgment.⁷⁰

2 **4. Analysis.**

3 **A. Wells Fargo is not entitled to summary judgment regarding Johnson's defamation claim.**

4 **1. Legal standard for defamation.**

5 To establish a prima facie case of defamation, a plaintiff must allege: (1) a false and
6 defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication
7 to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed
8 damages.⁷¹ The law of defamation is meant to provide an incentive for people not to spread lies
9 that can injure others.⁷²

10 To constitute slander *per se*, the alleged defamation must be oral and must fall into one
11 of four categories: (1) that the plaintiff committed a crime; (2) that the plaintiff has contracted a
12 loathsome disease; (3) that a woman is unchaste; or (4) the allegation must be one which would
13 tend to injure the plaintiff in his or her trade, business, profession, or office.⁷³

14 The determination of whether a statement is capable of a defamatory construction is
15 generally a question of law.⁷⁴ However, where the statement is ambiguous, the issue must be
16 left to the jury's determination. *See Nevada Independent Broadcasting Corp. v. Allen*, 99 Nev.,
17 at 410, 664 P.2d, at 343; *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 484, 851 P.2d 459, 463
18 (1993) (stating that "[a] jury question arises when the statement is susceptible of different
19 meanings, one of which is defamatory.").

20
21 ⁷⁰ *Id.* *See also Nichols v. Byrd*, 435 F.Supp.2d 1101, 1104-05 (D.Nev. 2006) (internal
22 citations omitted).

23 ⁷¹ *See Shafer v. City of Boulder*, 896 F.Supp.2d 915, 940 (D. Nev. 2012); *see also Wynn*
24 *v. Smith*, 117 Nev. 6, 10-11, 16 P.3d 424, 427 (2001); *Pacquiao v. Mayweather*, 803 F.Supp.2d
1208, 1211 (D. Nev. 2011).

25 ⁷² *See Simpson v Mars, Inc.*, 113 Nev. 188, 192, 929 P.2d 966, 968 (1997).

26 ⁷³ *See Nevada Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 409, 664 P.2d
27 337, 341 (1983).

28 ⁷⁴ *See Pacquiao v. Mayweather*, 803 F.Supp.2d, at 1211.

1 A statement is defamatory only if it contains a factual assertion that can be proven
2 false.⁷⁵ In reviewing an allegedly defamatory statement, the words must be viewed in their
3 entirety and in context to determine whether they are susceptible of a defamatory meaning.⁷⁶
4 As a general rule, only assertions of fact, not opinion, can be defamatory. However,
5 expressions of opinion may suggest that the speaker knows certain facts to be true or may imply
6 that facts exist which will be sufficient to render the message defamatory if false.⁷⁷ Further,
7 statements of belief are defamatory if they imply the existence of defamatory facts that are not
8 disclosed to the listener . . . for example, the statement, "I think he must be an alcoholic" is
9 actionable because a jury might find that it implied that the speaker knew undisclosed facts
10 justifying his opinion.⁷⁸

11 To determine if a statement is one of fact or opinion, the court must ask whether a
12 reasonable person would be likely to understand the remark as an expression of the source's
13 opinion or as a statement of existing fact.⁷⁹ A common situation in defamation cases arises
14 when the comment is neither pure fact nor pure opinion. A statement may be a "mixed type,"
15 that is, an opinion which gives rise to the inference that the source has based the opinion on
16 underlying, undisclosed defamatory facts. For example, it may be actionable to state an opinion
17 that plaintiff is a thief, if the statement is made in such a way as to imply the existence of
18 information which would prove plaintiff to be a thief.⁸⁰

19 ///

21 ⁷⁵ See *Shafer v. City of Boulder*, 896 F.Supp.2d, at 940; see also *Pacquiao v.*
22 *Mayweather*, 803 F.Supp.2d, at 1211.

23 ⁷⁶ See *Shafer v. City of Boulder*, 896 F.Supp.2d, at 940.

24 ⁷⁷ See *id.* at 940-41.

25 ⁷⁸ See *id.* at 941.

26 ⁷⁹ See *id.* at 940-41.

27 ⁸⁰ See *Nevada Independent Broadcasting Corp. v. Allen*, 99 Nev., at 411, 664 P.2d, at
28 342; *Lubin v. Kunin*, 117 Nev. 107, 113, 17 P.3d 422, 426 (2001).

1 2. *There are genuine issues of material fact concerning Johnson's claim that*
2 *Dounel's statements to Kaplan regarding her alleged criminal history are*
3 *defamatory.*

4 Here, there are genuine issues of material fact as to whether Dounel's statements to
5 Kaplan regarding Johnson's alleged criminal history are factual in nature and whether Dounel
6 implied the existence of undisclosed defamatory facts. Dounel's statements that Johnson must
7 have some type of criminal background and outstanding arrest warrants are clearly false, as
8 Johnson has no criminal record. Wells Fargo has failed to produce any evidence to the
9 contrary. Dounel's comments to Kaplan (*i.e.*, the third-party) suggested that Wells Fargo
10 closed Kaplan's and Johnson's joint account based on these criminal allegations. Dounel made
11 his defamatory statements to Kaplan after studying Dounel's computer, suggesting that
12 Dounel's comments were based on information presented on the computer. In other words,
13 Dounel's actions gave rise to the inference that he based his statements regarding Johnson's
14 alleged criminal conduct on underlying, undisclosed defamatory facts on his computer. A
15 reasonable person could believe that Dounel, through his experience as a personal banker, had
16 knowledge of Wells Fargo's systems and interpreted Johnson's account profile to support his
17 claim of alleged criminal activity. This creates a genuine issue of material fact as to whether
18 Dounel's comments suggest that he knew certain facts supporting criminal allegations against
19 Johnson or implied that facts exist which will be sufficient to render his communications to
20 Kaplan defamatory if false.

21 Wells Fargo argues that Dounel's statements that Johnson "must have some type of
22 criminal background or have arrest warrants out for her" and that Johnson "must be in trouble
23 with the law for the accounts to have been closed" belie statements of fact and cannot be
24 defamatory as a matter of law.⁸¹ This is simply untrue. As stated above, there are genuine
25 issues of material fact as to whether Dounel's statements and conduct imply the existence of
26 defamatory facts that were not disclosed to Kaplan. To obtain summary judgment, Wells Fargo
27 must prove here and now that there is no possible way that Dounel's conduct implied that he

28 ⁸¹ See Wells Fargo's motion for summary judgment at 8, on file.

1 based his statements regarding Johnson's alleged criminal conduct on underlying facts. Wells
2 Fargo cannot do this, thus its motion for summary judgment regarding Johnson's defamation
3 claim should be denied.

4 3. *There are genuine issues of material fact as to whether Dounel's defamatory*
5 *statements were published to a third person and whether Kaplan was*
6 *Johnson's agent for purposes of claiming the statements as "privileged."*

7 Wells Fargo also claims that Dounel's statements to Kaplan regarding Johnson's alleged
8 criminal history were not "publi[shed]" to a third-party and that Dounel's statements to Kaplan
9 were "privileged."⁸² Specifically, Wells Fargo alleges that: (1) Dounel made statements
10 regarding Johnson's alleged criminal history to Kaplan in his capacity as Johnson's alleged
11 agent, thus precluding a finding that Dounel published the statements to a third-party;⁸³ and (2)
12 Dounel's communications to Kaplan were in response to an inquiry or demand by Kaplan as
13 Johnson's alleged agent, thus the communication is allegedly privileged.⁸⁴ Both of Wells
14 Fargo's allegations live or die based on its argument that Kaplan was Johnson's alleged agent.

15 "Agency is the fiduciary relation which results from the manifestation of consent by one
16 person to another that the other shall act on his behalf and subject to his control, and consent by
17 the other so to act."⁸⁵ The agent must act or agree to act on the principal's behalf and subject to
18 his control.⁸⁶ "The agency relation results if, but only if, there is an understanding between the
19 parties which, as interpreted by the court creates a fiduciary relation in which the fiduciary is
20 subject to the directions of the one on whose account he acts."⁸⁷ When the facts pertaining to
21 the existence of an agency are conflicting, or conflicting inferences may be drawn from the

22 ⁸² See *id.* at 9-10.

23 ⁸³ See *id.* at 10.

24 ⁸⁴ See *id.*

25 ⁸⁵ See the Restatement (Second) of Agency § 1 (1958).

26 ⁸⁶ See the Restatement (Second) of Agency § 1, cmt. a.

27 ⁸⁷ See the Restatement (Second) of Agency § 1, cmt. b.

1 evidence, the question is one of fact for the trier of fact to determine.⁸⁸ For defamation
2 purposes, “the communication to a servant or agent of the person defamed is a publication
3 although if the communication is in answer to a letter or a request from the other or his agent,
4 the publication may not be actionable in defamation.”⁸⁹

5 Here, there are genuine issues of material fact regarding Wells Fargo’s publication of
6 Johnson’s alleged criminal history to Kaplan. Kaplan went into the Malibu Wells Fargo branch
7 where Dounel worked solely to cash his personal check – not to inquire about his and Johnson’s
8 closed joint account. Johnson never asked Kaplan to go to the Malibu branch or to ask any
9 representatives there about the reasons for her account closures. In fact, Johnson never asked
10 Kaplan to do anything at the Malibu Branch. It was only after Wells Fargo employees –
11 including Dounel – solicited Kaplan to open an additional account with Wells Fargo that
12 Kaplan inquired into why Wells Fargo would ask him to open an account when Wells Fargo
13 just closed his joint account. Wells Fargo spurred this question, not Johnson.

14 In fact, Johnson’s sole role in Kaplan’s communication to Dounel was to provide
15 Kaplan and Dounel the joint account closure letter at Kaplan’s request. Wells Fargo’s
16 contention that Kaplan was Johnson’s agent simply does not make sense. It defies logic that
17 Kaplan would be able to walk into a Wells Fargo branch and obtain Johnson’s personal
18 information without Johnson giving Wells Fargo explicit permission to disseminate this
19 information. Johnson never stated to Dounel that he had permission to disseminate her
20 personal information to Dounel. She did not even send her Guitarfile, LLC account closure
21 letters to Kaplan to evaluate with Dounel. The only reason why Dounel spoke to Kaplan
22 regarding the joint account was because Kaplan was a joint account holder and could discuss
23 the joint account on his own behalf.

24
25 ⁸⁸ See *American Prairie Const. Co. v. Hoich*, 560 F.3d 780, 793 (8th Cir. 2009).

26 ⁸⁹ See the Restatement (Second) of Torts § 577, cmt. e (1977); see also *Simpson v.*
27 *Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) (holding in part that the district
28 improperly dismissed a plaintiff’s defamation claim concerning allegedly defamatory
statements made by the defendant corporation’s representatives to its agents and employees).

1 Dounel's own conduct and remarks evidences the fact that Dounel spoke to Kaplan
2 solely on Kaplan's own behalf. If Kaplan was Johnson's agent, why would Dounel encourage
3 Kaplan to retain a private investigator to investigate Kaplan's own principal? In truth, Kaplan
4 appeared at the Malibu Branch on his own behalf and Dounel addressed him as a joint account
5 holder appearing on his own behalf.

6 Nevertheless, Wells Fargo argues that Kaplan was acting at Johnson's behalf and on her
7 behalf at the Malibu Branch, thus Dounel's comments to Kaplan regarding Johnson's alleged
8 criminal background are purportedly tantamount to a publication to Johnson herself.⁹⁰ Wells
9 Fargo cites a string of extra jurisdictional cases allegedly in support of this proposition, all of
10 which are readily distinguishable from this case. *See Ning Ye v. Holder*, 667 F.Supp.2d 103,
11 105 n.2 (D.D.C. 2009) (holding that one party's statement to an allegedly defamed person's
12 agent was not actionable when the agent stated twice to the party that he was acting "on behalf"
13 of the allegedly defamed person when inquiring into a subject that triggered alleged defamatory
14 comments); *30 River Court East Urban Renewal Co. v. Capogrosso*, 383 N.J.Super. 470, 479,
15 892 A.2d 711, 717 (2006) (holding in part that an allegedly defamed landlord invited and
16 directed an alleged defamer to make complaints concerning her tenancy to the landlord's
17 superintendent and that her alleged defamatory comments to the superintendent regarding her
18 tenancy were not "published" to a third-party); *Delval v. PPG Indus., Inc.*, 590 N.E.2d 1078,
19 1081 (Ct.App.Ind. 1992) (holding that employees' allegedly defamatory statements against a
20 supervisor to management personnel and subsequent communications to the company's
21 employee assistance program were not "published" to a third-party); *Kirk Jewelers, Inc. v.*
22 *Bynum*, 222 Miss. 134, 137-38, 75 So.2d 463, 463-64 (1954) (holding that an allegedly
23 defamed individual's claim was not actionable when the allegedly defamed individual
24 requested that another person place a call to the alleged defamer, in response to which the
25 alleged defamer made purportedly defamatory statements to the agent regarding the allegedly
26 defamed individual); *Beck v. Tribert*, 312 N.J.Super. 335, 351-51, 711 A.2d 951, 959-60 (1998)

27
28 ⁹⁰ See Wells Fargo's motion for summary judgment at 10.

1 (holding in part that a plaintiff's defamation claim was not actionable as a "publication" to a
2 third-party when he asked his friends to pose as prospective employers and contact a former
3 employer's representative to ascertain whether the representative was providing negative
4 references about plaintiff, leading to the representative's allegedly defamatory statements to
5 plaintiff's friends against plaintiff); *McDaniel v. Crescent Motors, Inc.*, 249 Ala. 330, 332, 31
6 So.2d 343, 344 (1947) (holding that plaintiff's managers' allegedly defamatory statements to
7 plaintiff's union representative concerning complaints against plaintiff were not published to a
8 third-party when the representative's job duties included representing plaintiff regarding
9 employment complaints); *Mims v. Metropolitan Life Ins. Co.*, 200 F.2d 800, 801-02 (5th Cir.
10 1952) (holding that a company president's allegedly defamatory statements regarding a former
11 employee that the president dictated to a stenographer and sent to a senator based on plaintiff's
12 request that a senator investigate his termination and the senator's letter to the president that
13 plaintiff approved were not "published" to a third-party).

14 Here, this case is distinguishable from each of Wells Fargo's cited cases, as Johnson
15 never requested that Kaplan go to the Malibu Branch to discuss her account closures. Further,
16 Dounel never asked Johnson whether he should discuss her accounts with Kaplan. Johnson
17 never asked Dounel to take any action whatsoever regarding her account closures. Kaplan
18 appeared at the Malibu Branch in his own personal capacity to cash a check – not to represent
19 Johnson in any capacity, whether business, employment, or otherwise. Even if, *arguendo*,
20 Kaplan had attempted to appear at the Malibu Branch on Johnson's behalf, Wells Fargo likely
21 would not have accepted his alleged representation of Johnson. In fact, Wells Fargo refused to
22 produce any joint account disclosures in this litigation until Kaplan signed a third-party
23 authorization permitting these disclosures, suggesting that Kaplan would have needed an
24 executed third-party authorization from Johnson to communicate with Wells Fargo on
25 Johnson's behalf.⁹¹ Johnson never provided any such authorization to Wells Fargo. At the very
26 least, there are genuine issues of material fact precluding summary judgment as to Kaplan's

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28 ⁹¹ See Exhibit 12.

1 alleged status as Johnson's agent and the publication of Dounel's comments to a third-party.

2 Wells Fargo also argues that Dounel's communications to Kaplan regarding Johnson's
3 alleged criminal history are privileged and not actionable because the communications were in
4 answer to Johnson's or her agent's demand and were not published with actual malice.⁹²

5 However, as stated above, Johnson did not demand or even ask Kaplan to ask Dounel about her
6 account closures. Kaplan asked about Johnson's and Kaplan's joint account closure solely
7 because Wells Fargo representatives asked Kaplan to open a new account and he believed the
8 request to be paradoxical given Wells Fargo's decision to close his joint account. Further, as
9 stated above, Kaplan was not Johnson's agent. Moreover, there are genuine issues of material
10 fact as to whether Dounel knew these statements were false and whether he made these
11 statements with reckless disregard to their truth, especially as the statements are completely
12 untrue. The factual disputes in this regard render summary judgment inappropriate. These
13 issues must be determined on the merits at trial.

14 On a related note, Wells Fargo argues that Dounel's statements to Kaplan are subject to
15 the conditional common interest privilege, which protects defamatory statements made "in good
16 faith on any subject matter in which the person communicating has an interest, or in reference
17 to which he has a right or a duty, if it is made to a person with a corresponding interest or
18 duty."⁹³ A person may not avail himself of the privilege if he abuses it through his knowledge
19

20 ⁹² See Wells Fargo's motion for summary judgment at 10; *see also, e.g., Millsaps v.*
21 *Bankers Life Co.*, 35 Ill.App.3d 735, 742, 342 N.E.2d 329, 334-35 (1976) (holding that a letter
22 from defendant to plaintiff's attorney in response to the attorney's inquiry was privileged and
23 not actionable); *Thomas v. Kaufmann's*, 436 F.Supp. 293, 297 (D. Pa. 1977) (holding that a
24 plaintiff's defamation claim required factual determinations by a jury regarding whether
25 communications between plaintiff's employer and plaintiff's father regarding alleged theft by
26 plaintiff were privileged, including whether the matter was fabricated and whether defendant
27 acted maliciously to destroy any privilege).

26 ⁹³ See Wells Fargo's motion for summary judgment at 11; *see also Lubin v. Kunin*, 117
27 Nev. 107, 115, 17 P.3d 422, 428; *Bank of America Nevada v. Bourdeau*, 115 Nev. 263, 267,
28 982 P.2d 474, 476 (1999) (holding that a bank's act of cooperating with a governmental
examiner to ensure that an officer of a new bank is qualified and experienced was, unless
malicious, subject to qualified privilege); *Lever v. Community First Bancshares, Inc.*, 989 P.2d

1 or reckless disregard as to the falsity of the defamatory matter.⁹⁴ If a fact issue is raised on the
2 existence of good faith or malice, or on whether or not the statements made exceed the
3 exigencies of the situation so as to constitute an abuse of the privilege, such fact questions are
4 for the jury or finder of fact at trial.⁹⁵ Wells Fargo argues that the conditional privilege applies
5 because: (1) Dounel's communications allegedly were made in response to Johnson's inquiries
6 through Kaplan, her alleged agent (a factual issue); (2) the communications involved a subject
7 matter in which the parties had a common interest (a factual issue); and (3) Wells Fargo did not
8 act with malice (a factual issue).⁹⁶

9 However, Johnson never requested that Kaplan ask Dounel about any of her closed
10 accounts. Further, as argued *supra*, Kaplan was not Johnson's agent. Moreover, the mere fact
11 that Johnson and Kaplan had a joint account does not create a privilege in which Wells Fargo
12 may recklessly spread demonstrably false information regarding a co-account-holder, which
13 disrupted the relationship between the account holders. Whether these statements were
14 malicious requires factual determinations and inquiry at trial, not through motion practice. This
15 is especially true, as Wells Fargo's only argument against a finding of malice is that "on their
16 face, the words used by [Wells Fargo's] employees suggest no malicious intent."⁹⁷ However,
17 Dounel falsely stated to Kaplan that Johnson must have a criminal record and went as far as to
18 recommend that Kaplan hire a private investigator to follow up on Dounel's criminal
19 accusations against her. This creates genuine issues of material fact regarding Dounel's malice
20 in making the statements. Thus, Wells Fargo's motion for summary judgment should be denied

21 _____
22 634, 639 (Wyo. 1999) (holding that a conditional privilege existed for a "routine business
23 transaction" initiated by a third-party attempting to obtain a loan from a bank that made alleged
24 defamatory comments about the third-party's real estate agent within the context of the
proposed loan).

25 ⁹⁴ See the Restatement (Second) of Torts § 596, cmt. a (1977).

26 ⁹⁵ See *Hellesen v. Knaus Truck Lines, Inc.*, 370 S.W.2d 341, 345 (Mo. 1963).

27 ⁹⁶ See Wells Fargo's motion for summary judgment at 12.

28 ⁹⁷ See *id.* at 13

1 regarding Johnson's defamation claim.

2 **B. Wells Fargo is not entitled to summary judgment regarding Johnson's false light**
3 **claim.**

4 To prove false light, a plaintiff must demonstrate that: (1) a defendant gave publicity to
5 a matter concerning the plaintiff that placed the plaintiff before the public in a false light; (2)
6 the false light under which the plaintiff was placed would be highly offensive to a reasonable
7 person; and (3) the defendant had knowledge of or acted in reckless disregard as to the falsity of
8 the publicized matter and the false light in which the plaintiff was placed.⁹⁸

9 There are various genuine issues of material fact that preclude summary judgment
10 regarding Johnson's false light claim against Wells Fargo. For example, Wells Fargo argues
11 that Dounel's statements to Kaplan regarding Johnson's alleged criminal history were merely
12 "evaluative opinions or were generic categorizations of the basis for the Accounts' closure that
13 cannot be construed as necessarily directed at Johnson."⁹⁹ This argument is ludicrous. Dounel
14 studied Johnson's and Kaplan's joint account information on his computer, then stated to
15 Kaplan that Johnson must have been in jail or have arrest warrants outstanding, thereby causing
16 the account closures. It defies belief that these statements were merely "evaluative opinions" or
17 "generic categorizations" that could have been directed at anyone other than Johnson.

18 Wells Fargo also claims that there was no "publicity" giving rise to a false light claim,
19 as the only alleged publicity given by Wells Fargo to its offensive statements was to Kaplan.¹⁰⁰
20 However, Wells Fargo has failed to disclose any information regarding its criminal allegations
21 against Johnson, including to whom it has disclosed this information. Wells Fargo has
22 stonewalled Johnson at every turn in her attempts to obtain information regarding Wells
23 Fargo's accusations against her. Wells Fargo should not be allowed to utilize this as a means to

24
25 ⁹⁸ See *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 615, 629, 895 P.2d 1269, 1278 (1995);
26 Restatement (Second) of Torts § 652E (1977); *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1082
(9th Cir. 2002).

27 ⁹⁹ See Wells Fargo's motion for summary judgment at 13-14.

28 ¹⁰⁰ See *id.* at 15.

1 obtain summary judgment. Wells Fargo's motion for summary regarding Johnson's false light
2 claim should be denied.

3 **C. Wells Fargo is not entitled to summary judgment regarding Johnson's request for**
4 **declaratory relief.**

5 Wells Fargo is not entitled to summary judgment regarding Johnson's declaratory relief
6 claim. Johnson alleges that Dounel defamed her and cast her in a false light when he alleged
7 that Johnson "must have" engaged in criminal conduct. Wells Fargo affirmatively defends that
8 "Plaintiff's claims are barred, in whole or in part, by principles of truth" ¹⁰¹ In light of this
9 affirmative defense, Johnson's request for declaratory relief is appropriate. Specifically,
10 Johnson is entitled to know the bases for Dounel's "truth[ful]" statements against her regarding
11 her alleged criminal conduct. ¹⁰² Johnson is entitled to a detailed explanation as to why Wells
12 Fargo alleged that she was/is involved in criminal activities.

13 Wells Fargo cannot have its cake and eat it too in this regard. In other words, Wells
14 Fargo cannot defend Dounel's statements against Johnson as truthful only to claim that Johnson
15 is not entitled to know the bases for these "truth[ful]" claims. This is a specious position.
16 Although the Court previously held that Johnson is not entitled to documents shrouded by the
17 Bank Secrecy Act, the Court never shielded Wells Fargo from disclosing the bases for its
18 claims that Dounel's statements against Johnson were allegedly true. Johnson is entitled to this
19 information, thus her request for declaratory relief is appropriate. Wells Fargo's motion for
20 summary judgment regarding Johnson's declaratory relief claim should be denied.

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27 ¹⁰¹ See Answer of Wells Fargo Bank to Complaint at affirmative defense no. 26, on file.

28 ¹⁰² See the Complaint at Paragraph 45, on file.

1 **5. Conclusion.**

2 For the foregoing reasons, Wells Fargo's motion for summary judgment should be
3 denied in its entirety.

4 DATED this 16th day of December, 2013.

5
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

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14 Las Vegas, NV 89145

15 *Attorneys for Lisa Johnson*
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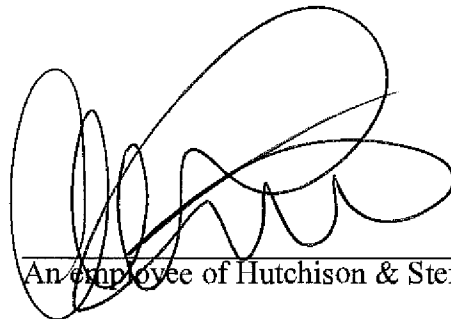
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,
3 LLC and that on this 16 day of December, 2013, I caused the above and foregoing document
4 entitled **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY**
5 **JUDGMENT** to be served as follows:

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

18 To the attorneys and/or parties listed below at the address and/or facsimile number indicated
19 below:
20

21 Paul M. Haire, Esq.
22 Kent F. Larson, Esq.
23 SMITH LARSON & WIXOM
24 1935 Village Center Circle
25 Las Vegas, NV 89134
26 Attorney for Defendants
27
28



An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Declaration of Lisa Johnson

I, Lisa Johnson, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration in support of my opposition to Wells Fargo Bank, National Association's ("Wells Fargo's") motion for summary judgment (the "Opposition"). I am competent to testify to the matters expressed herein if called to do so.

2. In or about 2003 or 2004, Michael Kaplan ("Kaplan") and I established a joint account at Wells Fargo.

3. On August 18, 2011, Wells Fargo sent me a letter stating that Wells Fargo would be closing Kaplan's and my joint account.

4. Attached as Exhibit 3 to my Opposition to Wells Fargo's motion for summary judgment is a true and correct copy of an account closure letter from Wells Fargo dated August 18, 2011 pertaining to Kaplan's and my joint account.

5. I received other letters from Wells Fargo stating that Wells Fargo would be closing a Visa Business Card account and operating that I maintained at Wells Fargo in the name of Guitarfile, LLC as well.

6. Attached as Exhibits 4 and 5 to my Opposition to Wells Fargo's motion for summary judgment are true and correct copies of account closure letters from Wells Fargo dated August 15, 2011 and August 18, 2011 regarding the Guitarfile, LLC accounts.

7. Wells Fargo stated in one of the letters that it was closing my Visa Business Card account with Guitarfile, LLC because "[b]ank policy excludes lending to certain types of businesses."

8. I was the only authorized signer on the Guitarfile, LLC accounts.

9. I contacted Wells Fargo multiple times to ascertain why Wells Fargo closed the accounts, all to no avail.

10. I believe that on October 6, 2011, while Kaplan was in Southern California, he went into a Wells Fargo branch located in Malibu, California (the "Malibu Branch") to cash a check.

1 11. I did not: (1) go with Kaplan to the Malibu Branch that day; (2) ask Kaplan to go
2 to the Malibu Branch; (3) ask any Malibu Branch employees why Wells Fargo closed my
3 accounts; or (4) request that Kaplan ask any Malibu Branch employees why Wells Fargo closed
4 my accounts.

5 12. That day, Kaplan and Dounel called me and spoke with me.

6 13. Dounel asked me to e-mail him the account closure letter regarding Kaplan's
7 and my joint account, which I agreed to do.

8 14. Shortly thereafter, I sent the letter in question to Dounel.

9 15. I did not request that Kaplan ask Dounel why Wells Fargo closed Kaplan's and
10 my joint account or her two Guitarfile, LLC accounts. Kaplan never stated to me that he would
11 make any inquiries to Dounel on my behalf or otherwise take any action on my behalf at the
12 Malibu Branch.

13 16. As Kaplan was a joint account holder on his and my joint Wells Fargo account,
14 he had the authority to check the joint account himself.

15 17. Later the same day that Dounel and Kaplan called me requesting the account
16 closure letter, Kaplan approached me about various accusations that Dounel made against me,
17 including that I must have been in jail, that I must have arrest warrants outstanding, and that
18 Dounel recommended that Kaplan hire a private investigatory to check into my allegedly
19 "shady" history. Kaplan appeared to be upset and began questioning me regard Dounel's
20 allegations.

21 18. Kaplan asked me, among other things, "what's going on?"

22 19. I was utterly shocked and offended by Dounel's accusations, especially as these
23 accusations were completely false.

24 20. I responded to Kaplan by stating that Dounel's accusations were outrageous and
25 that I had never had any run-ins with the law aside from a couple of speeding tickets.

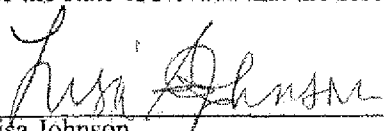
26 21. Kaplan – still apparently upset by Dounel's accusations – then made various
27 statements and asked multiple questions to me such as, "is there stuff I need to know about or
28 worry about?"

1 22. I then became defensive and essentially stated to Kaplan, "I have nothing to
2 hide."

3 23. Dounel's statements have caused tremendous stress and strain on Kaplan's and
4 my personal relationship.

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

7 DATE: 12/16/13


Lisa Johnson

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EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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1 10. At that point, the teller brought over Arash Dounel ("Dounel") – another Wells
2 Fargo employee – who introduced himself as the teller's manager. Dounel then brought me to
3 his desk, at which point I proceeded to tell Dounel about Wells Fargo's joint account closure
4 letter.

5 11. Dounel then asked me about my background, in response to which I told Dounel
6 that I had sold my business a few years earlier. Dounel also asked me about my banking
7 relationships, to which I provided information to Dounel regarding my other bank accounts.

8 12. Dounel then me asked if I had the joint account closure letter with me. I
9 responded that I did not have the letter, as I did not go into the Malibu Branch to discuss that
10 account.

11 13. However, I stated to Dounel that Johnson probably had a copy of the letter.

12 14. Dounel and I then called Johnson and spoke with her. Dounel asked Johnson to
13 e-mail him the closure letter, which Johnson agreed to do.

14 15. Johnson did not request that I ask Dounel why Wells Fargo closed Johnson's and
15 my joint account or her two Guitarfile, LLC accounts at Wells Fargo.

16 16. I never stated to anyone that I would make any inquiries on Johnson's behalf or
17 otherwise take any action on her behalf at the Malibu Branch.

18 17. After Johnson e-mailed Dounel the letter, I observed Dounel reading the letter,
19 then looking at something on his computer.

20 18. After Dounel looked at his computer, he stated to me that Johnson must have
21 been in jail or have arrest warrants.

22 19. I then stated to Dounel that he must be mistaken, to which Dounel replied that I
23 was a person of means and that I should hire a private investigator to thoroughly investigate
24 Johnson. Dounel stated, "that's what I would do if it were me."

25 20. This was very upsetting to me, as it appeared that Dounel was making these
26 remarks to me based on what Dounel saw on his computer.

27 21. Dounel then brought an additional Wells Fargo employee to his desk and
28 introduced her to me as being in Wells Fargo's private wealth department. The two Wells

1 Fargo representatives then discussed with me the prospect of opening one or more new
2 accounts with Wells Fargo.

3 22. Again, I stated that I did not understand how they could be talking about opening
4 a new account if they just closed my joint account. Dounel then stated that the closure was
5 because of Johnson – not me. I then stated that I needed to leave to get ready for the concert
6 that evening.

7 23. Upset by Dounel's accusations against Johnson, I then approached Johnson
8 about these accusations and began questioning her in that regard. I explained Dounel's
9 comments to Johnson and then asked Johnson, "what's going on?"

10 24. Johnson appeared to be shocked and offended by Dounel's accusations.

11 25. Johnson responded to me by stating that Dounel's accusations were outrageous
12 and that Johnson had never had any run-ins with the law.

13 26. I – still upset by Dounel's accusations – then made various statements and asked
14 multiple questions to Johnson such as, "is there stuff I need to know about or worry about?"

15 27. Johnson then appeared defensive and essentially stated to me, "I have nothing to
16 hide."

17 28. Dounel's statements caused tremendous stress and strain on Johnson's and my
18 personal relationship.

19 29. Approximately two weeks after Dounel made his statements to me regarding
20 Johnson's alleged criminal history, Dounel communicated with me and attempted to apologize
21 for stating that Johnson must have been in jail or had arrest warrants.

22 30. I responded that Dounel's comments had upset me and caused significant stress
23 between Johnson and me. I stated to Dounel that if he wanted to apologize, then he should send
24 me an apology letter.

25 31. Dounel then stated that he would re-open Johnson's and my joint account.

26 32. Notwithstanding Dounel's statement, Wells Fargo subsequently – and
27 inexplicably – refused to open a joint account for Johnson and me.

28 ///

1 33. Thereafter, I communicated with Dounel about Wells Fargo's bewildering
2 refusal to open the joint account, in response to which Dounel stated that he could not help me.

3 34. I also inquired into Dounel's apology letter to me, to which Dounel responded,
4 "I have sent the letter to my management and our legal department cannot allow me to send an
5 official letter of apology. I hope the apology that I have given you thus far verbally can suffice .
6 ..."

7 35. Attached as Exhibit 10 to Johnson's Opposition to Wells Fargo's motion for
8 summary judgment is a true and correct copy of e-mail correspondence between Dounel and me
9 dated November 2, 2011 to December 1, 2011.

10 36. I subsequently spoke to Robert Martin ("Martin") – my banker at BNY Mellon –
11 and advised Martin of Wells Fargo's actions. Martin responded that he was friends with Kirk
12 Clausen – Wells Fargo's president – and that he would contact the president. Martin then
13 responded to me that Clausen advised him that Johnson was involved in "some serious activity"
14 that caused Wells Fargo not to do business with her.

15 37. I then contacted, among others, attorney Greg Morris ("Morris") regarding the
16 Wells Fargo issue. Morris then introduced me to Chad Maze ("Maze") from Wells Fargo's
17 private wealth department. Maze stated to me that he would follow up on the situation.

18 38. Upon information and belief, Maze then checked with his colleagues at Wells
19 Fargo and then responded to me that he was not sure what had happened, but that he wanted to
20 do business with me.

21 39. I then advised Maze that I wanted to open a joint account with Johnson with an
22 initial balance of \$3 million to \$4 million, to which Maze responded that Wells Fargo would
23 not do any business with Johnson and that I could not include her on any account with Wells
24 Fargo.

25 40. Maze wrote to me, "[u]nfortunately, yes the account would not be accepted if
26 [Johnson] was associated with it. Of course you could open an account in your name, or the
27 name of your trust, but including [Johnson] could not be one of the options."

28 ///

1 41. Attached as Exhibit 11 to Johnson's Opposition to Wells Fargo's motion for
2 summary judgment is a true and correct copy of e-mail correspondence between Maze and me
3 dated November 14, 2011 to November 30, 2011.

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

6 DATE: 12/16/13


Michael Kaplan

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EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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

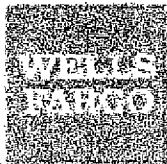
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EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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
AA000912

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EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

AA000913



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

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EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

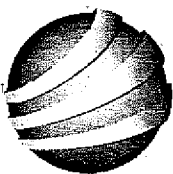
In the Matter Of:

JOHNSON vs. WELLS FARGO

A-12-655393-C

LISA JOHNSON

August 29, 2013



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AA000916

<p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 4 LISA JOHNSON, a Nevada 5 resident, 6 Plaintiff, 7 vs. CASE NO. 8 A-12-655393-C 9 WELLS FARGO BANK, NATIONAL 10 ASSOCIATION; DOES 1 through 11 X, inclusive; and ROE 12 CORPORATIONS, 1 through X, 13 inclusive, 14 Defendants. 15 16 VIDEOTAPED DEPOSITION OF LISA JOHNSON 17 Taken at Smith, Larson & Wixom 18 at 1935 Village Center Circle 19 Las Vegas, Nevada 89134 20 On Thursday, August 29, 2013 21 at 2:16 p.m. 22 23 24 25 Reported by: Jualitta Stewart, CCR No. 807, RPR</p>	<p>Page 1</p> <p>1 INDEX 2 3 WITNESS PAGE 4 LISA JOHNSON 5 Examination by Mr. Fitts 5 6 7 --oOo-- 8 9 10 EXHIBITS 11 DEFENDANT'S PAGE 12 A - Handwritten Notes (Not Provided) 112 13 14 --oOo-- 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 2</p> <p>1 APPEARANCES: 2 For the Plaintiff, Lisa Johnson: 3 JOSEPH S. KISTLER, ESQ. 4 Hutchison & Steffen 5 10080 West Alta Drive 6 Suite 200 7 Las Vegas, Nevada 89145 8 (702) 385-2500 9 10 For the Defendant, Wells Fargo Bank, N.A.: 11 STEWART C. FITTS, ESQ. 12 Smith, Larsen & Wixom 13 1935 Village Center Circle 14 Las Vegas, Nevada 89134 15 (702) 252-5002 16 17 Also Present: Patti Lucchesi, videographer 18 19 20 21 22 23 24 25</p>	<p>Page 4</p> <p>1 LAS VEGAS, NEVADA; 2 Thursday, August 29, 2013; 2:16 P.M. 3 4 THE VIDEOGRAPHER: This is Tape No. 1 to 5 the videotaped deposition of Lisa Johnson in the 6 matter of Lisa Johnson, a Nevada resident, versus 7 Wells Fargo Bank National Association, et al., being 8 heard before the District Court, Clark County, 9 Nevada. Case No. A-655393. 10 This deposition is being held at Smith, 11 Larsen & Wixom, 1935 Village Center Circle, Las 12 Vegas, Nevada 89134 on August 29th, 2013, at 13 2:16 p.m. 14 I'm Patti Lucchesi, I'm the videographer. 15 The court reporter is Jualitta Stewart. 16 Counsel, will you please introduce 17 yourselves and affiliations and the witness will be 18 sworn. 19 MR. KISTLER: Joseph Kistler of the law 20 firm of Hutchison & Steffen here in Las Vegas, 21 Nevada, appearing for and behalf of Ms. Johnson. 22 MR. FITTS: Stewart Fitts on behalf of 23 Wells Fargo Bank. 24 LISA JOHNSON, 25 having been first duly sworn, testified as follows:</p>

<p>1 EXAMINATION Page 5</p> <p>2 BY MR. FITTS:</p> <p>3 Q. Ms. Johnson, my name is Stewart Fitts,</p> <p>4 we've met before. And today is the day set for your</p> <p>5 deposition in the lawsuit you filed against Wells</p> <p>6 Fargo Bank.</p> <p>7 Is that the understanding of why you're</p> <p>8 here today?</p> <p>9 A. Yes.</p> <p>10 Q. Will you please state your full name for</p> <p>11 the record?</p> <p>12 A. Lisa Suzanne Johnson.</p> <p>13 Q. Can you spell that for us?</p> <p>14 A. L-i-s-a, S-u-z-a-n-n-e, J-o-h-n-s-o-n.</p> <p>15 Q. Have you used any other names or gone by</p> <p>16 other aliases?</p> <p>17 A. No. Oh, I was once married and I went by</p> <p>18 Lisa Johnson Hoogland.</p> <p>19 Q. Can you spell that for us?</p> <p>20 A. L-i-s-a; J-o-h-n-s-o-n; Hoogland,</p> <p>21 H-o-o-g-l-a-n-d.</p> <p>22 Q. What is your address?</p> <p>23 MR. KISTLER: One question. Ms. Johnson,</p> <p>24 it's kind of hard for me to hear.</p> <p>25 THE WITNESS: Okay.</p>	<p>1 residence? Page 7</p> <p>2 A. Yes. 301 Loma Metisse Road, Malibu,</p> <p>3 California 90265.</p> <p>4 Q. Any other addresses?</p> <p>5 A. No.</p> <p>6 Q. Out of the two addresses, where do you --</p> <p>7 can you give us an idea --</p> <p>8 A. My primary residence is Las Vegas,</p> <p>9 Nevada.</p> <p>10 Q. Okay. And you spend most of your time in</p> <p>11 Las Vegas?</p> <p>12 A. Yes. I spend -- it's probably 50/50</p> <p>13 Vegas, California right now.</p> <p>14 Q. Okay. What is your date of birth?</p> <p>15 A. October 20th, 1963.</p> <p>16 Q. Have you ever had your deposition taken</p> <p>17 before today?</p> <p>18 A. No, I have not.</p> <p>19 Q. You understand you're here today under</p> <p>20 oath and under the penalty of perjury if you were,</p> <p>21 not to tell the truth?</p> <p>22 A. Yes, I understand.</p> <p>23 Q. You understand that your deposition today</p> <p>24 is being conducted to determine what your testimony</p> <p>25 is regarding the subject matter of your lawsuit?</p>
<p>1 MR. KISTLER: So you may need to speak up Page 6</p> <p>2 just a little bit more.</p> <p>3 THE WITNESS: Sure.</p> <p>4 MR. KISTLER: Try to think about speaking</p> <p>5 loudly enough so that this young lady down at the</p> <p>6 end of the table --</p> <p>7 THE WITNESS: Oh, okay.</p> <p>8 MR. KISTLER: That way --</p> <p>9 THE WITNESS: You're trying to get -- is</p> <p>10 there a mic on that camera?</p> <p>11 MR. KISTLER: It's not -- it's not an</p> <p>12 amplified mic, so if you can speak up so maybe I can</p> <p>13 hear you then.</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. KISTLER: You're very soft spoken.</p> <p>16 THE WITNESS: I'll try to speak up.</p> <p>17 MR. FITTS: Can you hear me okay?</p> <p>18 THE WITNESS: Pardon?</p> <p>19 MR. FITTS: Can you hear me okay?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. FITTS:</p> <p>22 Q. Okay. Can you please state your address?</p> <p>23 A. My address is 9517 Canyon Mesa Drive, Las</p> <p>24 Vegas, Nevada 89144.</p> <p>25 Q. Any other addresses where you have a</p>	<p>1 A. Yes, I understand that. Page 6</p> <p>2 Q. There's a court reporter here, we have</p> <p>3 the videographer here as well, and there's a</p> <p>4 transcript being made of your testimony today and</p> <p>5 indeed of everything that's being said during the</p> <p>6 deposition today.</p> <p>7 You understand that?</p> <p>8 A. I do.</p> <p>9 Q. And so as your counsel just stated, we</p> <p>10 would like you to please speak loud enough so that</p> <p>11 for the benefit of the folks here that are helping</p> <p>12 us make that transcript.</p> <p>13 A. Sure.</p> <p>14 Q. Will you do that for us?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. One thing that the court reporter</p> <p>17 cannot do is transcribe two people speaking at the</p> <p>18 same time. And so I would like to propose just a</p> <p>19 very simple rule. And that is, I would ask that you</p> <p>20 wait until I'm completely done with my question</p> <p>21 before you provide me with your answer.</p> <p>22 A. Sure.</p> <p>23 Q. I will then do the same. I will wait</p> <p>24 until you're completely done with your answer before</p> <p>25 I ask you the next question.</p>

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1 A. No problem.
2 Q. Is that fair enough?
3 A. Fair enough.
4 Q. From time to time your counsel may raise
5 an objection and that is common during a deposition,
6 but you'll still need to answer the question even
7 though there's an objection, unless that objection
8 is raised on grounds of privilege and your counsel
9 instructs you not to answer.
10 Does that make sense to you?
11 A. Sure.
12 Q. We also need clear and audible responses.
13 For example, sometimes we nod our head during
14 general conversations or we say au-huh or huh-uh,
15 and we think we're communicating, but it's very hard
16 for the court reporter to make a clear record of
17 that. So I ask you to make clear audible responses.
18 A. Sure.
19 MR. KISTLER: The traditional answer to
20 that question or that advisement is "au-huh."
21 THE WITNESS: I know, I wanted to, but I
22 didn't. Thanks.
23 MR. FITTS: I appreciate that you are.
24 BY MR. FITTS:
25 Q. And I will ask that you give me full and

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1 complete answers based on your personal knowledge.
2 A. Sure will.
3 Q. I don't want you to speculate. If you
4 don't know an answer, please let me know. Okay?
5 A. H'm-h'm.
6 Q. If you don't understand a question that I
7 ask, will you please let me know?
8 A. Yes.
9 Q. And then I'll do my very best to rephrase
10 that question so that it's understandable.
11 A. You got it.
12 Q. Although I don't want you to speculate, I
13 am entitled to your best testimony based upon your
14 experience and your best estimate. And I'll give
15 you an example.
16 If I were to ask you today to estimate
17 the dimensions of this conference room, you could
18 probably give me a pretty good estimate but probably
19 not the precise measurement.
20 Does that make sense?
21 A. Yeah.
22 Q. So I'm entitled to your best estimate
23 based upon your experience.
24 In contrast, if I were to ask you the
25 dimensions of another conference room in this office

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1 that you've never been in, you would be speculating
2 because you've never been there, right?
3 A. Correct.
4 Q. Do you understand the difference between
5 speculation and giving me your best --
6 A. I think so, yeah.
7 Q. -- testimony based upon your experience?
8 A. Yes, I believe I do.
9 Q. If you need to take a break during your
10 deposition today, will you please let us know?
11 A. Yes.
12 Q. I'll try to take a periodic break because
13 our court reporter and videographer, they need
14 breaks periodically, so I'll try to do that. But if
15 you need a break before then, if you will please let
16 us know, we'll do the best to accommodate you.
17 A. Okay.
18 Q. Is that fair enough?
19 A. Yep. Yes, thank you.
20 Q. I do -- will ask you of one -- one
21 contingency on that is if I've asked you a question,
22 we'll need you to provide me an answer before we
23 take the break.
24 Is that fair enough?
25 A. Yes.

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1 Q. Okay. You're also going to have an
2 opportunity to review the transcript of your
3 deposition in a couple of weeks after it's prepared.
4 And you'll be able to make changes if you feel that
5 anything is incorrect. But I do want to let you
6 know that if you were to change the substance of an
7 answer, say if you change a yes to a no, I may be
8 able to comment on that and that may affect your
9 credibility at the trial in this matter.
10 Does that make sense?
11 A. It does.
12 Q. Okay. And that's why it's really
13 important to make sure that you understand my
14 questions and if you don't understand a question to
15 please let me know and I'll --
16 A. I will let you know.
17 Q. -- do the best to rephrase.
18 Are you on any medications or drugs or
19 alcohol that would impair your ability to understand
20 and answer questions?
21 A. No.
22 Q. Okay. Is there any reason why we cannot
23 go ahead with your deposition today?
24 A. No.
25 Q. Have you spoken with anyone other than

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1 your legal counsel in preparing for your deposition
2 today?
3 A. My partner, Michael Kaplan.
4 Q. Okay.
5 A. My accountant, my bookkeeper.
6 Q. And who is your bookkeeper?
7 A. Stacie Hummel.
8 Q. Stacie Hummel. Will you spell that for
9 us?
10 A. S-t-a-c-i-e, H-u-m-m-e-l.
11 Q. She's your accountant?
12 A. She's my bookkeeper.
13 Q. Bookkeeper. Is she with a particular
14 company?
15 A. Hummel & Associates.
16 Q. And what is her address?
17 A. I don't have it offhand right now. It's
18 on Charleston Boulevard in Las Vegas.
19 Q. Here in Las Vegas?
20 A. Yeah.
21 Q. Okay. And you've also spoken with
22 Michael Kaplan?
23 A. Correct.
24 Q. What did you discuss with Stacie Hummel
25 regarding your deposition?

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1 A. I explained to her what was happening
2 because I needed to get her to pull some references
3 from my bank statements for me.
4 Q. Okay. Anything else?
5 A. No.
6 Q. What did you discuss with Mr. Kaplan?
7 A. The entire scenario. Obviously, he's my
8 partner. I live with him so it started with
9 explaining to him the letters I was receiving and
10 his experience at the bank. So we've discussed
11 everything.
12 Q. So it sounds like you discussed it in
13 pretty detail?
14 A. Of course, he's my partner, so yes. He
15 knows everything.
16 Q. All right. When you say he's your
17 partner, what do you mean by that?
18 A. He's my common law partner, I live with
19 him.
20 Q. As opposed to a business partner or a
21 business --
22 A. Correct.
23 Q. -- associate?
24 Were there any particular issues that you
25 and Mr. Kaplan discussed where he suggested what

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1 facts occurred and when?
2 A. Yes, of course.
3 Q. Okay. Can you tell us what that was?
4 A. Any specifics?
5 Q. Yes.
6 A. Yes. We've spoken about every single
7 detail about everything that's happened.
8 Q. Is there anything that you did not recall
9 from your individual rec -- recollection that he
10 told you was a certain factual circumstance in this
11 case?
12 A. I'm not sure I understand your question.
13 Q. Okay. Did Mr. Kaplan suggest what you
14 should say in your deposition today?
15 A. No.
16 Q. Okay. Did you look at any documents in
17 preparing for your deposition today?
18 A. I have reviewed all of the documents, all
19 the legal documents that have gone back and forth
20 between our law firms, so yes, of course, I reviewed
21 all the documents.
22 Q. Anything outside the scope of those
23 documents?
24 A. Yes, I've looked online about other cases
25 like this.

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1 Q. Okay. Tell us what you've -- what you
2 looked at online.
3 A. Oh, well, you can search online and Wells
4 Fargo has a habit of closing people's bank accounts
5 for no reason. Sloppy risk -- risk assessment on
6 it. So I'm not the only one it's happening to.
7 Q. Did you make any copies of any research
8 that you've conducted?
9 A. Not as of yet. Anyone can go on the
10 Internet and find these things.
11 Q. What site did you go on?
12 A. Just Google it. I don't have a
13 particular site in front of me right now.
14 Q. Give me your best recollection.
15 A. Google Wells Fargo account of closures.
16 Q. Any others?
17 A. Risk assessment.
18 Q. You did not -- you did not copy or print
19 out any --
20 A. No.
21 Q. -- information you read?
22 A. No. It's readily available on the
23 Internet.
24 Q. You -- you indicated that Wells Fargo,
25 it's common knowledge that Wells Fargo closes

<p>Page 17</p> <p>1 accounts for --</p> <p>2 A. Don't put words in my mouth. I didn't</p> <p>3 say it's common knowledge. I said that you can</p> <p>4 search online and you can see that Wells Fargo has a</p> <p>5 habit, is what I said, of closing people's accounts</p> <p>6 and putting risk assessment on it. I'm not the only</p> <p>7 one, there's many cases.</p> <p>8 Q. What do you mean by a habit?</p> <p>9 A. Exactly that. That there are many cases</p> <p>10 of Wells Fargo closing people's accounts for no</p> <p>11 reason.</p> <p>12 Q. How many cases did you read about?</p> <p>13 A. I couldn't say right now. Probably 20 or</p> <p>14 30.</p> <p>15 Q. Okay. And you said for no reason?</p> <p>16 A. For risk assessment and for no reason.</p> <p>17 These are words that are used by other people on the</p> <p>18 Internet. "Wells Fargo closed my bank for no</p> <p>19 reason." By the way, it's not just Wells Fargo,</p> <p>20 it's other banking institutions as well.</p> <p>21 Q. Do you have any personal knowledge</p> <p>22 regarding any of those other instances that you read</p> <p>23 online other than what you read about online?</p> <p>24 A. Just what's online.</p> <p>25 Q. Okay. And do you know who created those</p>	<p>Page 19</p> <p>1 story.</p> <p>2 Q. So you're -- you're -- you're really just</p> <p>3 speculating, then, when you're saying that Wells</p> <p>4 Fargo has a habit of closing customer accounts --</p> <p>5 A. No, I'm not speculating.</p> <p>6 Q. I'm not done -- without -- you don't have</p> <p>7 any personal knowledge. You're reading what other</p> <p>8 people have said and you don't know who those</p> <p>9 individuals are, do you?</p> <p>10 A. No, I don't.</p> <p>11 Q. Okay. You don't know what their</p> <p>12 motivations are, do you?</p> <p>13 A. Yes, I do.</p> <p>14 Q. What are their motivations?</p> <p>15 A. They're trying to find out why Wells</p> <p>16 Fargo is closing their account and not giving them</p> <p>17 answers why.</p> <p>18 Q. Have you -- have you ever met any of</p> <p>19 those people?</p> <p>20 A. Have not.</p> <p>21 Q. You can't vouch for their credibility one</p> <p>22 way or another, can you?</p> <p>23 A. No, I cannot.</p> <p>24 Q. So you really don't know much about the</p> <p>25 underlying facts or circumstances?</p>
<p>Page 18</p> <p>1 online comments?</p> <p>2 A. You can read about it all online. All</p> <p>3 the people's names and e-mails are on there.</p> <p>4 Q. I'm asking you if you know who the</p> <p>5 authors are?</p> <p>6 A. I don't personally know them, no.</p> <p>7 Q. So you don't know with any personal</p> <p>8 knowledge regarding the validity regarding any</p> <p>9 account closure that you read about online?</p> <p>10 A. Online, I think that there's so many</p> <p>11 cases that are listed, I don't know any of those</p> <p>12 people personally. I don't think all of them are</p> <p>13 wrong.</p> <p>14 Q. And why don't you think all of them are</p> <p>15 wrong?</p> <p>16 A. Because if you take 10, 15, 20, 30 people</p> <p>17 and they're all saying the same thing and they're</p> <p>18 all different people from all over the country, I</p> <p>19 don't think all of them are wrong. That's my</p> <p>20 opinion.</p> <p>21 Q. But you don't have any personal knowledge</p> <p>22 as to whether those people are in collusion or not,</p> <p>23 do you?</p> <p>24 A. Since I don't know any of these people</p> <p>25 no, I don't. I just know that I have a similar</p>	<p>Page 20</p> <p>1 A. No, I think I know quite a bit.</p> <p>2 Q. Based on what?</p> <p>3 A. Based on my own experience and backup</p> <p>4 that this is happening to a lot of other people.</p> <p>5 Q. Okay. Based solely on what you read?</p> <p>6 A. Based on my research on the Internet,</p> <p>7 yes.</p> <p>8 Q. And that's it?</p> <p>9 A. It's based on my personal experience and</p> <p>10 research on what's on the Internet. And that's</p> <p>11 quite a lot, it's not just it.</p> <p>12 Q. Do you know how many customers Wells</p> <p>13 Fargo has?</p> <p>14 A. I don't.</p> <p>15 Q. Okay. But you've read 15 or 20 on online</p> <p>16 that have been closed?</p> <p>17 A. Or more, yeah.</p> <p>18 Q. And you've never met these folks?</p> <p>19 A. No, I haven't.</p> <p>20 Q. You have no personal knowledge regarding</p> <p>21 the reasons they were closed?</p> <p>22 A. No.</p> <p>23 Q. But you're making a firm judgment that</p> <p>24 these folks that you've never met must be telling</p> <p>25 the truth?</p>

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1 A. Seems clear that there's a problem with
2 banking institutions closing people's accounts.
3 Q. Is this common how you make your
4 determinations in life?
5 A. I look at all areas of evidence and
6 factual things that I read and so I base my
7 decisions and my judgments on things in life on,
8 first of all, my own personal experiences, the
9 experiences of others, and how I feel about the
10 situations and how I see things play out in the
11 world.
12 Q. But we're talk -- we're not talking about
13 your own experience with your own accounts, we're
14 talking about people you don't know, right?
15 A. That have posted very similar stories
16 online, so it validates what's happened to me.
17 Q. All right. Is that your complete answer?
18 A. Yes.
19 Q. Where were you born?
20 A. Corning, California.
21 Q. What are the names of your parents?
22 A. Doreen Johnson.
23 Q. Will you spell that?
24 A. D-o-r-e-e-n, J-o-h-n-s-o-n. And my
25 father's name is Garry, G-a-r-r-y; Johnson,

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1 J-o-h-n-s-o-n.
2 Q. What is their address?
3 A. My mother lives in Penticton British
4 Columbia Canada, P-e-n-t-i-c-t-o-n, British
5 Columbia. You can put B.C., Canada. And my father
6 lives in Rochester, R-o-c-h-e-s-t-e-r, Alberta,
7 Canada.
8 Q. Are your parents divorced?
9 A. Yes.
10 Q. Do you have any siblings?
11 A. Yes.
12 Q. Who are they?
13 A. I have one sister Colette, C-o-l-e-t-t-e;
14 Johnson, J-o-h-n-s-o-n.
15 Q. Where does she live?
16 A. She lives in Toronto, Ontario, Canada.
17 Q. Any other siblings?
18 A. I have a stepbrother and a stepsister.
19 Q. What are their names?
20 A. Arlin, A-r-l-i-n, Quinton, Q-u-i-n-t-o-n.
21 And Maureen, M-a-u-r-e-e-n, Wyatt, W-y-a-t-t.
22 Q. Where do they live?
23 A. Maureen Wyatt lives in Brantford,
24 Ontario, Canada. And Arlin lives in St. Albert,
25 it's S-t, period, Albert, Alberta, Canada.

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1 Q. And who is the natural -- who are the
2 natural parents?
3 A. Doreen Johnson and Garry Johnson.
4 Q. Where did you live growing up? Are you
5 from Canada?
6 A. I lived in California until I was seven.
7 I was born here. And then my family, who are all
8 from Canada, moved back to Canada. So I grew up in
9 Canada from age 7 to 23. I'm a dual citizen. I
10 moved back to the United States when I was 23.
11 Q. Did you graduate from high school?
12 A. I did.
13 Q. What high school?
14 A. St. Albert High.
15 Q. City?
16 A. St. Albert, Alberta, Canada.
17 Q. Are you currently married?
18 A. No.
19 Q. Were you previously married?
20 A. Yes.
21 Q. And you told us your husband's -- your
22 prior husband's name. What was his name again?
23 A. His first name is Wouter, W-o-u-t-e-r,
24 last name Hoogland, H-o-o-g-l-a-n-d.
25 Q. And where does he live?

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1 A. Holland.
2 Q. When did you marry Wouter?
3 A. Oh, I believe that was 1995.
4 Q. And how long were you married to him?
5 A. Year and a half.
6 Q. Where did you live with Wouter while you
7 were married?
8 A. Memphis, Tennessee.
9 Q. Do you have any children?
10 A. No.
11 Q. You live here in Las Vegas and also in
12 Malibu?
13 A. I live in Las Vegas.
14 Q. Okay.
15 A. The Malibu is a vacation home.
16 Q. You spend half your time at each place?
17 A. Roughly.
18 Q. Okay. Will you identify for us the
19 people who live with you here in Las Vegas?
20 A. Michael Kaplan.
21 Q. Is he the only individual?
22 A. Yes.
23 Q. And is there anybody that lives in your
24 vacation residence?
25 A. Michael Kaplan and I share the vacation

Page 25

1 home.
2 Q. Okay. Who owns the residence here in Las
3 Vegas?
4 A. Michael Kaplan.
5 Q. He owns a hundred percent of the
6 property?
7 A. Yes.
8 Q. Who owns the property in California?
9 A. Both of us.
10 Q. And what percentage?
11 A. It's my understanding it's -- well both
12 names are equally owned.
13 Q. Okay. And you refer to Michael as your
14 partner?
15 A. Yes.
16 Q. Okay. Did you say common law partner?
17 A. Yes.
18 Q. Okay. Again, I don't -- I don't --
19 A. Wouldn't that be the correct term?
20 Q. I don't want to put words in your mouth,
21 and I know people they refer to --
22 A. Yeah. I think they refer to common law
23 when you live together an extended period of time
24 without being married.
25 Q. When did you meet Michael?

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1 A. In 1998.
2 Q. And where --
3 A. In New York City.
4 Q. How did you meet him in New York City?
5 A. I was introduced to Michael by a
6 girlfriend.
7 Q. And when did you and Michael start
8 sharing a residence?
9 A. In the year 2000.
10 Q. Do you or Mr. Kaplan have any type of
11 written agreement regarding your partnership?
12 A. No.
13 Q. Are you involved in any businesses with
14 Michael?
15 A. No.
16 Q. Do you have any posthigh school training
17 or education?
18 A. Yes.
19 Q. Can you tell us what that is?
20 A. I went to Brevard Community College in
21 Florida.
22 Q. Can you spell that?
23 A. B, like boy; r-e-v, like Victor; a-r-d,
24 Brevard Community College in Florida.
25 Q. When did you attend Brevard Community

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1 College?
2 A. I believe it was 1987.
3 Q. Okay.
4 A. To '89.
5 Q. Did you obtain any type of degree or
6 certification from that --
7 A. I didn't finish, no.
8 Q. What did you study there?
9 A. Photography.
10 Q. Any other type of posthigh school
11 education or training or certification of any type?
12 A. Yes, I'm certified as a Bikram yoga
13 teacher. Bikram, B-i-k-r-a-m.
14 Q. And where did you obtain that
15 certification?
16 A. In Los Angeles, California.
17 Q. Anything else?
18 A. No.
19 Q. After -- what year did you graduate from
20 high school?
21 A. Oh, gosh, I think that was 1984.
22 Q. Okay. Are you currently employed?
23 A. I'm self-employed.
24 Q. Okay. Can you describe your
25 self-employment for us?

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1 A. I'm a photographer.
2 Q. Do you have your own company?
3 A. Yes.
4 Q. Is that Guitarfile, LLC?
5 A. Yes, it is.
6 Q. And that's located here in Las Vegas?
7 A. Yes.
8 Q. And how long have you been self-employed
9 with Guitarfile, LLC?
10 A. I believe that was established in 2009.
11 Q. Okay. Do you specialize in any
12 particular type of photography?
13 A. Yes.
14 Q. What type?
15 A. I photograph guitars specifically.
16 Q. Is your self-employment -- your work as a
17 photographer, is that primarily here in Las Vegas or
18 where does that take you?
19 A. It's primarily in Las Vegas, but I do
20 travel on a global level to photograph guitars.
21 Q. Can you enlighten me a little bit about
22 photographing guitars? Are these like professional
23 musicians and you photograph their guitars or is it
24 antiques or what?
25 A. Yes, correct. I photograph professional

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1 musician's guitars.
2 Q. Okay. I believe the book that I believe
3 either you're working on or is coming out is
4 something like 108 guitars or something. Can you --
5 A. Yes. I'm publishing a book that will be
6 released on October 8th of this year and it's called
7 108 Rock Star Guitars.
8 Q. Okay. I would assume that you may have
9 met some pretty interesting and perhaps well-known
10 folks?
11 A. I have.
12 Q. Who are some of the folks that you've
13 engaged in photography with with respect to rock
14 stars and so forth?
15 A. Jimmy Page, Eric Clapton, Jeff Beck,
16 Bonnie Raitt, Chrissie Hynde, Les Paul, Lou Reed,
17 Zakk Wylde.
18 Q. Do you play the guitar yourself?
19 A. I take lessons.
20 Q. And how did you get involved in that?
21 A. It's a bit of a long story.
22 Q. I don't need the long story, but you have
23 to --
24 A. I was living in Memphis, Tennessee
25 working for Eastman Kodak Company and I met the

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1 guitar player at church and he asked me out, started
2 dating him. My father told me never to date
3 musicians. I called my dad, I told him, "I'm dating
4 a musician, but he owns a vintage guitar and goes to
5 my church." And he said, "Oh, well that's
6 different, he owns a business."
7 So as my dad being a musician said if he
8 ever gets a Gibson Mandolin, I've always wanted one,
9 let me know. Within two weeks, my boyfriend got in
10 a Gibson Mandolin, 1917, mint condition. I asked,
11 "May I buy that for my dad as a gift and how much is
12 it?" And he said, "You can't afford it, but if you
13 photograph some guitars for me the way you've been
14 doing this other artwork" -- this other photography
15 that I've been doing -- "and make me a piece, I'll
16 trade you." So I said okay.
17 So I photographed guitars for him. Fell
18 in love with photographing guitars and shortly after
19 that, Kodak transferred me to New York City and I
20 decided I may as well photograph famous guitars. So
21 I went down to meet Les Paul and he let me
22 photograph his guitar and I've been shooting guitars
23 ever since.
24 Q. Congratulations.
25 A. Thank you.

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1 Q. That sounds like very interesting and
2 exciting. I used to live in Nashville.
3 A. Great place.
4 Q. Have you ever been to the Grand Ole Opry?
5 A. I have.
6 Q. Are you making a wage claim at all in
7 this case? Are you seeking lost wages or income
8 from your business?
9 A. I guess that remains to be seen. We'll
10 see how things go.
11 Q. Okay. Have you experienced any lost
12 income or wages to the present date?
13 A. In Guitarfile? With Guitarfile?
14 Q. Yes.
15 A. Not with Guitarfile, no.
16 Q. Other than your self-employment with
17 Guitarfile, do you have any other type of business
18 that you're engaged in?
19 A. No.
20 Q. Okay. Do you have any other source of
21 income?
22 A. No. Other than, you know, my partner
23 supports me. Michael supports me, so he's my source
24 of income.
25 Q. Okay. But Guitarfile, LLC, is that a

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1 source of income to you as well?
2 A. Well, not yet. Hopefully it will be.
3 Q. Okay. Do you have -- are there any other
4 employees at Guitarfile, LLC?
5 A. No.
6 Q. Okay. It's you, you run the whole show?
7 A. And I have freelance people that work for
8 me.
9 Q. On an independent contractor basis?
10 A. Correct.
11 Q. Okay. Have you ever filed bankruptcy?
12 A. No, I have not.
13 Q. And please, I know you're -- you're
14 very -- and please don't judge me on this, this is a
15 common question. And you seem very strong-minded.
16 And I have six daughters and I want them to be like
17 that too. But I'm not trying to offend you with
18 this question, but it's a common question.
19 Have you ever been charged with a crime
20 before?
21 A. No, I have not.
22 Q. So you've never been charged with a
23 felony or a crime involving dishonesty?
24 A. Absolutely not.
25 Q. Have you been a party to any other type

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1 of lawsuit other than this present lawsuit?
2 A. No.
3 Q. Have you ever been sued before?
4 A. No.
5 Q. Okay. Now, part of why we're here today
6 concerns the accounts that you had at Wells Fargo
7 Bank in up until 2011, correct?
8 A. Correct.
9 Q. Okay. Prior to 2011 and the closure of
10 your accounts at Wells Fargo, had you ever had any
11 bank accounts closed by any other financial
12 institution?
13 A. No.
14 Q. Okay. Have you had or held bank accounts
15 of any type in any other financial institution?
16 A. Yes.
17 Q. And what banks are those?
18 A. Nevada State Bank, Chase. You mean in
19 Las Vegas?
20 Q. Yeah, it's kind of an unfair question
21 because we could go back forever, couldn't we? Just
22 say the la -- you know, five-year period before
23 2011.
24 Do you recall any other banking
25 institutions?

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1 A. All my bank accounts -- Nevada State Bank
2 was my business banking account for my yoga studios.
3 And Chase -- because Wells Fargo closed my accounts,
4 I opened an account at Chase. And Chase used to be
5 called Washington Mutual prior, so I believe that's
6 all I can recall right now bank account-wise.
7 Q. So the Chase account was opened after
8 your Wells Fargo accounts were closed?
9 A. Actually, I had a Wells -- I mean, I had
10 a Chase account at the same time I had a Wells Fargo
11 account. And then I just decided there's no point
12 in having this Washington Mutual account, it was
13 Washington Mutual at the time, so I transferred my
14 personal checking to a Wells -- or I closed that
15 account because I had the checking account with
16 Michael and me and then I had my business account
17 with Wells Fargo, so I just reduced it to that one.
18 And when Wells closed my accounts, I went back to
19 Chase and I opened again there.
20 Q. Okay. And so that's currently where you
21 do your banking?
22 A. That's correct.
23 Q. Is that for Guitarfile, LLC?
24 A. It's for Guitarfile and my personal
25 checking.

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1 Q. I know you had a joint account with
2 Michael at Wells Fargo Bank that was closed,
3 correct?
4 A. That's correct.
5 Q. And so when you say you have a personal
6 account at Chase, does that include a joint account
7 with Michael?
8 A. I do not have a joint account with
9 Michael.
10 Q. And who were the personal or authorized
11 signers on your Guitarfile, LLC?
12 A. Myself only.
13 Q. And how about your Chase account?
14 A. Myself only.
15 Q. Aside from the -- I think there's three
16 accounts at issue that were closed at Wells Fargo
17 Bank.
18 Is that your understanding?
19 A. It was two accounts.
20 Q. I know there was the joint account with
21 Michael.
22 A. The joint account, and my Guitarfile bank
23 account.
24 Q. My understanding with Guitarfile, there
25 was an operating account?

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1 A. There was a credit card. Okay. If you
2 want to call that an account, sure. Yes, three
3 accounts.
4 Q. I was referring to --
5 A. One credit card and two banking accounts,
6 yes.
7 Q. Okay. Were there any other authorized
8 signers on any of those accounts other than knowing
9 that Michael was a signer on the joint account?
10 A. No.
11 Q. Okay. Aside from those accounts, and
12 I'll call them three accounts, will that make sense?
13 A. Sure.
14 Q. Have you ever had any other type of
15 account or business relationship with Wells Fargo?
16 A. Yes.
17 Q. Can you tell us what those were?
18 A. I had an IRA account. And just prior to
19 the bank closing my accounts, they offered me a --
20 another credit card account. I closed both of those
21 about six or eight months after Wells Fargo closed
22 my accounts. I transferred them to -- I closed the
23 credit card, which I never used, and I transferred
24 the IRA into a different IRA.
25 Q. Any other accounts that either you had

<p style="text-align: right;">Page 37</p> <p>1 personally or with a business with Wells Fargo?</p> <p>2 A. Yes.</p> <p>3 Q. What?</p> <p>4 A. There was one account with business that</p> <p>5 I had for a very brief period of time under the name</p> <p>6 of Quad Digital.</p> <p>7 Q. Can you spell that for us?</p> <p>8 A. Q-u-a-d, Digital, D-i-g-i-t-a-l.</p> <p>9 Q. Okay. Is that the full name, Quad</p> <p>10 Digital?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And was that your business?</p> <p>13 A. It was a four-person equal share</p> <p>14 25 percent partnership.</p> <p>15 Q. Okay. I think you referenced that now in</p> <p>16 your interrogatories?</p> <p>17 A. Yeah, I believe so, yes.</p> <p>18 Q. Okay. And so that was an account with</p> <p>19 Wells Fargo in Las Vegas or where was that opened?</p> <p>20 A. It was actually established in Calabasas</p> <p>21 where the three other partners lived.</p> <p>22 Q. I'm sorry, where?</p> <p>23 A. Calabasas, California.</p> <p>24 Q. I don't know where that is.</p> <p>25 A. It's the home of all the stars, Brittany</p>	<p style="text-align: right;">Page 39</p> <p>1 or Quad Digital?</p> <p>2 MR. KISTLER: Did Wells Fargo use any --</p> <p>3 use any information concerning any of those accounts</p> <p>4 in making good determination to close the three</p> <p>5 accounts at issue in this case?</p> <p>6 MR. FITTS: I can't answer that.</p> <p>7 MR. KISTLER: If you did, then I think</p> <p>8 you're required to provide that information. If you</p> <p>9 didn't, then you're not.</p> <p>10 MR. FITTS: I think the requirement that</p> <p>11 we were given was to -- is that you had an</p> <p>12 opportunity to tell us whether you wanted</p> <p>13 transactional -- copies of transactional with</p> <p>14 accounts at Wells Fargo. And Tim Poval told me he</p> <p>15 wanted copies of the three accounts at issue.</p> <p>16 And I know this is a little bit of break</p> <p>17 in your depo, but I'm happy -- now that I know of</p> <p>18 these three other accounts, I'm happy to provide</p> <p>19 transactional documents on those three accounts if</p> <p>20 you would like.</p> <p>21 MR. KISTLER: Yeah, I believe our</p> <p>22 discovery request are probably broad enough to where</p> <p>23 you should have provided those already. And clearly</p> <p>24 if Wells Fargo has taken the position that those</p> <p>25 three accounts have any relevancy to -- to -- to</p>
<p style="text-align: right;">Page 38</p> <p>1 Spears lives there and Justin Beiber. Calabasas,</p> <p>2 C-a-l-a-b-a-s-a-s.</p> <p>3 Q. It must be near L.A.?</p> <p>4 A. H'm-h'm.</p> <p>5 Q. Okay.</p> <p>6 A. Yes.</p> <p>7 Q. And when did you open up that account?</p> <p>8 A. Let's see, that was probably in 2011 or</p> <p>9 '10. I don't know the exact date right now.</p> <p>10 Q. Was that after the three accounts closed</p> <p>11 at Wells Fargo?</p> <p>12 A. No, prior.</p> <p>13 Q. And when -- so that opened up in 2011, do</p> <p>14 you know when it was closed?</p> <p>15 A. I couldn't tell you right now, I'm sorry.</p> <p>16 I don't have the exact dates, but it was closed</p> <p>17 shortly after it was opened. Like, that account was</p> <p>18 probably open for two months maximum.</p> <p>19 Q. Okay. Because one of the -- and the</p> <p>20 reason I ask is because your counsel had asked me</p> <p>21 for copies of all transactions and statements</p> <p>22 regarding the three accounts.</p> <p>23 MR. FITTS: But, Sid, I didn't see a</p> <p>24 request for that. Do you need us to produce</p> <p>25 anything with the IRA account, credit card account,</p>	<p style="text-align: right;">Page 40</p> <p>1 the -- to the allegations contained in the complaint</p> <p>2 in this case, then Wells Fargo has an affirmative</p> <p>3 obligation to provide that information to us</p> <p>4 pursuant to NRCP 16.1.</p> <p>5 So it's really, you know, you can proceed</p> <p>6 or not proceed at your own danger in providing the</p> <p>7 documents or not providing the documents. If</p> <p>8 they're relevant to this case, then you have an</p> <p>9 obligation to provide them to us.</p> <p>10 MR. FITTS: I was at the discovery</p> <p>11 commissioner conference with Tim Poval.</p> <p>12 MR. KISTLER: That's my position. I'm</p> <p>13 not going to argue with you, that's our position.</p> <p>14 MR. FITTS: And I'll disagree with your</p> <p>15 position.</p> <p>16 MR. KISTLER: Then we can disagree.</p> <p>17 MR. FITTS: All right.</p> <p>18 MR. KISTLER: I ask that you move on with</p> <p>19 this deposition.</p> <p>20 BY MR. FITTS:</p> <p>21 Q. Lisa, with respect to the IRA account</p> <p>22 that -- was that an independent account that you</p> <p>23 had?</p> <p>24 A. Yes.</p> <p>25 Q. That you would just contribute yourself?</p>

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1 A. Yes, it was.
2 Q. When was that opened?
3 A. A long time ago. I would have to look at
4 the documents. Long before any of this ever
5 happened.
6 Q. Okay.
7 A. Probably in 2000, maybe '1 or '2 or '3,
8 something around there.
9 Q. Okay. And then the credit card?
10 A. My business card, the Guitarfile business
11 card?
12 Q. Well, you mentioned a credit -- is
13 that --
14 A. Which credit card account?
15 Q. I'm a little bit confused because I had
16 asked you aside from the three accounts at issue in
17 this case that were closed if you had any other
18 accounts at Wells Fargo. And I thought, and correct
19 me if I'm wrong, number one was the IRA account; is
20 that right?
21 A. Right.
22 Q. Okay. And my understanding was that was
23 closed about six months after --
24 A. I closed it approximately --
25 Q. You closed it?

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1 A. -- six months after because I -- Wells
2 Fargo didn't deserve to have my IRA funds after
3 closing my accounts. And then the other credit card
4 was one that I walked into the branch and I was just
5 doing a regular transaction and the guy said, "Oh,
6 your credit is so amazing and you're such a great
7 client, we'd like to offer you a credit card. We
8 wouldn't even check your credit because your credit
9 is so great. Let us give you a credit card."
10 And I said, "No, I don't need another
11 credit card." And then he kept saying, "But we
12 won't check your credit." And I thought to myself,
13 you know, I only have one credit card that's in my
14 name. My other credit cards are associated with
15 Michael's accounts. So, okay. I'll go for it.
16 You're not going to check my credit.
17 Because I don't like it when people check
18 my credit because it affects my credit rating. I
19 had a very high credit rating, I still do. And I
20 agreed to taking the credit card. And guess what?
21 They checked my credit and my credit got dinged.
22 Q. Okay.
23 A. I never used that credit card and I
24 canceled it again at the same time that I canceled
25 the IRA account.

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1 Q. It seems to me that would be sometime in
2 2012, approximately?
3 A. It was in 2011 -- oh, the closure of the
4 account?
5 Q. Yeah. It was six months after?
6 A. Yeah, maybe. I don't have the exact
7 date, so I can't say if it was '11 or '12, but --
8 Q. And then on the Quad Digital, do you have
9 the dates that that was opened?
10 A. I don't.
11 Q. Okay. You said something about 2011, but
12 sometime in that area, I think.
13 A. Yeah, it could have been '10 or '11, I'm
14 not sure.
15 Q. Were you the authorized signer on that
16 account?
17 A. All four partners were authorized
18 signers.
19 Q. Okay. And what type of business was Quad
20 Digital in?
21 A. It wasn't. It was just something we were
22 talking about. We founded it. We equally funded it
23 and nothing happened with it.
24 Q. Was there ever a purpose for it?
25 A. You know, it was established with two

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1 friends of ours. One that's very famous, John
2 Melendez and his wife. We either creative people in
3 the industry, you know, my partner Michael works
4 with John Melendez from the Tonight Show, Jay Leno,
5 very creative people. We had dinner several times.
6 We threw around fun ideas that we could do, and it
7 never materialized. I closed the business.
8 Q. Was that a corporation, Quad Digital?
9 A. I think it was set up as an LLC, but I
10 can't remember now.
11 Q. Who would the officers have been?
12 A. There were four of us. I was one.
13 Suzanna Melendez, Debbie Baer (Phonetic), and
14 Michael Ellman was the partner, but he had to put
15 his wife Jeri Ellman down. So those were the four
16 people associated with the business.
17 Q. How do you spell Ellman?
18 A. I believe it's spelled E-I-I-m-a-n.
19 Q. Okay. Had you ever had any prior
20 disputes with Wells Fargo before the three accounts
21 were closed?
22 A. No.
23 Q. Okay. I'm going to refer to those three
24 accounts as the subject accounts.
25 A. Sure.

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1 Q. Will you understand what I mean by that?

2 A. You're -- just to reiterate, the subject

3 accounts would be my personal checking account that

4 was joint with Michael?

5 Q. Au-huh.

6 A. My business account Guitarfile, and the

7 Guitarfile credit card.

8 Q. Yes.

9 A. Those are the three accounts as the

10 subject.

11 Q. Yes.

12 A. Okay. Yes, I understand that.

13 Q. Okay. Now, there obviously came a time

14 when the subject accounts were closed, do you recall

15 when that was?

16 A. I think that I -- the letter in my head

17 is March 2011 that I received a letter or August.

18 March or August.

19 Q. Okay. Is that when you received notice?

20 A. I believe, yeah. I think it was August,

21 I want to say, 2011.

22 Q. So there were letters in the mail?

23 A. Yes.

24 Q. And can you tell us generally what the

25 substance of the letters --

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1 A. It said something to the effect your bank

2 accounts will be closed due to a risk assessment.

3 This is our final decision. If you have questions,

4 you can call this 1-800 number. The accounts will

5 be closed effective immediately on such and such

6 date.

7 Q. Was there a separate letter for each of

8 the three accounts?

9 A. Yes, there was.

10 Q. And what did do you after you received

11 the closure letters?

12 A. Michael called the 800 numbers to find

13 out why they had closed the account because they

14 closed his account and he didn't receive any

15 letters. And he is actually the person that

16 established that bank account in the first place

17 with my name on it. So he proceeded to call the 800

18 number to which he received no information.

19 Q. Was there an answer to the number?

20 A. A person answering?

21 Q. Yes.

22 A. He made the call, but I believe, yes, he

23 did get through to a person.

24 Q. Do you have an understanding of what was

25 said on that telephone conversation?

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1 A. The bottom line was, "Sorry, we don't

2 have any information. We can't tell you anything."

3 Q. Okay. Do you know when that telephone

4 call occurred, approximately?

5 A. Date, no, I don't. It would have been

6 immediately after we received that letter.

7 Q. And so what happened after that telephone

8 call that Michael placed to Wells Fargo?

9 A. I'm not sure of the exact series of

10 events, but I can go through several events that

11 happened. I can't tell you exactly which sequen --

12 you know, they'll be in sequential order. But he --

13 Michael then proceeded to pursue calling other

14 representatives within Wells Fargo bank to reach a

15 higher level of someone that may be able to provide

16 an answer. And everywhere that he went, we were

17 told, "There's no information that we have available

18 to explain anything to you."

19 That was very frustrating. And then

20 Michael went to his business banker at Mellon and

21 spoke to him and said, "Can you -- do you know

22 anyone at Wells Fargo Bank?" The guy knows -- knew

23 the president at Wells Fargo bank in Las Vegas.

24 He contacted the president and the

25 president said to Bob at Mellon -- I believe the

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1 president's name is Chad said, "Oh, well, I don't

2 know what's wrong with the account, but it must be

3 something really terrible, really bad otherwise we

4 wouldn't have closed the account." Something to

5 that effect. "There must be a problem with Lisa

6 that we closed her account."

7 Then Michael went into the bank, he

8 happened to be in Malibu and he went into the Malibu

9 branch and commonly the tellers will always say to

10 him, "Mr. Kaplan, you're leaving too much money in

11 your bank account. Please, will you come and speak

12 to one of our bankers to see how we may be able to

13 serve you and all of your excess money?"

14 And so Michael was escorted over to a

15 gentleman named Arash Dounel as a business banker at

16 the Malibu branch. And he said, "You know, it's

17 funny you guys want my funds, yet you've just closed

18 my bank account, my girlfriend's bank account.

19 What's going on?"

20 And Arash Dounel went into our personal

21 account that had been -- that was a joint account

22 that had been closed, and he said to Michael

23 something to the effect of, "Oh, it shows unusual

24 activity here. There must have been something

25 really bad with Lisa. She must have a criminal

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1 background."
2 Or, "You looked to be a man of means,
3 you're a wealthy man. Why don't you hire a private
4 investigator and find out if Lisa's been in jail or
5 has warrants out for her arrest," something to that
6 effect.
7 Michael was horrified by these
8 accusations, and he came home and discussed those
9 with me. And at that time as well while he was
10 sitting there, Arash Dounel asked for a copy of the
11 letter. He said, "Do you have the letter?" And I
12 ended up copying it and faxing it or e-mailing it to
13 him that day that showed the letter stating Wells
14 Fargo closing my account.
15 So after that, Michael was very upset and
16 he asked for -- when he came home and started
17 questioning me about this stuff, obviously he's
18 known me for many, many years and knows certainly in
19 the span of time that he's known me, which is
20 15 years this weekend, I have never had any arrests
21 or any criminal activity, nothing.
22 And he was highly offended and he asked
23 Arash Dounel for a letter of apology. Over the
24 phone, Arash Dounel apologized for the things that
25 he said about me and Michael asked him to put that

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1 in writing, which he did, apparently, but he never
2 sent that letter to Michael. Michael e-mailed him
3 and said, "Where is my apology letter for the things
4 that you said about Lisa specifically?" We have
5 that e-mail.
6 And Arash Dounel wrote back and
7 said, "Mr. Kaplan, I hope that my phone apology will
8 suffice because I was required to send this letter
9 to our legal department and they won't allow me to
10 send it to you."
11 And I might add that Arash Dounel is no
12 longer employed by Wells Fargo Bank. Was he fired
13 for the things that he said about me? He slandered
14 me.
15 Q. This is your deposition and I'm not a
16 witness, but that's your understanding.
17 Is there anything else that would be in
18 the series of events, anything else that you recall?
19 A. Specifically as far as what did Michael
20 do or --
21 Q. You or Michael after you received the
22 closure notice -- notices.
23 A. We went to every avenue possible. Many
24 people within Wells Fargo Bank, calling, researching
25 trying to find out why they would close my account,

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1 our account and my business account and credit card.
2 Q. Okay. Let me just ask you a few
3 follow-up questions.
4 A. Sure.
5 Q. But I want to make sure, is that the full
6 story that you recall --
7 A. That's pretty much the gist of it, you
8 know.
9 Q. Okay. So Michael called the 1-800 number
10 shortly after you got the closure notices?
11 A. Correct.
12 Q. Okay. And was told essentially, "We
13 don't have any additional information"?
14 A. That's correct.
15 Q. Okay. And Michael was on the telephone,
16 not you; is that correct?
17 A. That's correct.
18 Q. Okay. And so were you there listening to
19 Michael while he was on the phone?
20 A. On some of those occasions. On some of
21 the calls, I was.
22 Q. I'm just talking about the first call
23 that was made to the 1-800 --
24 A. I don't think I was.
25 Q. Okay. Other than the individual on the

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1 other end saying, "I don't have any other -- more
2 information," do you remember has Michael -- strike
3 that.
4 Do you have an understanding of what else
5 was said on that telephone call?
6 A. That's basically what I told you is what
7 was said on the call.
8 Q. Okay. And then I believe you said, at
9 least my notes show that -- indicate that after
10 that, Michael called other people at Wells Fargo
11 higher up the ladder?
12 A. That's correct.
13 Q. Okay. Do you know specifically who he
14 called?
15 A. I don't, but Michael knows specifically.
16 Q. Okay. Do you know the general time frame
17 in which he contacted these other people higher up
18 the ladder?
19 A. Over several weeks of time that initially
20 with -- with -- several calls were made within one
21 and two weeks to try to find out what was going on,
22 and every avenue was a dead end.
23 Q. Okay. So that was one or two weeks after
24 you got the closure notices?
25 A. I can't exactly say how long it was.

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1 Initially it was probably the first couple of weeks
2 where he was making many calls and trying to figure
3 out what was going on. And the, you know, still --
4 still things are going on. We're still trying to
5 find out what is going on. It's a daily -- a daily
6 issue we're dealing with right now.
7 Q. Then you indicated that -- that Michael
8 called someone at Mellon Bank?
9 A. That's correct.
10 Q. And who was that person?
11 A. Bob Martin.
12 Q. And what title does he have at Mellon
13 Bank?
14 A. I'm not sure.
15 Q. Okay. And was that a telephone call that
16 Michael made to Mr. Martin?
17 A. I'm not sure if he spoke to him on the
18 phone about that the first time or if it was in
19 person, but I know that he has discussed it with him
20 both on the phone and in person.
21 Q. Were you present --
22 A. No.
23 Q. -- during any of those conversations?
24 A. No, I was not.
25 Q. Were you on the telephone when Michael

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1 called any of the folks at Wells Fargo who are
2 higher up the ladder?
3 A. Yes, I was.
4 Q. Okay. And who -- who were you on the
5 phone with?
6 A. I don't have their names. Michael will
7 have that data.
8 Q. All right. Did Michael keep notes of
9 this?
10 A. Yes.
11 Q. Did you keep notes?
12 A. No. I have -- I have Michael's, you
13 know, notes in our files. We have everything in a
14 Wells Fargo file. So.
15 Q. Okay. Have you disclosed those to your
16 attorney?
17 A. Yes.
18 Q. When did you make those notes?
19 A. Over the course of the last two -- year
20 and a half, two years.
21 Q. Did you take the notes of these company
22 calls as they occurred?
23 A. Michael did, yes.
24 Q. Okay. And did you add anything to those
25 notes?

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1 A. No.
2 Q. And one of the accounts was a joint
3 account that both you and Michael had?
4 A. Correct.
5 Q. And so were those notes kept as part of a
6 joint effort to keep a record of the communications
7 that you and Michael had with Wells Fargo?
8 A. Yes.
9 Q. And that was shortly after receiving the
10 closure notices?
11 A. Yes, and onward.
12 Q. I'm sorry?
13 A. Yes, and onward. Onward in time.
14 Q. Okay. Are you aware of whether any of
15 those notes have been disclosed in this case?
16 A. Disclosed to?
17 Q. To Wells Fargo.
18 A. No, I don't think so.
19 Q. Have you reviewed -- reviewed all the
20 documents disclosed in this case? Have you seen any
21 of those notes that --
22 A. Of course.
23 Q. Okay. Are they handwritten notes?
24 A. Some handwritten, some e-mails.
25 Q. What do you mean by e-mails?

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1 A. Well, e-mails.
2 Q. And I'm not trying to be cute here. Are
3 they e-mails between you and Michael?
4 A. E-mails between Michael and
5 representatives of Wells Fargo Bank.
6 Q. Okay.
7 A. And his bankers.
8 Q. So those are like correspondence to other
9 people?
10 A. Correct.
11 Q. Right now I'm talking about notes that
12 you and --
13 A. You'll have to ask Michael those
14 questions because Michael is the one who took the
15 notes, and so he'll have the notes.
16 Q. And some of these notes were made before
17 retaining legal counsel?
18 A. Yes.
19 MR. FITTS: Counsel, I would ask that
20 those notes be disclosed in this matter under 16.1.
21 MR. KISTLER: I don't know that they
22 haven't been. We'll look and see. We'll review
23 your request and, you know, if we have documents
24 that -- that are relevant to your request, then we
25 will -- if they have not been produced, we will

<p style="text-align: right;">Page 57</p> <p>1 produce them.</p> <p>2 MR. FITTS: Thank you.</p> <p>3 MR. KISTLER: But as I sit here today, I</p> <p>4 don't know that there are any documents that you've</p> <p>5 requested that have not been produced that are in</p> <p>6 our possession.</p> <p>7 MR. FITTS: Well, there would be an</p> <p>8 affirmative duty, of course, under 16.1.</p> <p>9 MR. KISTLER: I'm saying that whatever</p> <p>10 documents we have, I'm not conceding that we haven't</p> <p>11 produced all documents that were either requested or</p> <p>12 required to be produced pursuant to 16.1.</p> <p>13 MR. FITTS: Thank you.</p> <p>14 MR. KISTLER: That being said, I will</p> <p>15 conclude that if we have documents -- if we have</p> <p>16 documents that -- that correspond to Ms. Johnson's</p> <p>17 testimony, those have been produced.</p> <p>18 BY MR. FITTS:</p> <p>19 Q. Ms. Johnson, going back to --</p> <p>20 THE VIDEOGRAPHER: Excuse me, Counsel.</p> <p>21 MR. FITTS: Oh, we need to go -- take a</p> <p>22 break.</p> <p>23 THE WITNESS: Oh, sure.</p> <p>24 THE VIDEOGRAPHER: This marks the end of</p> <p>25 Tape No. 1. It's 3:16 p.m.</p>	<p style="text-align: right;">Page 59</p> <p>1 calling on behalf of you as well?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And you were on some of those</p> <p>4 calls, but you don't recall exactly which ones or</p> <p>5 who you spoke with?</p> <p>6 A. Right.</p> <p>7 Q. Okay. And then when Michael contacted</p> <p>8 Bob Martin at Mellon Bank, was he contacting</p> <p>9 Mr. Martin on behalf of both of you again?</p> <p>10 A. Yes.</p> <p>11 Q. And you had discussed that with Michael?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And do you know what Michael</p> <p>14 told Mr. Martin at Mellon Bank?</p> <p>15 A. I don't. But I'm -- I believe he told</p> <p>16 him what happened, probably not in every minute</p> <p>17 detail, but he gave him the gist of what was going</p> <p>18 on, yeah.</p> <p>19 Q. Okay. And do you know how many separate</p> <p>20 conversations --</p> <p>21 A. I don't, no.</p> <p>22 Q. Remember our rule.</p> <p>23 A. Okay. Go ahead. Sorry.</p> <p>24 Q. I just want to make sure it's clear on</p> <p>25 the record.</p>
<p style="text-align: right;">Page 58</p> <p>1 We're off the record.</p> <p>2 (Recess.)</p> <p>3 THE VIDEOGRAPHER: Back on the record.</p> <p>4 The time is 3:26 p.m. This marks the beginning of</p> <p>5 Tape No. 2.</p> <p>6 BY MR. FITTS:</p> <p>7 Q. Ms. Johnson?</p> <p>8 A. Yes.</p> <p>9 Q. May I call you Lisa?</p> <p>10 A. Sure.</p> <p>11 Q. When Michael called the 1-800 number, he</p> <p>12 was calling about his joint account with you as well</p> <p>13 as your accounts?</p> <p>14 A. Yeah, he was calling to find out why was</p> <p>15 our joint account closed.</p> <p>16 Q. Okay. So he was calling on behalf of --</p> <p>17 A. Both of us.</p> <p>18 Q. Both of you. And that was your</p> <p>19 understanding that he was calling on your behalf as</p> <p>20 well as his?</p> <p>21 A. Yeah.</p> <p>22 Q. Did you ask him to do that?</p> <p>23 A. Yeah.</p> <p>24 Q. And when Michael called the other folks</p> <p>25 at Wells Fargo higher up the ladder, he was also</p>	<p style="text-align: right;">Page 60</p> <p>1 But do you know or recall how many</p> <p>2 conversations that Michael had with Mr. Martin on</p> <p>3 your behalf?</p> <p>4 A. No.</p> <p>5 Q. Okay. Were you either on the phone or</p> <p>6 present during any of those conversations between</p> <p>7 Michael and Mr. Martin?</p> <p>8 A. No.</p> <p>9 Q. Okay. And then we get to the</p> <p>10 conversation that Michael had in the Malibu branch</p> <p>11 with Arash Dounel.</p> <p>12 Have I missed anything up to the time</p> <p>13 before that conversation in the Malibu branch</p> <p>14 occurred?</p> <p>15 A. He spoke with several representatives of</p> <p>16 Wells Fargo Bank. He work with Bob Martin at</p> <p>17 Mellon. I believe he may have also spoke with the</p> <p>18 president at Wells Fargo Bank or exchanged e-mails</p> <p>19 with him. And he spoke with the banker Arash Dounel</p> <p>20 at Malibu. And also there was another woman at the</p> <p>21 bank in Malibu that was a part of that conversation,</p> <p>22 and I don't know who she was.</p> <p>23 Q. Okay. Let me just make sure I understand</p> <p>24 that part because you're right, you did say that</p> <p>25 Michael had spoken with -- oh, strike that.</p>

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1 I thought that you had said Mr. Martin
2 then talked to someone at Wells Fargo Bank.
3 A. Yeah. Mr. Martin did speak with the
4 president at Wells Fargo Bank. But I think Michael,
5 you'll have to ask him, but I believe he also had a
6 direct conversation, but I can't be sure.
7 Q. Do you -- do you know why Mr. Martin
8 contacted the president of Wells Fargo Bank?
9 A. As a favor to Michael.
10 Q. Okay. So is he -- was Mr. Martin asked
11 by Michael to make that call?
12 A. Yes.
13 Q. And so was Mr. Martin calling on behalf
14 of both you and --
15 A. Yeah.
16 Q. -- Michael?
17 A. H'm-h'm.
18 Q. And then you indicated you think that
19 Michael may have had a conversation with the
20 president of Wells Fargo?
21 A. I think he did. I know that he called
22 his office and spoke with his secretary, and I -- I
23 think that he did speak with the president as well,
24 but I can't be sure.
25 Q. Again --

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1 MR. KISTLER: There's no pending
2 question.
3 MR. FITTS: I'm sorry, what?
4 MR. KISTLER: There's no pending
5 question.
6 MR. KISTLER: This isn't the Family Feud,
7 so wait until he completes his question until you
8 answer. You're kind of beating him to the punch.
9 THE WITNESS: Okay.
10 MR. FITTS: And I appreciate that. It's
11 difficult --
12 THE WITNESS: I'm very quick-minded, so
13 I'm, like, on it.
14 MR. KISTLER: It's not like Family Feud
15 where you have to hit the buzzer before the
16 question's asked.
17 THE WITNESS: Okay.
18 MR. KISTLER: So wait until the question
19 is --
20 THE WITNESS: All right.
21 MR. KISTLER: -- thoroughly expressed and
22 then --
23 THE WITNESS: Okay.
24 MR. KISTLER: -- give the answer.
25 MR. FITTS: And that's a hard rule. I

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1 had my deposition taken, and it's hard rule to -- to
2 follow. But that will just help us. You'll see
3 when the transcript comes out, it just comes out a
4 lot clearer that way.
5 BY MR. FITTS:
6 Q. So I think we were talking about your
7 belief that Michael had also spoken with the
8 president of Wells Fargo Bank.
9 Was -- did Michael contact the president
10 again on your behalf as well as Michael's?
11 A. Yes, of course.
12 Q. Okay. So when Michael's contacting these
13 individuals, he has your authority. He's just
14 not --
15 A. Of course.
16 Q. And your knowledge, he's not going around
17 asking people about your accounts without your
18 knowledge and permission?
19 A. Correct.
20 Q. Okay. Do you have a recollection as to
21 when Michael had that conversation or contact with
22 the president of Wells Fargo Bank?
23 A. It would have been within -- within a
24 week or a couple of weeks of receiving that letter.
25 Q. Okay. And then we get to the Malibu

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1 branch. And I want to make sure I've got everything
2 up until the Malibu branch, is their conversation.
3 Is there anything that I've missed that
4 we haven't talked about?
5 A. I don't think so.
6 Q. Okay.
7 MR. KISTLER: I think the question goes
8 to sequencing. Was -- was that the sequence because
9 I think you originally said you weren't sure about
10 the sequence.
11 THE WITNESS: Yeah, like -- I'm not going
12 to -- you can't put me down like exactly this
13 happened in this row. I can't tell you sequentially
14 that I put it in all the correct sequential order,
15 but those were the things that occurred.
16 MR. FITTS: Thank you.
17 BY MR. FITTS:
18 Q. I seem to recall from your interrogatory
19 answers, and I think your complaint, is that the
20 conversation with Mr. Dounel at the Malibu branch
21 was on -- on or about Aug -- October 6th --
22 A. Okay.
23 Q. -- 2011. So I was just trying to figure
24 out, okay, well, at least generally what occurred
25 between the time you --

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1 A. Right.

2 Q. -- received the closure letter.

3 A. All of these calls to Wells Fargo, to Bob

4 Mellon -- Martin at Mellon, the president, I think

5 all that stuff happened before the Arash Dounel

6 incident.

7 Q. Okay.

8 A. But you can confirm that with Michael in

9 his deposition.

10 Q. And so then we get to on or about

11 October 6th, 2011, at the Malibu branch.

12 What was the purpose of Michael going to

13 that branch?

14 A. I think he went in to do a simple banking

15 transaction. I'm not sure why, if it was a deposit

16 or what.

17 Q. And someone made the comment that you

18 should do something more with your money, or

19 something to that effect, to Michael?

20 A. Often the bank tellers will make a

21 comment to Michael. "Mr. Kaplan, you're leaving too

22 much money in your personal checking account. Why

23 don't you let us have some of that money and put it

24 in a other type of account?"

25 Q. Okay. And that's when Michael was

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1 introduced to Arash Dounel?

2 A. Correct.

3 Q. Now, were you present at the branch --

4 A. No.

5 Q. -- in Malibu -- it's okay.

6 Were you present in the Malibu branch on

7 or about October 6th, 2011 when this conversation

8 took place?

9 A. No.

10 Q. Okay. But you said there was a time when

11 you were asked to send a copy of the closure notices

12 to Mr. Dounel when Michael was there?

13 A. That's correct.

14 Q. Okay. Can you tell me how that unfolded?

15 A. I believe Michael called me from the

16 bank, and he said, "Can you please e-mail that

17 letter to this e-mail, Arash Dounel?" And I did.

18 Q. Okay. So were you in Las Vegas or where

19 were you when that call came?

20 A. I was in Malibu.

21 Q. So you were aware that Michael was then

22 at the branch and there was some type of discussion

23 between Michael and Mr. Dounel regarding the account

24 closures?

25 A. That's correct.

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1 Q. And Michael was making this inquiry on

2 both your behalf and his; is that right?

3 A. That's correct.

4 Q. Okay. And he -- he had your authority to

5 do so?

6 A. Yes. It's also his account, so he has

7 the authority to check it himself.

8 Q. Well, but there were two other accounts

9 that were just yours, right?

10 A. He was specifically talking about that

11 personal checking account.

12 Q. Okay. Did you send him the closure

13 notices on your two personal accounts as well as --

14 A. No.

15 Q. -- the joint account?

16 A. I don't think so, no.

17 Q. Okay. And so it was just the closure

18 letter on the joint account that you sent to --

19 e-mailed to Mr. Dounel?

20 A. Yes.

21 Q. And that was at the Malibu branch?

22 A. Yes.

23 Q. And Michael was there at the branch at

24 the time?

25 A. Correct.

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1 Q. Okay. Do you recall anything else that

2 you discussed with Michael on the telephone at that

3 point in time?

4 A. No.

5 Q. Did you speak with Mr. Dounel on the

6 telephone at all?

7 A. You know, I think I did. I think Michael

8 put him on the phone and he gave me his e-mail, so I

9 took the e-mail down.

10 Q. Okay. Do you recall anything else about

11 that telephone call?

12 A. No.

13 Q. But it was your understanding that

14 Mr. Dounel was trying to look into the reason why

15 the account had been closed?

16 A. Yes.

17 Q. Okay. And did you then stay on the phone

18 while -- while Michael and Mr. Dounel were talking

19 or did you hang up and --

20 A. I hung up and took care of the action

21 item which was to scan and to fax -- e-mail the item

22 to Mr. Dounel.

23 Q. And what happened after you scanned and

24 e-mailed the document to Mr. Dounel?

25 A. I continued with my workday.

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1 Q. Okay. So you -- you hung up?
2 A. Correct.
3 Q. Okay. And so you knew Michael was there
4 trying to find out for himself and on your behalf
5 why the joint account was closed?
6 A. Yes.
7 Q. And Michael -- you had given Michael your
8 authority to find out for me?
9 A. Yeah.
10 Q. And was there a time that they ever
11 called you back to tell you why the accounts -- the
12 account was closed?
13 A. No.
14 Q. Do you have an understanding of what
15 occurred in the Malibu branch after you hung up the
16 phone?
17 A. Yes.
18 Q. And that is, in general, comments that
19 Michael told you that Mr. Dounel had made?
20 A. Yes.
21 Q. Okay. Do you know what Michael did after
22 those comments were made?
23 A. No.
24 Q. Okay. And did Michael then --
25 A. I mean, he came home.

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1 Q. He came home. Okay.
2 And at that time, I think you said that
3 you and Michael had discussed Michael's conversation
4 with Mr. Dounel?
5 A. Yes, when he came home.
6 Q. Do you remember the substance of the
7 conversation that you had with Michael?
8 A. Yes.
9 Q. Can you tell us to the best of your
10 recollection?
11 A. Sure.
12 Q. Okay.
13 A. Michael came home, he said, "You're not
14 going to believe this. I just came home from the
15 bank and this guy over there is basically saying
16 that the reason the account must have been closed is
17 because you have a criminal background and that I
18 should hire a private investigator to find out
19 what's going on with you. If you have criminal
20 activity, if you have warrants out for your arrest.
21 What's going on?"
22 Q. Anything else you remember about that
23 conversation?
24 A. He was very upset.
25 Q. What was your response?

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1 A. I was shocked that someone would say
2 something like that about me. They don't know me.
3 I never had any issues with the law aside from maybe
4 a speeding ticket in my Porsche Turbo 911, it's hard
5 to not speed sometimes.
6 The only thing I've ever had is a
7 speeding ticket, so I was very shocked and very
8 upset because already I was very frustrated about
9 the lack of reaction or ability or willingness from
10 all of the people that we spoke to at Wells Fargo
11 Bank to provide any information as to why my account
12 was closed.
13 And now I have this guy telling my
14 boyfriend that I must be a criminal, that I must
15 have some kind of shady background or he better
16 check me out and hire a private investigator. I was
17 highly shocked, highly offended.
18 Q. What did you do after that?
19 A. What do you mean?
20 Q. Did you call Mr. Dounel up and talk to
21 him?
22 A. No, I did not call Mr. Dounel.
23 Q. Did you contact anybody at the bank
24 after Mr. Kaplan told you of what happened?
25 A. Repetitively we contacted the bank.

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1 Michael also acts as my attorney so he has full
2 authority to check on my accounts. And yes, after
3 that, we made several more calls back to Wells Fargo
4 Bank.
5 Q. Did you do anything that day that you
6 and Michael -- when Michael came home and told you
7 about what happened, did you do anything that day?
8 A. Such as make a phone call?
9 Q. Yes.
10 A. You know, I don't recall. I think it was
11 probably towards the end of the day, so I don't know
12 anything would have happened that day, but I think
13 the next day we were back on.
14 Q. What did you tell Michael when Michael
15 said, hey, this person at the bank said this, what
16 did you tell Michael?
17 A. I said that's outrageous. I've never had
18 anything -- problem with the law or anything like
19 that.
20 Q. Okay. And do you remember anything else
21 about the conversation that you had with Michael?
22 A. "We have to find out what's going on
23 here. This is a mistaken identity situation.
24 There's -- this is insane. This is crazy.
25 Absolutely have not done anything to warrant my

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1 accounts being closed."
2 You know, Michael was upset. He was
3 making statements like, you know, is there stuff I
4 need to know about or worry about, you know, putting
5 me a little bit on the defense. And I'm having to
6 say to him, "Hey, you know, like, I have nothing, I
7 have nothing to hide."
8 So no, this guy has really offended me
9 and it has affected by life and really do not
10 appreciate him slandering me like that and causing
11 issues with my relationship. So yeah, a lot of
12 things were said, a lot of things were discussed and
13 it's an ongoing discussion in my home --
14 Q. Do you --
15 A. -- to this day.
16 Q. Do you believe Michael believed you --
17 A. Yes, I do.
18 Q. I'll finish that.
19 A. Sorry. But you pause quite long in
20 between your sentences so I think you're done.
21 Q. And I'm sorry. You're really quick and
22 I'm really slow.
23 A. Yeah, I can see that.
24 Q. So, I'll try to do better.
25 Did you have a sense that Michael

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1 believed you that no, you didn't have any criminal
2 background?
3 A. Yes. Michael and I, at that time, had
4 been together for 12, 13 years. And during that
5 time span, he knows that I've never had any kind of
6 situation with the law. So yes, he does believe me.
7 But, you know, when things like that are
8 said about you, it makes anyone look sideways and
9 go, you're sure there's not something I don't know
10 about?
11 Q. Okay.
12 A. But yes, I do believe that he believes
13 me, otherwise he wouldn't be trying to help me.
14 Q. Okay. Do you believe that Michael
15 believed then Arash Dounel's comments?
16 A. I think he was highly offended by Arash
17 Dounel's comments.
18 Q. Because he didn't believe they were true?
19 A. Yes.
20 Q. Yes what, I'm sorry?
21 A. I don't believe he thought they were
22 true. He was highly offended by the comments.
23 Q. All right.
24 A. He knows my character.
25 Q. And then after that day, which is on or

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1 about October 6th 2011, you said that you and/or
2 Michael made more contacts to Wells Fargo; is that
3 right?
4 A. Yes.
5 Q. And I'm not asking for exact dates, but
6 can you give me the general sequence of the
7 additional contact that you and/or Michael had --
8 A. You would have to ask Michael that.
9 Q. All right.
10 A. I don't know.
11 Q. So it's my understanding from your
12 answers, you recall there were additional contact,
13 you just don't recall the details?
14 A. Correct.
15 Q. All right. You did mention, though, that
16 earlier that Michael was communicating with Arash
17 Dounel and asked for an apology?
18 A. Yes.
19 Q. Okay. Was -- was that a conversation
20 that you witnessed?
21 A. It was.
22 Q. Or was it on the phone just between
23 Mr. Dounel and Michael?
24 A. Michael spoke with Mr. Dounel on the
25 phone. Mr. Dounel apologized to Michael for the

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1 comments that he made about me on the phone.
2 Michael requested that he put those comments -- that
3 apology in a letter form. He e-mailed Mr. Dounel
4 two or three times saying, "Where's the letter you
5 promised me?" And finally he sent a final e-mail
6 that said, "Where is the letter you keep promising
7 me apologizing for the comments you made about
8 Lisa?"
9 And Dounel e-mailed him back and said, "I
10 had to submit the letter to my legal department.
11 They will not allow me to send you the letter. I
12 hope that my phone apology will suffice."
13 Q. Okay. And you know this is what Michael
14 told you, you were not on the phone, correct?
15 A. Correct.
16 Q. I believe there were some e-mails,
17 though, that you referenced as well?
18 A. Correct.
19 Q. So your testimony is coming from what
20 Michael's told you and what you read in e-mails?
21 A. Correct.
22 Q. Are there any other sources that you base
23 your testimony on other than what Michael's told you
24 and the e-mails that you --
25 A. No.

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1 Q. -- read?
2 And I'm talking about the conversation
3 that Michael had with respect to an apology from
4 Mr. Dounel.
5 A. Yes.
6 Q. Okay. All right. Aside from all those,
7 do you remember any other contact that you or
8 Michael had with Wells Fargo about the account
9 closures or any comments that Mr. Dounel had made?
10 A. No.
11 Q. Okay. And, again, were you making kind
12 of -- were you making notes as these events
13 occurred? Was it you and Michael making the notes?
14 Tell me about that just so I understand correctly.
15 A. Michael took notes, I did not.
16 Q. Okay. Would you read those notes?
17 A. Sure.
18 Q. Okay.
19 A. I mean, Michael would write notes and I
20 saw his notes, yes.
21 Q. Is there anything else that you recall
22 other than what we discussed that either you or
23 Michael did regarding the closure notices that we
24 haven't talked about?
25 A. No. We contacted Wells Fargo Bank. We

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1 tried to speak with members of the bank personally
2 and got nowhere, so we had to file a lawsuit.
3 Q. Okay. Do you recall when -- when you
4 retained legal counsel with respect to this subject
5 matter of this lawsuit?
6 A. I'm not sure of the exact date.
7 Q. I saw a letter from a Dirk Ravenholt.
8 A. Better known as Dirk the jerk, yeah. He
9 refused the case.
10 Q. Okay. Those are your words, not mine.
11 Okay. So did you and Michael have a
12 conversation with Mr. Ravenholt?
13 A. Michael had a conversation with him.
14 Q. Okay. It sounds like it wasn't very
15 positive.
16 A. He -- I think he said it's -- it was a
17 conflict -- or I can't remember. He -- he was
18 afraid of Wells Fargo Bank, actually. There was a
19 specific statement that he said to Michael, and it
20 was something to the effect that he didn't want to
21 have issues with Wells Fargo Bank for taking Wells
22 Fargo Bank on.
23 Q. Did you ever meet Dirk?
24 A. No.
25 Q. Did Michael meet with him?

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1 A. Yes.
2 Q. And was there a point in time where
3 Dirk -- he wrote a letter on behalf of you and
4 Michael, do you remember that?
5 A. I don't.
6 Q. Okay.
7 A. Yeah, I think he did. He write -- he
8 wrote one -- one letter, went nowhere.
9 Q. Okay. And so what happened after that?
10 A. Then we found Sid.
11 Q. And how did you find Sid?
12 A. Michael unearthed him because I believe
13 he did work with Hutchison before.
14 Q. Okay. And do you recall the approximate
15 time that you retained Hutchison & Steffen?
16 A. I don't know exactly.
17 Q. Okay.
18 MR. KISTLER: For the record, I'm the Sid
19 that she was referring to. That's my middle name,
20 that's what I go by.
21 MR. FITTS: I'm sorry. Thank you,
22 Counsel.
23 BY MR. FITTS:
24 Q. After these accounts were closed, and I
25 think -- do you recall at Wells Fargo on the notice

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1 letters they indicated the accounts would be closed
2 approximately 30 days?
3 A. I believe it was 30 days, yeah.
4 Q. Okay. Just so I'm clear on this, did you
5 take any action to open replacement accounts?
6 A. I did.
7 Q. And can you -- and I apologize if you've
8 already told me about some of those, but, you know,
9 we had three accounts. One was your joint account
10 that you and Michael had and then your two business
11 accounts.
12 With respect to your personal account,
13 it's my understanding you then opened up a
14 replacement account at Chase?
15 A. That's correct.
16 Q. But instead of a joint account, it was
17 just your own personal account?
18 A. That's correct.
19 Q. Is there a reason why you and Michael
20 didn't just switch your joint account to Chase?
21 A. Yes.
22 Q. And what was that?
23 A. Because Michael only banks with Wells
24 Fargo Bank. He only banks with three institutions,
25 and he's banked with Wells Fargo Bank for over

<p style="text-align: right;">Page 81</p> <p>1 25 years. And he values his banking relationship 2 and he chooses to not change his baking accounts. 3 I also value my banking account 4 relationships, and I'm horrified that Wells Fargo 5 has closed my accounts for an obscure reason. 6 Q. So Michael still has his -- his accounts 7 at Wells Fargo Bank? 8 A. Correct. 9 Q. Okay. Do you know what other banks he 10 has accounts at? 11 A. Mellon and Schwab. 12 Q. And does Michael have a personal banker 13 or a business banker at Wells Fargo that he deals 14 with? 15 A. I don't know. 16 Q. So you opened up your personal account at 17 Chase, and then what did you do with the two 18 accounts with Guitarfile? 19 A. I opened a guitar business account with 20 Chase. And I opened a Guitarfile credit card, 21 business credit card with Chase. 22 Q. Okay. And did Chase have any problems 23 with opening an account for you? 24 A. No. 25 Q. Did you have to fill out applications to</p>	<p style="text-align: right;">Page 83</p> <p>1 A. Not as of yet. 2 Q. Do you anticipate that's -- that a future 3 application will be denied? 4 A. I'm highly concerned that in the future, 5 I could be denied lines of credit by a banking 6 institution. And I wish to clear this so that that 7 does not happen in the future. 8 Q. Since August of 2011, have you applied 9 for any type of line of credit? 10 A. No. 11 Q. Okay. Do you anticipate applying for a 12 line of credit in the future? 13 A. Yes. 14 Q. And what line of credit would that be? 15 A. I don't understand the question. What do 16 you mean? 17 Q. I -- 18 A. What would it be for? 19 Q. Yes. 20 A. I'm launching a book called 108 Rock Star 21 Guitars. I've trademarked that as my brand. And 22 it's my intention to launch an entire line of 23 products under the 108 Rock Star Guitar umbrella. 24 Q. Have you had any discussions with any 25 financial institutions? And when I say discussions,</p>
<p style="text-align: right;">Page 82</p> <p>1 open up these three accounts with Chase? 2 A. Sure, the regular forms were required. 3 Q. Did Chase ask you or require you to 4 disclose whether any other bank had decided to close 5 your accounts? 6 A. No. 7 Q. And so you were not required to mention 8 the account closure in any form to Chase when you 9 opened up your replacement accounts? 10 A. No. 11 Q. That was a bad question, I'm sorry. It 12 will come out as a double negative, so I'll ask that 13 again. 14 Did you make any reference at all to 15 Chase with respect to the three accounts that were 16 closed by Wells Fargo? 17 A. No. 18 Q. Were -- did Chase require you or inquire 19 of you as to whether or not any bank had decided to 20 close any accounts of yours in the past? 21 A. No. 22 Q. Has any financial institution denied any 23 application by you to open up any type of account 24 with them since you received the closure notices 25 from Wells Fargo Bank in August of 2011?</p>	<p style="text-align: right;">Page 84</p> <p>1 any preliminary discussions with any financial 2 institution with respect to this credit line that 3 you would like to open up in connection with your 4 book? 5 A. No. I wish to get this matter cleared 6 before I do that. And my book needs to launch 7 before I do that. 8 Q. When is the book scheduled for launching? 9 A. October 8th, 2013. 10 Q. And when you say you'd like to get this 11 matter cleared, what do you mean by that? 12 A. I want this situation cleared with Wells 13 Fargo Bank because I've done nothing wrong. I'm not 14 a risk assessment of any kind. I don't want to have 15 future issues with bank institutions so I want this 16 situation resolved aka cleared with Wells Fargo 17 Bank. So Wells Fargo says, We seem to have made an 18 error here and your name is cleared. Because right 19 now I don't feel like I've got a very good name 20 within the Wells Fargo banking institution. 21 Q. Do you want to do future banking with 22 Wells Fargo? 23 A. It depends on how they act here in the 24 future. 25 Q. Are you looking to get the line of credit</p>

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1 from Wells Fargo?

2 A. Well, right now I don't have an account

3 with Wells Fargo.

4 Q. Have you -- and I, again, sometimes I'll

5 forget, I apologize. But have you had any type of

6 financial advisor give you advice as to what will be

7 required with respect for a line of credit for your

8 book and the merchandise?

9 A. Within Wells Fargo Bank, no.

10 Q. How about any other financial

11 institution?

12 A. I mean, my financial advisor is my

13 partner, Michael Kaplan.

14 Q. Okay.

15 A. So we have a pretty good understanding of

16 what's required when you go to reach out for lines

17 of credit, so I've discussed it with him only.

18 Q. All right.

19 A. And my bookkeeper.

20 Q. Stacie?

21 A. Right.

22 Q. Stacie Hummel. Okay.

23 And so your concern regarding the line of

24 credit for your book and your merchandise arises out

25 of your conversations that you've had with Michael

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1 in his capacity as a financial advisor to you?

2 A. No.

3 Q. Okay. Tell me where I'm wrong so I can

4 understand.

5 A. My own personal concern. Michael gives

6 me his opinion and I discuss it with him, but I'm

7 the one that raised the point what if down the line

8 I'm trying to reach -- got my lines of credit to

9 launch my products and a banking institution says,

10 Oh, I see Wells Fargo has closed your accounts due

11 to a risk assessment. No, we can't loan you a

12 million dollars.

13 Q. Is that what --

14 A. That's my only feeling. And then

15 Michael, who advises me on things, affirms that. My

16 bookkeeper, affirms that.

17 Q. When you say they affirm that, do they --

18 A. Agree with me.

19 Q. Michael and Stacie Hummel have told you

20 that when you apply for a line of credit, you would

21 have to disclose that Wells Fargo had closed three

22 of your accounts in the past?

23 A. Not have to, but it could be a question

24 that's raised.

25 Q. All right. Do you know what your -- the

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1 amount of the line of credit that you would need for

2 your book and merchandise?

3 A. Not at the time.

4 Q. You mentioned a million dollars.

5 A. Just throwing a number out.

6 Q. Fair enough.

7 A. Could be easily that.

8 Q. And so you're -- and I don't want to

9 downplay it, but when you say could, it could be a

10 problem, you're not sure whether or not, right, but

11 there's a possibility?

12 A. That's correct, the possibility is there.

13 Q. Okay. And so that I -- I know what we're

14 talking about what you said Mr. Dounel slandered

15 you. I'm not putting words in your mouth, am I?

16 A. No.

17 Q. Okay. I know you have a defamation claim

18 in this case, right?

19 A. Correct.

20 Q. And you have a claim for false light?

21 A. Sorry?

22 Q. False light.

23 A. False light like you're shedding false

24 light on my character.

25 Q. I'm not asking you a legal opinion at

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1 all, but there's a claim that says false light in

2 your complaint?

3 A. Oh, yeah.

4 Q. And then you have a third complaint for

5 declaratory relief.

6 A. Yes.

7 Q. So with respect to the defamation claim

8 and the false light claim, it appears from my

9 reading of your complaint that it's based upon the

10 statements that Mr. Dounel -- and I'm going to use

11 the word "allege," and I hope you're not offended,

12 but that's what's alleged in your complaint. It

13 seems like those two complaint -- those two claims

14 are based upon the statements that's Mr. Dounel

15 allegedly made to Michael.

16 Is my understanding correct?

17 A. Yes.

18 Q. Are there any statements outside of

19 what Mr. Dounel said that you're basing those claims

20 on?

21 A. No.

22 Q. Okay. And so they were all made by Arash

23 Dounel, all of the defamatory statements?

24 A. Actually, no.

25 Q. Okay. Tell me.

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1 A. The president of Wells Fargo Bank also
2 said that I must have done something very bad, must
3 have a criminal record. He didn't know what it was,
4 but it must be very bad in order for them to close
5 my accounts.
6 Q. And again, was that statement made to
7 Robert Martin --
8 A. Correct.
9 Q. -- of Mellon Bank?
10 A. Yes.
11 Q. And, again, Robert Martin was contacting
12 the president of Wells Fargo Bank with authority
13 from you and Michael --
14 A. Correct.
15 Q. -- to do so?
16 A. H'm-h'm.
17 Q. And he was making that inquiry on your
18 behalf?
19 A. Yes.
20 Q. And you knew he would be making that
21 contact?
22 A. Yes.
23 Q. Any other statements that you are basing
24 your defamation and false light claims on?
25 A. Other people that Michael spoke with at

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1 Wells Fargo Bank. There was one woman, I don't
2 remember her name, but I was on the phone with her
3 and, again, she was also saying, you know, there --
4 "We have very good reasons for closing accounts and
5 I'm not at liberty to discuss them with you."
6 Q. Okay. Did you feel that was defamatory?
7 A. I suppose not, not defamatory.
8 Q. Okay. She didn't get into anything
9 like --
10 A. She didn't say you done something bad.
11 Q. -- criminal.
12 A. Yeah. No, she did not.
13 Q. I stopped because I didn't want us to
14 speak over each other.
15 And so the conversation with this lady
16 that I believe -- did you have the conversation?
17 You said you spoke to her on the phone?
18 A. Yes. We had a conference call.
19 Q. Okay. And so that was between you and
20 Michael was on the phone?
21 A. Correct.
22 Q. And then this lady?
23 A. Yes.
24 Q. Okay. And this lady said that we have
25 very good reasons to close accounts and she said she

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1 couldn't say anything else?
2 A. Correct.
3 Q. All right. So she didn't say anything
4 about, okay, there must be some type of criminal
5 problem here with Lisa?
6 A. No.
7 Q. All right. So we have the comments by
8 Arash and then we have the alleged statement by --
9 to Robert Martin of Mellon Bank?
10 A. Yes. By the president of Wells Fargo
11 Bank.
12 Q. And, again, I'm trying to figure out what
13 because that's a little bit new to me.
14 So I know about the comments that were
15 allegedly made by Mr. Dounel, but what -- do you
16 recall specifically what the statement was to
17 Mr. Martin? Something -- something -- it must have
18 been something serious or what?
19 A. Yeah. The president of Wells Fargo Bank
20 said to Bob Martin, "I don't know why they closed
21 the account, but it must be something very serious
22 in order for us to close the account." Something to
23 that effect. There may have been more in there,
24 Michael would be able to confirm exactly what he
25 said.

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1 Q. All right. Thank you. Anything else?
2 A. No.
3 Q. These were all oral statements, meaning
4 conversing either on the phone or in person, right?
5 A. Or on e-mail, yes.
6 Q. Were there statements in an e-mail that
7 talked about a --
8 A. Defamatory statements, no.
9 Q. Okay. That's what I'm talking about.
10 A. Oral, yes. They were oral statements.
11 Other than Michael referencing in an e-mail to Arash
12 Dounel, "Where is my apology letter for the things
13 you said about Lisa," that is in an e-mail.
14 Q. Okay. So we've covered all of the
15 alleged statements that you have a concern about; is
16 that right?
17 A. Yes.
18 Q. Is there anything else?
19 A. We've covered all of the statements, yes.
20 Q. I'm sorry. I'm a little bit slow. I
21 know you're probably wanting to go faster. I will
22 go as fast as I can.
23 Now, you've told me that those statements
24 were offensive to you. Am I --
25 A. That's correct.

<p style="text-align: right;">Page 93</p> <p>1 Q. Am I putting words in your mouth or would 2 you describe it. I thought you said offensive. You 3 told me earlier not to put words in your mouth, so I 4 don't want to do that, but I want to make sure I 5 understand what you're saying. 6 A. Arash Dounel's statements were highly 7 offensive. 8 Q. Okay. What about the statements to Bob 9 Martin? 10 A. Highly offensive. And further statements 11 were made that, you know, this is another way that 12 I've been harmed by this is that Michael was going 13 to open up a -- another joint account that had a 14 substantial amount of funding in it and Wells Fargo 15 Bank said, "We will take the money if it's under 16 your name, but if Lisa Johnson's name is on there, 17 we will not open that account." 18 Q. All right. 19 A. So Wells Fargo Bank is refusing three 20 million or more dollars, which is unheard of in 21 these days especially, because my name is going to 22 be on the account. 23 Q. That kind of brings up an interesting 24 situation, doesn't it? 25 A. It does, doesn't it?</p>	<p style="text-align: right;">Page 95</p> <p>1 sense from what you learned about what Mr. Dounel 2 stated that he actually did want to reopen your 3 account at one point? 4 A. At one point he said, "We can open new 5 accounts, but it will be new -- different account 6 numbers." We were given conflicting stories. One 7 person would say, "Oh, we'll open new accounts for 8 you." And then the next day somebody else would 9 say, "Oh, no, Mr. Kaplan even, we can't open a new 10 account for you." 11 So which is it? We can open an account 12 or not open an account? 13 Q. So when you said you were getting 14 conflicting statements, you were -- were you getting 15 conflicting statements from the same person? 16 A. No, different. 17 Q. Okay. So one person at the bank would 18 say one thing and then another person at the bank 19 would contradict that? 20 A. That's correct. 21 Q. And the contradiction has to be whether 22 or not they could reopen your accounts? 23 A. They never agreed to reopen my original 24 accounts. They said we can open up you a new 25 account today.</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. Because Wells Fargo is in the business of 2 wanting to do banking, right? 3 A. That's right. 4 Q. They would like to do banking with -- 5 with Michael, right? 6 A. Right. 7 Q. Do you feel like they have any ill will 8 toward you? 9 A. They must. 10 Q. You say must. What do you mean? Are you 11 saying that for sure you know or -- because the word 12 "must" can be defined in different ways. Must can 13 be a definitive term or it can be, well, what else 14 is it, it must be this? 15 A. Wells Fargo has closed my bank accounts 16 because they feel that I'm a risk assessment of some 17 sort they won't reveal. So they must have something 18 against me if they refuse to do business with me. 19 Q. Do you have any personal knowledge that 20 they have any -- anyone at Wells Fargo has actual 21 ill will or malice toward you? 22 A. No. Other than the statements Arash 23 Dounel made about me. That's kind of ill will, 24 isn't it? 25 Q. Do you -- did you get the idea or get the</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. When you say they said that, who is they 2 or who are they? 3 A. Members of the bank. I don't know their 4 specific names right now. 5 Q. Are these conversations or statements 6 made to you or to Michael? 7 A. To Michael. Actually, also made to me 8 by, I believe it was another banker via e-mail that 9 said -- and I said -- I said, "I want my original 10 bank accounts because those are my bank accounts 11 that I've had for several years and I don't want new 12 bank accounts. I want my bank accounts. So I don't 13 want new bank accounts with Wells Fargo, I want my 14 accounts reestablished because I've done nothing 15 wrong." 16 Q. And do you recall who made that statement 17 you could have new accounts opened in different -- 18 A. Not right now, no. 19 Q. It's not Arash? 20 A. I can't remember. 21 Q. Okay. But anyway whoever it was said 22 that new accounts would be -- could be open but it 23 would have to have different account numbers? 24 A. Correct. 25 Q. And were those accounts ever opened?</p>

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1 A. No.
2 Q. Why not?
3 A. Because I want the situation cleared
4 before I do anymore further banking with Wells Fargo
5 Bank.
6 Q. So is it your understanding that you
7 could if you wanted to, you could have other
8 replacement accounts opened at Wells Fargo and
9 different accounts numbers if you wanted to?
10 A. I'm not sure.
11 Q. All right.
12 A. Because they certainly would not take an
13 account that had \$3 million in it with my name on
14 it. So at this point, my understanding is they
15 don't want to do any banking with me.
16 Q. Is that how much you had in your joint
17 account with Michael?
18 A. No.
19 Q. Where did you get the three million?
20 A. Because Michael and I had -- Michael was
21 going to open and establish an account and did not
22 because he was told by someone at Wells Fargo Bank,
23 I believe it was the president said that no, they
24 would not take an account with that value even if my
25 name was on -- If my name was on it. They would

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1 take it with Michael's name only but not with my
2 name.
3 Q. Okay. So are you telling me that there
4 was a fourth account that you and Michael -- I
5 should stop there, I'm not saying that correctly.
6 There was actually a second joint account
7 that you and Michael were going to open up at Wells
8 Fargo in the amount of approximately three million?
9 A. Correct.
10 Q. But Wells Fargo said, no, not if Lisa's
11 name is on it?
12 A. That is correct.
13 Q. And, again, these are general statements
14 we're talking about without identifying anyone
15 specifically at Wells Fargo, correct?
16 A. Correct.
17 Q. And you don't --
18 A. Michael knows specifically who.
19 Q. Michael knows those people but you don't
20 know who those people are?
21 A. Correct.
22 Q. Is that because Michael is the one that
23 had the conversations and you were not present?
24 A. Yes.
25 Q. I wanted to ask you generally about the

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1 damages that you're alleging in this case. And
2 we've talked about the statements you said were
3 highly offensive.
4 A. Yes.
5 Q. I want you to identify for me, if you
6 would, talk about any injury or damages that you
7 believe these statements have resulted in damages or
8 injury to you. And what I'd like to do is have you
9 start with, you know, what you consider the most
10 serious first and then just kind of go down in
11 order.
12 Can you do that for us?
13 A. H'm-h'm. Sure can.
14 Q. Okay.
15 A. Well, first of all, I've been slandered
16 and defamatory statements have been made about me
17 that I find highly offensive that suggests that my
18 character is one of criminal activity and that would
19 indicate to me that someone thinks that I have an
20 unsavory background or a criminal background, shady
21 background of some kind. I find that highly
22 offensive.
23 I'm a highly principled person, honest
24 person, and I do good for people and it's highly
25 offensive that someone would say that about me to

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1 my -- my common law partner.
2 Q. Okay.
3 A. And number two, those statements have
4 caused tremendous stress and strain on my personal
5 relationship with my partner Michael Kaplan for the
6 duration of this entire episode. And, you know, a
7 lot of anxiety has been, fear and just unease of --
8 of conversation has resulted in my relationship, my
9 personal relationship that I value very much.
10 Number three --
11 Q. Can I -- I just wanted to ask you more
12 about that, if I could.
13 A. Sure.
14 Q. Have -- have you received any type of
15 medical treatment or anything of that sort with
16 respect to any of the stress or anxiety that you
17 felt?
18 A. Not medical treatment, no. But I do seek
19 counsel with someone, and I work -- I'm working
20 through those issues with that person.
21 Q. When you say counsel, I don't know what
22 you mean by that. Are you talking about your legal
23 counsel or are you talking about --
24 A. No, just someone that is -- knows how to
25 deal with stress and anxieties.

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1 Q. Is this like a spiritual advisor or is it
2 a psychologist? What -- can you help me out more?
3 A. I would say someone that's been schooled
4 in how to deal with stress and anxiety. It's not a
5 social worker or a psychiatrist or psychologist, but
6 someone that is schooled in dealing with stress and
7 anxiety and fear. Helps you to meditate and calm
8 down and not worry.
9 Q. Is this a place that you go where you
10 have to -- or is this just a friend that talks to
11 you?
12 A. Sometimes I speak with her on the phone
13 and sometimes I see her in person.
14 Q. So is this -- do you have to pay for
15 this?
16 A. No.
17 Q. So this is -- would this be someone that
18 you characterize as a friend that provides support
19 to you?
20 A. It's someone that is trained, like I
21 said --
22 Q. Right.
23 A. -- in dealing with this kind of stuff.
24 And she right now does not charge me for it because
25 she doesn't charge. It's just a service that she's

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1 offering me.
2 Q. All right. And how often do you get
3 that?
4 A. Once a week.
5 Q. Once a week.
6 Can you identify that person for us?
7 A. Is that necessary? Why does she need to
8 have her name?
9 Q. I guess it's up to you whether you're
10 claiming that's part of your damage. And if it is,
11 then I -- I need to --
12 A. I'm not claiming that as part of my
13 damage.
14 Q. Okay.
15 A. I'm claiming my stress and anxiety, but
16 my time with her is not part of my damage. I'm not
17 paying her so there's not damages there as far as
18 financial. The damage is my internal self is being
19 damaged.
20 Q. Right. And when you -- when you go and
21 talk to someone who's schooled in dealing with those
22 types of issues, I mean, is this person -- you know,
23 you say schooled, is this person trained as an
24 expert in stress relief? That's what I'm trying to
25 find out because if it goes to -- if you're alleging

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1 stress, emotional stress, then it would be my
2 position, at least, that that person if that person
3 is schooled and trained that that person that would
4 be relevant as to, okay, well, what is this stress
5 that Lisa's feeling? How much stress is it? Can
6 you quantify it and what's the source of the stress?
7 Do you see what I'm saying?
8 A. Then maybe you'd like to talk to my yoga
9 teacher, too, because I go to yoga for stress as
10 well.
11 Q. See, that's what I'm trying to figure
12 out, is this someone -- is this a yoga teacher or is
13 this someone who has some type of medical or
14 psychological training and license?
15 A. I would say it's psychological training,
16 but she's not a psychiatrist. You know, today we
17 live in a different world. There is a lot of --
18 there are a lot of spiritual teachings and we use
19 meditation to deal with stress and anxiety, so one
20 doesn't necessarily have to go to a doctor or
21 medical team for that.
22 I'm also trained in yoga and meditation
23 myself, but sometimes it helps to reach out to
24 someone else to help you even if -- I'm personally
25 trained, which I am, it helps to be able to work out

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1 and speak your internal processes with someone else.
2 And that's how this person is servicing me.
3 Q. So it's -- it's my understanding you
4 would -- you didn't want to disclose who this person
5 is?
6 A. I just don't see the point of it.
7 Q. Okay.
8 MR. FITTS: Sid, do you have a position
9 at this point as to the disclosure of that person?
10 I don't want to get in an argument at 4:30 in the
11 afternoon. But I think --
12 MR. KISTLER: I say press on with your
13 deposition at this point. If there's an issue
14 concerning this, we can address it later.
15 MR. FITTS: Fair enough. Is that all
16 right?
17 THE WITNESS: That's fine.
18 MR. FITTS: That's what we'll do.
19 BY MR. FITTS:
20 Q. So you have stress?
21 A. Yes. So --
22 Q. And you've been speaking to this friend
23 who is trained in that area of dealing with stress.
24 And then you talked about your yoga teacher. I
25 mean, were you going to list your yoga teacher as

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1 number -- in that or were you being maybe sarcastic
2 and so forth? And I don't mean that in any
3 disrespectful way, but I want to find out what you
4 seriously believe you're doing for the stress.
5 A. I wasn't being sarcastic at all.
6 Q. Okay.
7 A. You were asking me, you know, about the
8 relationship with a person that was helping me with
9 dealing with my stress, and I'm adding to you that I
10 also practice yoga and I do that for stress release.
11 I also exercise every day for my stress release and
12 my anxiety which helps me tremendously and there's
13 no cost incurred with that. So I was just making a
14 comparison. I speak with someone and I exercise to
15 relieve my stress and anxiety, which is tremendous.
16 I live with tremendous anxiety every day.
17 Q. And -- and does that anxiety -- I imagine
18 having a new book come out and a merchandise line
19 that's stressful in and of itself.
20 A. It's stressful to think my book is going
21 to launch and I'm not going to be able to complete
22 my future vision of launching my product line
23 because Wells Fargo says that I'm a risk assessment
24 and I'm not going to be able to get the lines of
25 credit that I require to launch my full on line of

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1 merchandise.
2 Q. All right. Again, you're using the word
3 "could," you don't know yet, do you?
4 A. It's a potential possibility that I am
5 trying my best to prevent.
6 Q. All right. Okay. So we've got the
7 highly offensive and then you have the stress and
8 you were going to mention number three.
9 A. Yes. I've had to hire an attorney to
10 protect me. It's cost me at this point upwards of
11 \$60,000 I've had to spend on attorney's fees, and we
12 haven't even gone to trial yet. So that's
13 tremendous harm to my financial situation.
14 Q. Anything else?
15 A. Yes. As mentioned, but I just want to
16 make sure that I'm very clear on this, I've been
17 involved in a common law relationship, partnership
18 with Michael Kaplan for 15 years as of this weekend,
19 Labor Day weekend. It's been a source of contention
20 with me and the relationship that we've not been
21 married.
22 And I think, you know, how am I
23 protected? I've given 15 years of my life to this
24 person, I'm not married. If something should ever
25 happen to him, where does that leave me? We have

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1 two homes, two mortgages. We have a lot of
2 expenses. If anything happens to him, I'm, first of
3 all, going to be beside myself, very upset. And how
4 am I going to handle all of our household expenses?
5 So this is a complaint that I've had to
6 Michael for a number of years. "Hey, you need to
7 set up some kind of account so I'm not going to be
8 put in a position when I'm devastated that
9 something's happened to you and then I have this
10 other pressure where I don't have access to the
11 funds, appropriate funds that I need to take of our
12 household expenses."
13 And so we've had this discussion
14 throughout the years numerous times and now right
15 when he's about to set up this account that's got
16 substantial funding in it of three some-odd million
17 dollars, that's come to a halt. I still do not have
18 access to my household funds or if anything happens
19 to him or my security, I don't have that now because
20 Wells Fargo Bank has closed our accounts.
21 And right now, until this is cleared,
22 Michael doesn't want to open up another joint account
23 with me. So that's harmed me. I'm harmed because I
24 do not have access to the substantial amount of
25 funding that he was going to provide to me.

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1 MR. FITTS: And I apologize to interrupt
2 you, but we have to go on a break because our tape
3 needs to be replaced. Okay?
4 THE WITNESS: Okay.
5 MR. FITTS: All right.
6 THE VIDEOGRAPHER: This marks the end of
7 Tape No. 2. The time is 4:25 p.m.
8 We're off the record.
9 (Recess.)
10 THE VIDEOGRAPHER: The time is 4:36 p.m.
11 This marks the beginning of Tape No. 3.
12 We're back on the record.
13 BY MR. FITTS:
14 Q. Ms. Johnson, before we broke, took a
15 break, you were talking about your relationship --
16 A. Yes.
17 Q. -- with Michael. And I want to make sure
18 you have an opportunity to fully explain how you --
19 you believe that your relationship with Michael has
20 been damaged as a result of the alleged comments
21 we've talked about.
22 A. Yes. We already cleared that. What we
23 were discussing at the break was the fact that I had
24 to hire an attorney.
25 Q. Okay. Very good. You're right.

<p style="text-align: right;">Page 109</p> <p>1 You talked about that before you got into 2 your relationship -- 3 A. No, Michael was my second issue. The 4 third was my lawyer -- my lawyer. 5 Q. And then the fourth was your relationship 6 with Michael? 7 A. Just to confirm, number one was the 8 slander, defamation. 9 Q. Right. 10 A. Number two was the strain in my 11 relationship with Michael Kaplan. 12 Number three is that I had to hire an 13 attorney and I've paid substantial legal fees at 14 this point in time, already nearing \$60,000. 15 Q. Okay. 16 A. Number four, if you'd like me to move on. 17 Actually, I started on number four which was that 18 Michael intended to open a joint bank account with 19 Wells Fargo Bank up to and over three to 20 five million dollars is what we had discussed. And 21 now he's decided that he's not opening that joint 22 account until this is cleared. 23 And the president of Wells Fargo Bank 24 told Michael that he would not open an amount with a 25 substantial amount of money with three million or</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Okay. My memory doesn't serve me as we' 2 as yours may, but if you believe they've been 3 disclosed, what I would like to do is mark those as 4 an exhibit. 5 A. Did you -- sorry, are you finished? Can 6 I respond? 7 Q. Yes. 8 A. Did you receive documentations from 9 Mr. Workman regarding my transactions of my Wells 10 Fargo Bank account? 11 Q. I received a supplemental report -- 12 A. Yes, that would be the same document. 13 Q. -- regarding Mr. Workman yesterday late 14 afternoon. 15 A. Yes, those would be the documents. 16 Q. And then this afternoon, I received a 17 supplemental disclosure from your legal counsel 18 containing some statements from another bank. 19 A. Yes, those would be the documents. 20 Q. Okay. But those, what I see in front of 21 you that you're -- those are your handwritten notes? 22 A. Yes, the top document is. 23 Q. Okay. May we mark those as an Exhibit A? 24 A. I don't know. 25 MR. KISTLER: They can. If you're</p>
<p style="text-align: right;">Page 110</p> <p>1 more if my name was on it. So that has harmed me, 2 that's number four. 3 I have two other items. 4 Q. I see you're -- are you reading from 5 notes there? 6 A. My personal notes that I've made, yes. 7 Q. Okay. And how -- how many sheets do you 8 have there? 9 A. One and then a few other documents, just 10 extra papers that I have. 11 Q. And what do the other documents pertain 12 to? 13 A. My bank account, checks that were in 14 question. 15 Q. Okay. Do they have to do -- do they 16 pertain to this lawsuit? 17 A. Yes. 18 Q. Okay. Have you disclosed those 19 documents? 20 A. I believe they were disclosed. 21 Q. Okay. I don't recall seeing them, but 22 you're saying the documents that you have in front 23 of you right now have been disclosed in this 24 lawsuit? 25 A. I think they were.</p>	<p style="text-align: right;">Page 112</p> <p>1 testifying from it, they have that marked. 2 THE WITNESS: Okay. 3 MR. FITTS: So why don't we mark that as 4 Exhibit A. The court reporter will do that. 5 (Whereupon, Exhibit A was 6 marked for identification.) 7 MR. FITTS: May I see that? 8 BY MR. FITTS: 9 Q. In this Exhibit A here, when did you make 10 this notation? 11 A. Probably last week. 12 Q. It states, it's entitled, it says "Harm." 13 A. That's correct. 14 Q. Okay. I'm going to give this back to you 15 and could you just read it for us? 16 A. Sure. I'm going to read it in sequential 17 order that I've numbered it. 18 Q. Can you start with -- 19 A. Since you asked me to give you in order 20 of priority of how I've been harmed -- 21 Q. Thank you. 22 A. -- I have readjusted the order in which I 23 wrote them down. 24 Q. Thank you. 25 A. So I have been harmed, number one, I have</p>

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1 been slandered and defamed. Was said that I had --
2 possibly had a criminal record, criminal activity,
3 and to hire a private investigator. So number one,
4 that is how I've been harmed.
5 Number two, I have been harmed in that
6 there has been tremendous strain in my personal
7 relationship with Michael Kaplan. My 15-year
8 relationship has been strained because of the
9 situation.
10 Number three, I have been harmed because
11 I had to hire a lawyer to clear my name and I have
12 attorney's fees and costs.
13 Number three [sic], the president of
14 Wells Fargo Bank would not open a \$5 million account
15 with my name on it because they don't want to do
16 business with me. That Michael only banks with the
17 Wells Fargo Bank, Schwab, and Mellon, and our
18 household accounting is -- no longer exists because
19 of that.
20 Because we do not have a mutual account
21 within the Wells Fargo Bank and so our household
22 accounting has been highly inconvenienced. Now I
23 have to wait for funds to clear. If Michael gives
24 me funding for our household account, I have to take
25 his check, deposit it into my Chase account and wait

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1 for those funds to clear before I have access to
2 those funds.
3 Number five, it's important to me that I
4 have my name cleared to ensure that I have no issues
5 with lines of credit in the future for branding and
6 creating a line of products under my 108 Rock Star
7 Guitar brand.
8 And number six, I've had to disclose the
9 situation at great embarrassment to my publicist and
10 to my accountant and also -- yeah, just to my
11 accountant and to my publicist about the situation.
12 Particularly embarrassing to my publicist
13 because at the time, I had just recently engaged
14 with that publicist and it was very embarrassing to
15 have to say to him, "The check that I just sent to
16 you, please destroy that, I'm going to have to
17 reissue from another bank or send you a cashier's
18 check because Wells Fargo Bank for no reason has
19 closed my accounts."
20 Q. Okay. So is that the complete list,
21 then?
22 A. Yes, that is the complete list.
23 Q. All right. Regarding the item where
24 you're talking about, I guess, the financial impact
25 that you've had as a derivative effect from your

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1 relations with Michael. Do you know what I'm
2 talking about there?
3 A. No.
4 Q. Okay. You're talking about apparently
5 there was going to be some type of fund you said set
6 up jointly in your name and Michael's in the amount
7 of \$3 million?
8 A. Correct.
9 Q. Okay. And when did that decision come
10 about?
11 A. To open the account?
12 Q. Au-huh.
13 A. As I mentioned, we had been talking about
14 trying to do something like that for some time. For
15 a number of years I have been expressing to him,
16 "Hey, if something happens to you, I need to have
17 something set up because we are in a committed
18 relationship, just choosing to not get married."
19 And just because of the way the government has
20 things set up, if you're not married, you don't have
21 access to your partner's assets if they die.
22 So this has been a source of contention
23 within our relationship. And as he was about to
24 actually take action and open this account, Wells
25 Fargo says, No, we won't take an account of

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1 \$3 million -- three to five million dollars is what
2 he was talking about -- if Lisa Johnson's name is on
3 it.
4 So to this date, we still do not have
5 that account and I'm harmed by that because I don't
6 have access to those funds.
7 Q. Okay. So you and Michael have talked
8 about that for approximately 13 years before the --
9 A. Oh, no, not the duration of our
10 relationship. But I would say we started discussing
11 it probably a good five years into our relationship.
12 Q. All right. And those discussions
13 gradually developed to the point where Michael was
14 going to set up a fund. And what kind of fund was
15 this going to be for you?
16 A. Oh, I don't know exactly, but it was
17 going to be a personal joint account between Michael
18 and I so if anything ever happened to him, I would
19 have access to those funds.
20 Q. All right.
21 A. Like, was it going to be an IRA or mutual
22 account or --
23 Q. That's what I'm trying to find out.
24 A. It was going to be a personal account
25 that I would have access to in the event anything

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1 were to happen to him. So it wouldn't have been,
2 you know, an IRA situation where I wouldn't be able
3 to get the funds. It would just be a regular
4 account, an interest bearing account.
5 Q. It was going to be some type of fund
6 where you could inherit money from Michael if he
7 were to pass away?
8 A. That's correct.
9 Q. And this would replace any type of
10 inheritance that, you know, you might receive from a
11 trust or a will?
12 A. I don't think it would be a replacement
13 of an inheritance. It probably would have been in
14 addition to an inheritance. But it would be a
15 security for me that I would have immediate access
16 to funding to cover our household expenses in the
17 event that anything happened to him.
18 Q. Okay.
19 A. Because if something happened to him and
20 I didn't have access to those funds, I would not
21 have enough funds in my personal account to cover
22 even one month of our monthly expenses.
23 Q. Have you ever been named as a life
24 insurance beneficiary on any --
25 A. We do not have life insurance.

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1 Q. Let me finish.
2 Michael doesn't have any life insurance
3 policy?
4 A. No.
5 Q. Okay. Have you and Michael ever
6 discussed that?
7 A. We have.
8 Q. And before the account closure?
9 A. Yes.
10 Q. Okay. Was there a reason why you didn't
11 do that as a form of protection for you?
12 A. Michael doesn't believe in life
13 insurance.
14 Q. Okay. Was there any other discussions of
15 any other type of accounts that could be set up for
16 you?
17 A. No.
18 Q. Okay. Is there anything to prevent
19 Michael from setting up an account and making you as
20 a beneficiary in the event something were to happen
21 to him?
22 A. I don't understand the question.
23 Q. Well, with respect to any type of
24 financial account, have you had any discussions with
25 him where you would be the beneficiary of an account

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1 if something were to happen to him?
2 A. He has a trust set up, so I know that
3 there's some kind of trust set up where I'm a
4 beneficiary.
5 Q. Okay. And would you benefit -- be the
6 beneficiary of what if something were to happen to
7 him?
8 A. I believe I'm the beneficiary, one of his
9 beneficiaries should something happen to him.
10 Q. Okay. And do you know who the other
11 beneficiaries are?
12 A. I think so.
13 Q. How many are there?
14 A. I don't know. That's his personal
15 information.
16 Q. You've never seen the trust?
17 A. No.
18 Q. Okay. Do you know what percentage of
19 Michael's estate that you would inherit if something
20 were to happen to him?
21 A. He once told me 50 percent.
22 Q. Fifty percent of his estate?
23 A. That's what he told me, but I don't have
24 that in writing.
25 Q. Okay. Is there a reason why Michael's

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1 never shown you that trust document?
2 A. You would have to ask him.
3 Q. Have you ever asked him?
4 A. Yeah.
5 Q. And what does he say?
6 A. "I'll get it to you."
7 Q. And what happens?
8 A. I have not received it.
9 Q. And did those discussions occur before
10 August of 2011?
11 A. Yes and have occurred after.
12 Q. Okay. So really nothing's changed?
13 A. With regard to the trust account, no.
14 Q. Right. Or his estate?
15 A. That's -- as far as I know, that's one in
16 the same thing.
17 Q. Do you -- do you know what Michael's
18 estate is worth?
19 A. I don't.
20 Q. He's never told you?
21 A. No.
22 Q. Have you ever asked?
23 A. No.
24 Q. Okay. Do you have any idea of what it
25 might be?

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1 A. It would be a guess.
2 Q. What I'm trying to find out is if you're
3 a part -- if you're a beneficiary of his trust and
4 something happened, wouldn't that \$3 million go to
5 you anyway? Do you have any idea?
6 A. Do you have any idea how long it takes to
7 get money from a trust when somebody dies?
8 Q. I'm asking you the question.
9 A. I don't.
10 Q. Because you're the witness. That's all
11 you have to tell me is you don't know.
12 A. I don't know.
13 Q. I'm trying to find out why you believe
14 that you're damaged from the nonexistence of a
15 \$3 million joint account if you are going to inherit
16 that money in any event if something were to happen
17 to Michael.
18 A. Because the \$3 million is a separate fund
19 from the trust account and is funds that would be
20 readily available to me anytime, any time, any day
21 from that point that the account is opened up until
22 anything should happen to him.
23 Q. So you --
24 A. It's basically --
25 Q. You're telling me the trust account

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1 doc -- the trust documents would -- would indicate
2 whether or not that \$3 million account is part of
3 the trust or not?
4 A. They're two separate things as far as I
5 know.
6 Q. But how do you know that? See, you're
7 telling me about your damages and I'm trying to find
8 out really how do you know that?
9 A. Well, I'm just telling you that Michael
10 was going to open a substantial bank account with
11 three to five million dollars in it, that's my
12 understanding. It would be separate from the trust,
13 so let's not mix things up here.
14 There's an account that he was going to
15 open up that Wells Fargo said they would not open if
16 my name was on it. This has nothing to do one bit
17 with the trust that I really don't know anything
18 about, that I have no documentation. I only have
19 Michael's word that he set that up.
20 Q. Well, that three million would be part of
21 the estate, Michael's estate if he passed away,
22 right?
23 A. It may not be in the trust, he may have a
24 separate account that's set up as a trust, but I
25 don't know where the \$3 million sits right now. It

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1 could be in his Mellon account, his Schwab account,
2 but certainly not -- in the trust account, I don't
3 know.
4 Q. And that's why the trust documents would
5 be important to find out those things, right?
6 A. That's Michael's business. If he chooses
7 to share that with me, that's Michael's business.
8 It's not for me to question him or ask him.
9 Q. It seems like you're saying that that is
10 part of your business, though.
11 A. No, the trust is none of my business.
12 What's my business is the \$3 million that he was
13 going to open up as a joint account and has not
14 because he wants to get the situation cleared,
15 number one.
16 Number two, he only banks with Wells
17 Fargo Bank and until this gets cleared, he can't
18 open up a mutual account.
19 Q. Again, Lisa, I want to ask you, do you
20 know whether or not the \$3 million that would be --
21 you believe would be yours, do you know whether or
22 not that's part of, number one, the estate and
23 number two, the trust?
24 A. I don't know.
25 Q. And so one would have to look at

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1 Michael's estate documents and trust documents to
2 determine really whether or not you've been damaged
3 as a result of these statements.
4 MR. KISTLER: I'm going to object to this
5 questioning. You've asked and answered -- you've
6 asked --
7 MR. FITTS: You can make a short and
8 concise statement. You're making a speaking
9 objection.
10 MR. KISTLER: Now you're asking -- Now
11 you're asking for a legal conclusion.
12 MR. FITTS: Please don't make a speaking
13 objection.
14 MR. KISTLER: Now you're asking for a
15 legal conclusion. I object on those grounds.
16 BY MR. FITTS:
17 Q. Okay. Would you please answer that?
18 A. What's the question?
19 MR. FITTS: Could you read back the
20 question.
21 (Record read.)
22 THE WITNESS: No, I do not know.
23 BY MR. FITTS:
24 Q. And so one would need to look at those
25 trust and estate documents to determine whether or

<p style="text-align: right;">Page 125</p> <p>1 not the three million --</p> <p>2 MR. KISTLER: Objection. Asked and</p> <p>3 answered already. Asked and answered.</p> <p>4 BY MR. FITTS:</p> <p>5 Q. You can answer the question.</p> <p>6 A. I'm not understanding your question.</p> <p>7 Q. All right. You don't know whether the</p> <p>8 three million is a part of Michael's trust; is that</p> <p>9 right?</p> <p>10 A. That's correct, I don't know.</p> <p>11 Q. So you would have to look at the trust</p> <p>12 documents?</p> <p>13 A. I don't know what you would have to do.</p> <p>14 Q. Okay. You also talked about you had to</p> <p>15 disclose certain things to your accountant and to</p> <p>16 your publicist.</p> <p>17 A. To my bookkeeper and my publicist.</p> <p>18 Q. And the bookkeeper is Stacie --</p> <p>19 A. Correct.</p> <p>20 Q. -- Hummel. And is your publicist, is</p> <p>21 that Albright?</p> <p>22 A. Correct.</p> <p>23 Q. Is it Jeff?</p> <p>24 A. Yes.</p> <p>25 Q. Can you tell me why you've been required</p>	<p style="text-align: right;">Page 127</p> <p>1 out if there was any risk assessment, and there was</p> <p>2 zero evidence of there being any risk assessment.</p> <p>3 The only questionable item that came up was from a</p> <p>4 transaction in 2006 where I had withdrawn \$85,000</p> <p>5 from my State Farm -- state -- Wells Fargo account,</p> <p>6 and there was no evidence that that money, that that</p> <p>7 \$85,000 was deposited anywhere and so I have proof</p> <p>8 that it was deposited directly into my business</p> <p>9 banking account.</p> <p>10 I don't feel that a transaction in 2006</p> <p>11 had anything to do with the account closures in</p> <p>12 2011. But basically this banking expert is grasping</p> <p>13 at straws trying to find out some reasonable</p> <p>14 explanation as to why Wells Fargo would close my</p> <p>15 account. And he thought, well, maybe because there</p> <p>16 was this huge transaction and they didn't know where</p> <p>17 the funding went and that raised a red flag.</p> <p>18 Q. Okay. And so that was a voluntary</p> <p>19 disclosure that you made to Stacie?</p> <p>20 A. It was not voluntary, it was that I</p> <p>21 needed to prove -- show evidence of where that</p> <p>22 funding went.</p> <p>23 Q. But you referred to that as grasping at</p> <p>24 straws?</p> <p>25 A. I'm saying that the banking expert is</p>
<p style="text-align: right;">Page 126</p> <p>1 to disclose this information to your bookkeeper</p> <p>2 Stacie Hummel?</p> <p>3 A. I told her because I needed her to help</p> <p>4 me reconcile some transactions in my bank account to</p> <p>5 show you or the court or my attorneys that any</p> <p>6 questionable transactions, large transactions in my</p> <p>7 Wells Fargo account were business transactions into</p> <p>8 my Nevada State Bank account. And so she was able</p> <p>9 to pull those transactions for me for my records.</p> <p>10 Q. And why was it required to look at any</p> <p>11 bank account from Nevada State Bank?</p> <p>12 A. Because -- oh, to show that a large sum</p> <p>13 of money that was withdrawn from my Nevada State --</p> <p>14 I mean, from my Wells Fargo account was directly</p> <p>15 deposited into my business banking account with</p> <p>16 Nevada State Bank.</p> <p>17 Q. And when did that transaction occur?</p> <p>18 A. In 2006.</p> <p>19 Q. And why do you believe that that is</p> <p>20 related to the letter notices in August 2011?</p> <p>21 A. I don't believe that it is related.</p> <p>22 Q. So why did you have to -- feel like you</p> <p>23 had to disclose it?</p> <p>24 A. Because we hired an accounting -- a</p> <p>25 banking expert to analyze my bank account to find</p>	<p style="text-align: right;">Page 128</p> <p>1 looking for any small anything that could possibly</p> <p>2 have raised a red flag, and that was the only thing</p> <p>3 that he found. And I am showing proof that that</p> <p>4 funding was deposited directly into my business</p> <p>5 banking account.</p> <p>6 Q. Okay. That's your complete answer?</p> <p>7 A. Yes.</p> <p>8 Q. Why did you have to disclose the alleged</p> <p>9 statements Jeff Albright?</p> <p>10 A. Jeff Albright had just become my</p> <p>11 publicist, and I believe that was one of the very</p> <p>12 first checks that I had sent to him. I had just</p> <p>13 established my business working relationship with</p> <p>14 him. He deals with a lot of high-end celebrities</p> <p>15 and powerful executives.</p> <p>16 And I was very embarrassed that he may</p> <p>17 have already received a check that I sent him and</p> <p>18 had deposited it or cashed it and that it would be</p> <p>19 returned as insufficient funds. I did not want to</p> <p>20 be embarrassed by that and jeopardize my working</p> <p>21 relationship with him by something like that</p> <p>22 happening. And so I notified him before anything</p> <p>23 like that could happen as a heads up that, hey,</p> <p>24 something ridiculous is happening with my bank</p> <p>25 account, please disregard that check and I will</p>

<p style="text-align: right;">Page 129</p> <p>1 issue a new one to you. So that I could maintain my</p> <p>2 credibility and integrity with him.</p> <p>3 Q. Wells Fargo gave you a 30-day advance</p> <p>4 notice of the closing of your accounts, correct?</p> <p>5 A. Yes.</p> <p>6 Q. So why did you write a check to Jeff</p> <p>7 Albright if you did not believe that it would clear</p> <p>8 before the 30 days was up?</p> <p>9 A. I wrote the check to Jeff Albright, I got</p> <p>10 the letter about the account closure after I wrote</p> <p>11 the check to Jeff. I had no idea when that check</p> <p>12 was going to clear, 30 days or not. I was not going</p> <p>13 to take any risk that that check was going to be</p> <p>14 returned as insufficient funds.</p> <p>15 Q. Was there anything to prevent you from</p> <p>16 just telling Jeff Albright that you had decided to</p> <p>17 change accounts and that to just return the check</p> <p>18 and you would write a new one on your new account?</p> <p>19 MR. KISTLER: You mean asking her to lie,</p> <p>20 is that what you're saying? Is there anything</p> <p>21 preventing her from lying to him?</p> <p>22 MR. FITTS: Oh, no, I didn't say that.</p> <p>23 I'll rephrase that.</p> <p>24 BY MR. FITTS:</p> <p>25 Q. Did you understand my question?</p>	<p style="text-align: right;">Page 131</p> <p>1 to gain credibility in the world of a very high</p> <p>2 powered and intimidating music industry. And for me</p> <p>3 to have finally been able to garner and secure Jeff</p> <p>4 Albright, my publicist, who is friends with all</p> <p>5 these major artists -- Jimmy Page, Jeff Beck -- I</p> <p>6 did not want that guy, my new publicist, to think</p> <p>7 that I was a flake in any way, shape, or form.</p> <p>8 So before anything could happen, whether</p> <p>9 there was a 30-day notice or not, I was going to</p> <p>10 make sure that he was paid correctly and there would</p> <p>11 be no issues with any checks that I sent him. And</p> <p>12 so I revealed to him to show my integrity because,</p> <p>13 number two, as a yogi, I live for truth and die for</p> <p>14 truth.</p> <p>15 So the only thing I can ever say to you</p> <p>16 or to him or to anyone is the truth. And that's</p> <p>17 what I did, immediately, to handle the situation to</p> <p>18 let him know what kind of person that I am and I</p> <p>19 took care of him.</p> <p>20 Q. And so what did you tell Jeff?</p> <p>21 A. Well, I believe that you already have</p> <p>22 that information in e-mail, a copy of the e-mail</p> <p>23 that I wrote to Jeff.</p> <p>24 Q. Do you recall what you said?</p> <p>25 A. The gist of it is, "Hey, I don't know</p>
<p style="text-align: right;">Page 130</p> <p>1 A. Please repeat it.</p> <p>2 Q. Okay. No, I did not say lie.</p> <p>3 I said -- and let me make sure I</p> <p>4 understand what you said. You wrote the check to</p> <p>5 Jeff Albright before you received the closure</p> <p>6 notices?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And the closure notice gave a</p> <p>9 30-day advance notice, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So there was at least 30 days,</p> <p>12 then, for the check to be processed before the</p> <p>13 closing of your account, correct?</p> <p>14 A. Apparently, yes.</p> <p>15 Q. Okay. And so why could you not have just</p> <p>16 told Jeff that your -- you were changing checking</p> <p>17 accounts and either check -- cash the check or</p> <p>18 return it to you and you would provide him with a</p> <p>19 replacement, and that's all you had to tell Jeff?</p> <p>20 A. Number -- two things. Number one, I was</p> <p>21 so freaked out when I got that letter. Why would</p> <p>22 they close my account? What do they mean risk</p> <p>23 assessment? I was very worried and I was worried</p> <p>24 about my integrity with this publicist.</p> <p>25 You have no idea how hard I have worked</p>	<p style="text-align: right;">Page 132</p> <p>1 what's going on with my bank, but they have closed</p> <p>2 my accounts for something to do with a risk</p> <p>3 assessment. It's ridiculous, I'm outraged and if</p> <p>4 they don't fix it, there will be a lawsuit. And</p> <p>5 please disregard the check that I have sent to you,</p> <p>6 I will issue a new check," something to that effect.</p> <p>7 Q. And my question to you is, you could have</p> <p>8 just told Jeff, "Please give me the check back, I</p> <p>9 want to reissue another check." Because you did</p> <p>10 tell Jeff that, right?</p> <p>11 A. Tell him what?</p> <p>12 Q. Didn't you just tell me that you told</p> <p>13 Jeff -- you asked Jeff for the check back, that you</p> <p>14 would reissue a new check?</p> <p>15 A. I didn't ask him for the check back, I</p> <p>16 told him probably disregard that check and I'll</p> <p>17 issue you a new check.</p> <p>18 Q. Why couldn't you have just have said</p> <p>19 that?</p> <p>20 A. Because I live for truth, I die for</p> <p>21 truth. I told him the truth so that no matter what,</p> <p>22 I was covered and he knew what was going on.</p> <p>23 Q. So there was no requirement other than</p> <p>24 your own self-imposed requirement to get into other</p> <p>25 issues regarding the closure of your account to</p>

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1 Jeff?

2 A. I was required to tell him the truth of

3 the situation and that's what I did.

4 Q. Did he ask you?

5 A. How would he know to ask me?

6 Q. That's my point.

7 A. How would he know?

8 Q. That's my point.

9 A. I had to tell him because I did not want

10 him to receive a check that was not valid or

11 honored.

12 Q. All I'm asking is that you asked him to

13 disregard the check and you would do a replacement.

14 And my question to you is, why didn't you

15 just stop there?

16 A. Because I tell the truth.

17 Q. All right. Is that your complete answer?

18 A. Yes.

19 Q. There was no other requirement, was

20 there, to get into any other information with Jeff

21 Albright, was there?

22 A. The requirement to tell the truth what

23 was happening in the situation --

24 Q. Other than your own self-imposed

25 requirement of yogi?

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1 A. I think it's a legal requirement to

2 disclose to people you're conducting business with

3 what's going on with your financial obligations.

4 Q. And why -- what is your source of that

5 legal requirement?

6 A. To show him that I -- I am a person of

7 integrity, that I pay my bills on time, that if

8 there's any, issue that I'm going to take care of it

9 immediately.

10 Q. Well, it --

11 A. Give him a sense of security.

12 Q. Seems like you're talking about your own

13 self-imposed requirement.

14 Are you aware of any law that required

15 you to disclose that to Jeff Albright?

16 A. I don't think there's a law, but I think

17 a person with integrity would reveal the truth of a

18 situation.

19 MR. FITTS: All right. Ms. Johnson, it's

20 ten after -- a little bit close to ten after five

21 and I've been instructed by our discovery

22 commissioner that I am to stop. And that was during

23 the discovery conference this morning.

24 And so I'm going to suspend the

25 deposition now pursuant to her directive. And she

Page 135

1 has indicated that I am to notice the continuation

2 of your deposition on another date. And I'm

3 certainly willing to work with you the best I can on

4 that. So at this point, we'll suspend the

5 deposition.

6 THE VIDEOGRAPHER: This marks the end of

7 today's volume of the deposition of Lisa Johnson.

8 The time is 5:07 p.m.

9 We're off the record. Digital Tape

10 No. 3.

11 (Thereupon, the taking of the deposition

12 concluded at 5:07 p.m.)

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Page 136

1 CERTIFICATE OF DEPONENT

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3 PAGE LINE CHANGE REASON

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15 DECLARATION OF DEPONENT

16 I, LISA JOHNSON, deponent herein, do

17 hereby certify and declare under penalty of perjury

18 the within and foregoing transcription to be my

19 deposition in said action; that I have read,

20 corrected, and do hereby affix my signature to said

21 deposition.

22

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24

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LISA JOHNSON

Subscribed and sworn to before me this

day of , 2013.

NOTARY PUBLIC

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EXHIBIT PAGE ONLY

EXHIBIT 7

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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EXHIBIT 8

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

RSPN

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

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

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

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. The amended
responses are underlined below:

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

1 unduly burdensome or expensive, taking into account the needs of the case, limitations on the
2 parties' resources, and the importance of the issues at stake in the litigation.

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

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

11 GENERAL OBJECTIONS

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

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

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

25 4. No incidental or implied admissions will be made by the answers. The fact that
26 Plaintiff may respond or object to any interrogatory, or part thereof, shall not be deemed an
27 admission that Plaintiff accepts or admit the existence of any fact set forth or assumed by such
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interrogatory, or that such answer constitutes admissible evidence. The fact that Plaintiff responds to part of any interrogatory is not to be deemed a waiver by it of its objections, including privilege, to other parts to such interrogatory.

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

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

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

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

SECOND AMENDED ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

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

///

1 ANSWER TO INTERROGATORY NO. 1:

2 In August 2011, Plaintiff received a letter from Wells Fargo stating that Defendant
3 was closing a joint account that Plaintiff had with Michael Kaplan. The letter had no
4 explanation for the sudden and abrupt closing. Also in August of 2011, Plaintiff received a
5 letter from Wells Fargo stating that it was closing her Visa Business Account with her
6 company, Guitarfile, LLC. The letter states: "M22 Bank policy excludes lending to certain
7 types of businesses." That same month, Plaintiff also received a letter from Wells Fargo
8 stating that it was closing the operating account of Guitarfile, LLC. Thereafter, Plaintiff
9 contacted Ramy Zaki (an employee of Wells Fargo from the Beverly Hills branch) and other
10 employees at Wells Fargo numerous times to ascertain why Wells Fargo closed these
11 accounts. However, Wells Fargo refused to tell her why it closed her accounts.

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

2 Thereafter, on or about October 11, 2011, upon information and belief, Mr. Kaplan
3 spoke with Cheryl Taylor (assistant to Kirk Clausen President of Wells Fargo) and Kate
4 Wright (District Manager and Vice President of Wells Fargo) concerning the closure of
5 Plaintiff's and Mr. Kaplan's accounts at Wells Fargo. Ms. Wright advised Mr. Kaplan that
6 she said she could not tell why Wells Fargo closed the accounts but that she was sure its risk
7 management department had a good reason. That same day, Mr. Kaplan spoke with Andrew
8 Noll (Vice President of Wells Fargo) concerning the closure of Plaintiff's and Mr. Kaplan's
9 accounts at Wells Fargo. Mr. Kaplan also spoke with his personal banker Robert Martin
10 (President of BNY Mellon). Mr. Martin's contact information is as follows: 2200 Paseo
11 Verde Parkway, Suite 200, Henderson, NV 89052 (Telephone: 702.944.7136) Mr Martin
12 spoke with Kirk Clausen, who is the President of Wells Fargo Bank. Mr. Clausen told Mr.
13 Martin he did not know why the accounts had been closed, but that it must be a serious
14 national security issue for the accounts to have been closed in that manner.

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

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

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INTERROGATORY NO.5:

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

- (a) state the amount or range of damages claimed;
- (b) describe in specific detail how the amount or range of damages is calculated or determined;
- (c) describe what information and documents were used, referred to, or relied upon in calculating or determining the amount or range of damages;
- (d) describe in specific detail what assumptions were made, including the basis thereof, in calculating the amount or range of damages; and
- (e) identify each person who participated in the calculation or determination of the damages.

ANSWER TO INTERROGATORY NO. 5:

Plaintiff has suffered injury to her reputation and character in an amount to be determined by the fact-finder at trial. Further, Plaintiff had a banking relationship with Wells Fargo for several years and as a result of Wells Fargo's arbitrary and wrongful actions against Plaintiff, Plaintiff is trying to establish new banking relations. Plaintiff will need financing in the future with her book and merchandise projects and upon seeking financing could be put in a difficult position with future lenders because of Wells Fargo's actions. As discovery is continuing, Plaintiff reserves the right to supplement her answer to this interrogatory.

INTERROGATORY NO. 12:

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

///

1 ANSWER TO INTERROGATORY NO. 12 :

2 Plaintiff was required to disclose to her publicist that her accounts with Wells
3 Fargo were involuntarily closed due to allegedly suspicious activity. This disclosure
4 harmed Plaintiff's status and reputation in the business community, especially as Plaintiff
5 was required to disclose Wells Fargo's closures of her accounts to a business associate.
6 For additional information, please see Lisa J. 0087 to Lisa J. 0088 containing information
7 pertaining to Plaintiff's disclosure of information to publicist Jeff Albright. Mr.
8 Albright's contact information is as follows: 3070 Windward Plaza, Suite F-770,
9 Alpharetta, Georgia 30005. As discovery is continuing, Plaintiff reserves the right to
10 supplement her answer to this interrogatory.

11 INTERROGATORY NO. 13:

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

15 INTERROGATORY NO. 15:

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

20 ANSWER TO INTERROGATORY NO. 15:

21 Plaintiff has an obligation to disclose that Wells Fargo closed her bank accounts
22 when she seeks credit lines for her new business venture. This will harm Plaintiff as she
23 seeks credit and financing concerning her new book publication and the sales of ancillary
24 merchandise. Plaintiff's book is titled, "108 Rock Star Guitars." Plaintiff plans to
25 market and sell various items of merchandise in conjunction with this book, including
26 iPhone/iPad case covers, scarves, guitar picks, mini books, clothing, furniture, and t-
27 shirts. Wells Fargo's actions have negatively affected Plaintiff's ability to obtain
28 financing for her book and related merchandise. Plaintiff's joint bank account with

1 Michael Kaplan at Wells Fargo was utilized to help fund the book. Wells Fargo closed
2 that account, creating numerous difficulties given that Mr. Kaplan continues to bank at
3 Wells Fargo and not with Plaintiff's new bank. Plaintiff has been required to establish
4 new bank accounts and is waiting to seek financing until the release of her book in the
5 Fall of 2013. As discovery is continuing, Plaintiff reserves the right to supplement her
6 answer to this interrogatory.

7 INTERROGATORY NO. 17:

8 Identify all businesses of which you have had an ownership interest, making sure to
9 state the name of each business, the addresses of each business; your percentage of ownership;
10 the names of other owners; the nature of the businesses operations; and the period in which you
11 held the ownership interest.

12 ANSWER TO INTERROGATORY NO. 17:

13 Plaintiff possesses a 100% ownership interest in Guitarfile, LLC, which is located
14 at 9517 Canyon Mesa Drive Las Vegas, Nevada 89144. Guitarfile, LLC is in the business
15 of guitar photography. Plaintiff has had an ownership interest in Guitarfile, LLC for
16 three years. Plaintiff also possesses a 100% ownership interest in Bikram Yoga, Las
17 Vegas, which is located at 6787 West Tropicana Avenue, Las Vegas, NV 89103. Bikram
18 Yoga, Las Vegas is a yoga studio. Plaintiff has had an ownership interest in Bikram
19 Yoga, Las Vegas for two years. Plaintiff also possesses a 100% interest in Bikram Yoga
20 The Strip, which is located at 1037 S. Highland Drive #1037, Las Vegas, NV 89109.
21 Bikram Yoga The Strip is a yoga studio. Plaintiff has had an ownership interest in
22 Bikram Yoga The Strip for 1 ½ years. Plaintiff also possessed a 25% ownership interest
23 in Quad Digital, LLC, which was located at 9517 Canyon Mesa Drive, Las Vegas, NV
24 89144. This entity never began operating business and thus never engaged in any
25 business ventures. The other owners of Quad Digital, LLC were Geri Ellman (515
26 Avocado Avenue, Corona del Mar, CA 92625; 3220 S. Fair Lane, Suite 12, Tempe, AZ
27 85282; telephone: 949.633.3282), Suzanna Melendez (25531 Prado De Las Flores,
28 Calabasas, CA 91302; telephone: 818.451.8117), and Debi Baer (4672 Arriba Drive,

1 Tarzana, CA 91356; telephone: 818.298.0204 & 818.345.8180). As discovery is continuing,
2 Plaintiff reserves the right to supplement her answer to this interrogatory.

3 DATED this 8th day of August, 2013.

4 HUTCHISON & STEFFEN, LLC

5 

6 Mark A. Hutchison (4639)
7 Joseph S. Kistler (3458)
8 Timothy R. Koval (12014)
9 Peccole Professional Park
10 10080 West Alta Drive, Suite 200
11 Las Vegas, NV 89145

12 *Attorneys for Plaintiff Lisa Johnson*

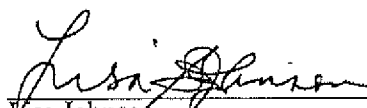
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VERIFICATION


I, LISA JOHNSON, declare as follows:

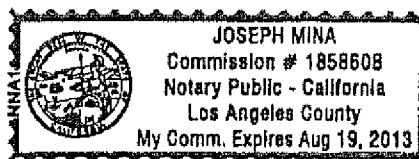
I have read the foregoing **SECOND AMENDED RESPONSES TO WELLS FARGO BANK, N.A. FIRST SET OF INTERROGATORIES** and know the contents thereof. I know the same to be true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and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

DATED this 7th day of August, 2013.


Lisa Johnson

SUBSCRIBED and SWORN before me this 8 day of August, 2013.


NOTARY PUBLIC in and for said
County and State



CERTIFICATE OF SERVICE

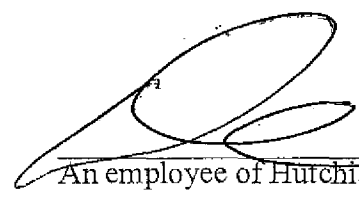
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 5th day of August, 2013, I caused the above and foregoing document entitled **LISA JOHNSON'S SECOND AMENDED RESPONSES TO WELLS FARGO BANK, N.A. FIRST SET OF INTERROGATORIES** to be served as follows:

- ☒ 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 Defendant



An employee of Hutchison & Steffen, LLC

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Respondent.

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

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

Appeal from the Eighth Judicial District Court
Case No. A655393

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

*Attorneys for Appellant
Lisa Johnson*

Document Index

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

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

Doc	Description	Vol.	Bates Nos.
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
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5	Plaintiff's Reply in Support of Motion to Compel and Opposition to Wells Fargo Bank's Countermotion for Protective Order	I	AA000204-000220
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32	Wells Fargo Bank, N.A.'s EDCR 7.27 Civil Trial Memorandum, filed 02/04/14	V	AA001082-001095


1 CERTIFICATE OF SERVICE

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

6 Kent F. Larsen (3463)
7 Paul Haire, Esq. (5656)
8 SMITH LARSEN & WIXOM
9 Hills Center Business Park
10 1935 Village Center Circle
Las Vegas, NV 89134
kfl@slwlaw.com
pmh@slwlaw.com
Facsimile 702-252-5006

11 *Attorneys for Defendants*

12
13
14 DATED this 26th day May, 2014.
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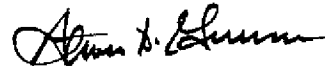
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Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.
Nevada Bar No. 5635
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 252-5002
Fax: (702) 252-5006
Email: kfl@slwlaw.com
scf@slwlaw.com
Attorneys for Defendant
Wells Fargo Bank, N.A.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,

Plaintiff,

v.

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

Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

**ORDER AFFIRMING DISCOVERY
COMMISSIONER'S OCTOBER 19,
2012 REPORT AND
RECOMMENDATIONS
AND
REMAND TO DETERMINE
PRIVILEGE LOG REQUIREMENT**

On February 8, 2013, the District Court conducted a hearing on Plaintiff's Objection to the Discovery Commissioner's October 19, 2012 Report and Recommendations. Joseph S. Kistler, Esq., appeared on behalf of Plaintiff. Stewart C. Fitts, Esq., appeared on behalf of Wells Fargo Bank, National Association ("Wells Fargo"). After due consideration of the parties' briefs, the pleadings and papers on file herein, and the arguments presented by counsel, and with good cause appearing,

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

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

AA000711

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Discovery
2 Commissioner's October 19, 2012 Report and Recommendations is AFFIRMED.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Wells Fargo shall
4 provide a privilege log pertaining to the subject matter of the October 19, 2012 Discovery
5 Commissioner Report and Recommendations.
6

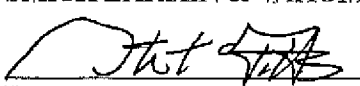
7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the subject matter
8 pertaining to the October 19, 2012 Discovery Report and Recommendations shall be remanded to
9 the Discovery Commissioner for purposes of determining which privilege log requirements (*see, e.g.,*
10 *Albourn v. Koe, M.D.*, Discovery Commissioner Opinion No. 10, November, 2001) can be required
11 without violating the provisions of the Bank Secrecy Act (31 U.S.C. § 5311 *et seq.*). For clarification
12 purposes, the District Court Judge is not specifically ordering the terms of any such privilege log.
13

14 DATED this 10th day of March, 2013.

15 
16 DISTRICT COURT JUDGE 


17
18
19 Submitted by:

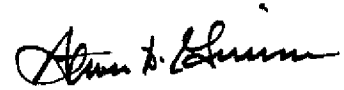
20 SMITH LARSEN & WIXOM

21 
22 Kent F. Larsen, Esq.
23 Nevada Bar No. 3463
24 Stewart C. Fitts, Esq.
25 Nevada Bar No. 5635
26 Hills Center Business Park
27 1935 Village Center Circle
28 Las Vegas, Nevada 89134
Attorneys for Defendant
Wells Fargo Bank, N.A.

Approved as to form and content:

HUTCHISON & STEFFEN

21 
22 Mark A. Hutchison, Esq.
23 Nevada Bar No. 4639
24 Joseph S. Kistler, Esq.
25 Nevada Bar No. 3458
26 Timothy R. Koval, Esq.
27 Peccole Professional Park
28 10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff Lisa Johnson


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON,

Plaintiff,

vs.

WELLS FARGO BANK NATIONAL
ASSOCIATION,

Defendant.

CASE NO. A-12-655393-C

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

TUESDAY, MARCH 12, 2013

TRANSCRIPT OF PROCEEDINGS
DISCOVERY CONFERENCE

APPEARANCES:

For the Plaintiff:

JOSEPH S. KISTLER, ESQ.

For the Defendant:

STEWART C. FITTS, ESQ.

RECORDED BY: RICHARD KANGAS, COURT RECORDER

1 Tuesday, March 12, 2013 at 9:52 a.m.

2
3 DISCOVERY COMMISSIONER BULLA: Johnson.

4 Everyone state their appearances, please.

5 MR. KISTLER: Good morning, Your Honor. Joseph Kistler, the law firm of
6 Hutchison & Steffen, on behalf of the plaintiff in this case.

7 DISCOVERY COMMISSIONER BULLA: Good morning.

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

10 DISCOVERY COMMISSIONER BULLA: Okay. Good morning. So the
11 Judge referred you back to me with instructions on the privilege log; determine the
12 scope of the privilege log that does not violate the privilege for the statute -- or the
13 statute. Okay, so you all need to enlighten me.

14 MR. KISTLER: Judge, this all came -- this all arose as a result of really the
15 following events and I think I can give you just a brief factual analysis and just
16 procedurally let you know where the Court -- where we are at this point.

17 DISCOVERY COMMISSIONER BULLA: Okay, if you could speak up just a
18 little bit, I'm having a hard time hearing you.

19 MR. KISTLER: Very well, Your Honor. This is a defamation case. My client
20 was defamed in our view by a bank official in connection with the closure of a joint
21 account. The bank has responded with a general denial as well as an affirmative
22 defense of truthfulness.

23 Now, Your Honor, prior to the defamation, the Bank explained its
24 rationale for closing the account as -- and that was in the moving papers and the
25 oppositions that were filed both before you as well as the Court -- that the Bank had

1 reviewed pursuant to its responsibilities of overseeing and managing risks in its
2 business operations and as a result of that, the account was closed. That was
3 before the defamation was stated that the account was closed based on criminal
4 activity or outstanding warrants on behalf of my client which is undeniably a false
5 accusation.

6 The Bank didn't say anything about any federal reporting requirements
7 or anything whatsoever in this pre-defamatory statement. Rather it was based on
8 our responsibilities to oversee and manage risks regarding our accounts.

9 After the lawsuit was filed, we said show us. Give us the information
10 pertaining to your oversight and management of risks in your business operations;
11 i.e., we asked for information which was objectively and obviously relevant in this
12 case. The Bank responded with a blanket assertion that all of our documents are
13 privileged under the Bank Secrecy Act and the Patriot Act. No documents were
14 provided. No privilege log was provided as well.

15 We filed a motion to compel that came before Your Honor and Your
16 Honor, based upon the -- at least in part if not totally on the nonbinding authority of a
17 California intermediate appellate court holding and the *Union Bank versus Superior*
18 *Court* case, held that the bank didn't need to provide documents that were privileged
19 under the Bank Secrecy Act or the Patriot Act. We --

20 DISCOVERY COMMISSIONER BULLA: I think I looked at the act themselves
21 too.

22 MR. KISTLER: You did, Your Honor.

23 DISCOVERY COMMISSIONER BULLA: Okay. Good, I'm glad I just didn't
24 rely on a nonbinding California case. That would have --

25 MR. KISTLER: That was the analysis that the Court was urged to follow by

1 the Bank and the Court did in fact at least consider that nonbinding authority.

2 DISCOVERY COMMISSIONER BULLA: I think we have a little statute in
3 Nevada that says we can look to California case law if there's no Nevada case law
4 on point as well, but --

5 MR. KISTLER: Yes, Your Honor.

6 DISCOVERY COMMISSIONER BULLA: -- be that as it may.

7 MR. KISTLER: Your Honor, can look at anything that Your Honor believes is
8 appropriate --

9 DISCOVERY COMMISSIONER BULLA: Well I should --

10 MR. KISTLER: -- even if it's nonbinding authority.

11 DISCOVERY COMMISSIONER BULLA: Right. I should look at what makes
12 sense though. Okay, go ahead.

13 MR. KISTLER: Your Honor, we objected to your report and
14 recommendations --

15 DISCOVERY COMMISSIONER BULLA: Right.

16 MR. KISTLER: -- and the District Court affirmed your recommendations,
17 however remanded back to you for a privilege log. And quite frankly, you know, the
18 -- the situation that we're at right now is -- going back to this nonbinding authority in
19 California, particularly at page 903, the California court said: We do not suggest that
20 all reports of suspicious activity are protected by the SAR, suspicious activity report
21 privilege. We're mindful that evidentiary privileges should be narrowly construed
22 because they prevent otherwise admissible and relevant evidence from coming to
23 light. I.e., a privilege short circuits our traditional truth testing mechanism of full
24 discovery in cross-examination. That's my --

25 DISCOVERY COMMISSIONER BULLA: Which is why I ordered some of the

1 records produced pursuant to a privilege log when you were here on October 5th.
2 So I'm not sure I understand what you told the Judge.

3 MR. KISTLER: Your Honor, what we told the Judge was that account
4 records; i.e., a ledger of deposits, withdrawals was given, but nothing else. And
5 there was no privilege log that was provided by the Bank.

6 DISCOVERY COMMISSIONER BULLA: Yes, and did you explain to the
7 Judge that the difficulty of doing that is the very nature of the statute itself which
8 would require disclosure identification of documents that are privileged?

9 MR. KISTLER: Your Honor, the Bank made that argument in front of Judge
10 Sturman and that is that by merely claiming the privilege, we would be violating the
11 privilege and that was deemed to be specious by the Court. It is a circular
12 argument --

13 DISCOVERY COMMISSIONER BULLA: All right. Well I'll take this under
14 advisement and I'll talk to the Judge. Okay?

15 MR. KISTLER: Very well, Your Honor.

16 MR. FITTS: Will Your Honor hear the Bank?

17 DISCOVERY COMMISSIONER BULLA: Do you want -- I'm sorry?

18 MR. FITTS: Will Your Honor hear the Bank on this?

19 DISCOVERY COMMISSIONER BULLA: Well you're winning. Do you want to
20 add something to it?

21 MR. FITTS: I think that I need to clarify portions of --

22 DISCOVERY COMMISSIONER BULLA: Okay.

23 MR. FITTS: -- the argument that was just made, Your Honor.

24 DISCOVERY COMMISSIONER BULLA: Please go ahead.

25 MR. FITTS: As Your Honor is aware, Judge Sturman affirmed Your Honor's

1 report and recommendation, but did in fact remand this matter back for a privilege
2 log and I want to point out that in our documents that were submitted before Your
3 Honor last fall, we did in our footnote I think 3 on page 12 express the --

4 DISCOVERY COMMISSIONER BULLA: And I remember that footnote.

5 MR. FITTS: Okay. Thank you. But we did express our concern that -- you
6 know, we understand the privilege log requirement. You know, we have this fairly
7 unique federal statute --

8 DISCOVERY COMMISSIONER BULLA: Right.

9 MR. FITTS: -- that if we do that, if we disclose everything under the Nevada
10 requirements of a privilege log, we could then violate the statute. That was our
11 concern and we expressed that to the Judge Sturman and in fact that's why Judge
12 Sturman remanded it back. She -- I've ordered the transcript. I don't know that she
13 said that was specious. I said -- I think she actually indicated --

14 DISCOVERY COMMISSIONER BULLA: Maybe a synonym for specious?

15 MR. KISTLER: Actually I think that was the exact word that, Your Honor --

16 MR. FITTS: Well we'll --

17 DISCOVERY COMMISSIONER BULLA: Okay. Do I --

18 MR. KISTLER: -- that she used.

19 DISCOVERY COMMISSIONER BULLA: Can I have a copy of that transcript?

20 MR. FITTS: I have not yet received it. I've ordered it.

21 DISCOVERY COMMISSIONER BULLA: Okay.

22 MR. FITTS: And so --

23 DISCOVERY COMMISSIONER BULLA: I'd like to look at that transcript
24 before I make a decision, and I would like to talk to the Judge too.

25 MR. FITTS: I'll provide it to counsel and to Your Honor as soon as I get it.

1 But I think it's important then to look at Your Honor's report and recommendation
2 that was affirmed. And, Your Honor, the Bank has customers that we try -- that we
3 want to work with and --

4 DISCOVERY COMMISSIONER BULLA: And some you don't, apparently.

5 MR. FITTS: Well, but then we have a federal statute that requires us to do
6 certain things. And so the Bank's intent is to comply with the federal statute. And
7 hopefully within the scope of that we can get along with a customer, but there are
8 sometimes we just can't do business with a customer, and that's recognized under
9 the Bank Secrecy Act.

10 DISCOVERY COMMISSIONER BULLA: Maybe we should just repeal all
11 these acts. Make it fair game.

12 MR. FITTS: Your Honor, I'll -- we'll follow the law. That's all we want to do.

13 DISCOVERY COMMISSIONER BULLA: Well, that's what I'm going to do.

14 MR. FITTS: Okay.

15 DISCOVERY COMMISSIONER BULLA: Let me ask you this question --

16 MR. FITTS: Could I --

17 DISCOVERY COMMISSIONER BULLA: -- there -- can I just --

18 MR. FITTS: Certainly.

19 DISCOVERY COMMISSIONER BULLA: -- have an answer to this question
20 because plaintiff's counsel rose or brought up this issue that not all of these S-A-R
21 documents -- SAR documents were privileged.

22 MR. KISTLER: Judge --

23 MR. FITTS: That's what I want to address --

24 DISCOVERY COMMISSIONER BULLA: Okay.

25 MR. FITTS: -- because --

1 MR. KISTLER: Judge, the *Union Bank* case that Your Honor at least
2 considered as well as Judge Sturman considered --

3 DISCOVERY COMMISSIONER BULLA: Right.

4 MR. KISTLER: -- specifically states that a suspicious activity report or any
5 document that refers to a suspicious activity report or any document that is attached
6 to a suspicious activity report is covered by the statute. I read to you at page 903
7 the intermediate appellate court's statement that clearly not all information that a
8 bank generates is -- for example, their own internal risk management reports; i.e.,
9 the kind of reports that apparently the Bank relied upon and written communications
10 to my client at the time that the account was closed are not so covered.

11 The trick here, Your Honor, is without a privilege log, we don't know if
12 an SAR was generated or not generated. We don't know if there's documents that
13 reference an SAR or not -- or don't reference an SAR. We don't know if there are
14 documents that are attached to an SAR or not. We don't know if any of that exists.
15 And that's why a privilege log is necessary to identify what documents the Bank has
16 and if a privilege is being claimed, upon what grounds that privilege is being
17 claimed.

18 The analysis that the Discovery Commissioner that -- I believe you
19 submitted in your opinion 10, November 2001, that we cited --

20 DISCOVERY COMMISSIONER BULLA: That would actually be my
21 predecessor but --

22 MR. KISTLER: Your predecessor. Your well-reasoned -- the well-reasoned
23 opinion by your predecessor specifically addresses -- well, in general addresses this
24 exact situation and that is a blanket we don't have to produce anything or any
25 information concerning what we have is not acceptable under our rules.

1 DISCOVERY COMMISSIONER BULLA: Sure we had the Bank Secrecy Act
2 and the Patriot Act at that time. Unfortunately we had some events that led to those
3 acts being implemented.

4 MR. FITTS: May I --

5 MR. KISTLER: And so --

6 MR. FITTS: May I just --

7 MR. KISTLER: And so --

8 MR. FITTS: -- complete my argument and then --

9 DISCOVERY COMMISSIONER BULLA: Just let plaintiff's counsel --

10 MR. FITTS: All right.

11 DISCOVERY COMMISSIONER BULLA: -- finish and then you can finish.

12 MR. KISTLER: And so, Your Honor, if there is no -- well clearly -- clearly this
13 was remanded to your -- to you by Judge Sturman saying a privilege log should be
14 provided and it's up to you to tailor what type of privilege log is required in this
15 case --

16 DISCOVERY COMMISSIONER BULLA: What if I'm telling you I can't do that
17 because of the nature of the act?

18 MR. KISTLER: Well you won't be telling us, you'll be telling Judge Sturman
19 that you can't do what she remanded -- the issue that she remanded back to you to
20 do.

21 DISCOVERY COMMISSIONER BULLA: Well I'd like to see the transcript and
22 I'm -- I appreciate your concern over my wellbeing, but I have to be able to comply
23 with that act.

24 Now let me ask you this question: Are these a series of documents that
25 I can review in camera, or does that violate the act?

1 MR. FITTS: No, we can submit those to Your Honor and I think I even -- in
2 my footnote on page 12 of our countermotion for protective order we indicated that if
3 Your Honor required, I believe the case law permits Your Honor to look at them in
4 camera and we would certainly be happy to do so.

5 DISCOVERY COMMISSIONER BULLA: So why don't you supply me with the
6 documents in camera. Why don't you supply me with the transcript. Let me talk to
7 the Judge so I make sure I completely understand what she wants me to do. And
8 then let me see if I'm capable of either fashioning an order for a privilege log and/or
9 if I really believe that I can't based on the nature of the act and what's being
10 requested, at least I can review the documents and make sure that they are as the
11 defendant represents them to be. And if not or if I think that there's something that
12 shouldn't be privileged, then we can talk about it via conference call.

13 MR. FITTS: That's perfectly fine with us, Your Honor.

14 DISCOVERY COMMISSIONER BULLA: Okay. Let's do it that way and I do
15 want to be fair to both of you, but I also can't do something that I can't do --

16 MR. FITTS: May I --

17 DISCOVERY COMMISSIONER BULLA: -- no matter who order -- I have to
18 do the right thing and if that gets me into trouble, it gets me into trouble. Writ me.
19 But I'm serious. I have to do the right thing and that's what I'm going to do.

20 So let me take a look at those documents in camera. Let me see if
21 there's a way to deal with this. Let me read the transcript so I fully make sure I
22 understand what the Judge is asking me to do, and if necessary, I'll talk to her as
23 well.

24 MR. FITTS: For the record, may I just --

25 DISCOVERY COMMISSIONER BULLA: Yes.

1 MR. FITTS: -- finish my response to --

2 DISCOVERY COMMISSIONER BULLA: Yes, you may.

3 MR. FITTS: -- counsel's argument? I think it's important to look at the report
4 and recommendation that was in fact affirmed by Judge Sturman, and I'm referring
5 to page 3, first of all, paragraph 6 which Judge Sturman affirmed and it says that
6 Wells Fargo is not required to provide any documents pertaining to the reasons why
7 Wells Fargo closed plaintiff's accounts.

8 And that's even broader than the Bank Secrecy Act, Your Honor,
9 because the Bank, under applicable law, state and federal law, has a right to do
10 business with anyone it wants just as a customer can. For example, if the plaintiff
11 came to the bank and said listen, I want to take my accounts to another bank, Wells
12 Fargo wouldn't have the right to go into court and say, Ms. Johnson, tell us why
13 you're making the change.

14 And nor does she have the right to know the reasons why we have
15 decided to do -- not to do business with her. There's just no case law that allows her
16 to do that and I think plaintiff recognizes that because their own third claim for relief
17 seeks declaratory relief in the form of an order requiring the Court to order us to
18 state why we closed the accounts and that --

19 DISCOVERY COMMISSIONER BULLA: So Mr. Fitts --

20 MR. FITTS: -- and yet they're going through discovery and they're short
21 circuiting the process and they've provided no case law whatsoever that we have to
22 disclose the reason why and I think that's what the report and recommendation
23 states.

24 DISCOVERY COMMISSIONER BULLA: So Mr. Fitts, what if one of your
25 customers came into one of your banks and screamed at the top of his lungs I want

1 to close my accounts because your upper management here has been indicted on
2 fraud and embezzlement, which wasn't true, and your bank lost 12 customers that
3 day because of that statement. Are you telling me that it would be okay to do that?

4 MR. FITTS: Not if the statement was untrue --

5 DISCOVERY COMMISSIONER BULLA: Right, so why --

6 MR. FITTS: Right.

7 DISCOVERY COMMISSIONER BULLA: -- why in reverse is that not a
8 possibility?

9 MR. FITTS: Well I -- let me address that because I think that's a critical point.
10 The Bank could file a defamation claim.

11 DISCOVERY COMMISSIONER BULLA: Which they have.

12 MR. FITTS: All right. And -- but that doesn't preclude --

13 DISCOVERY COMMISSIONER BULLA: Which the plaintiff has.

14 MR. FITTS: Yes, correct. And plaintiff has indicated that the Bank has
15 asserted the affirmative defense of the truth. Well we're -- the Bank is saying,
16 number one, under federal law we can't disclose the reason why and further under
17 applicable law we don't -- there's no law that requires us to. And in response to that
18 specific issue, Your Honor correctly said to plaintiff well that's a separate motion
19 that's separate and distinct from discovery. You should file, plaintiff, a motion to the
20 Judge asking the Judge to strike your affirmative defense. That's their course of
21 action, but they've never done that.

22 DISCOVERY COMMISSIONER BULLA: Well, I think the Judge, when I read
23 the minutes, agreed with me that you'd have to prove your defense of truth to be
24 able to assert it. But my concern is this, and listen, this is one of the outcomes of
25 the problem that these acts have created is that now we live in secrecy. And I'm not

1 saying I'm going to thwart federal law, I'm going to follow it. But the problem is what
2 happens in this case is the plaintiff may not be able to prove their case and that
3 concerns me. So I need to look at everything and then make a decision.

4 MR. FITTS: Well, I just think that -- and I'll just respectfully state for the record
5 if they want to strike our affirmative defense, then the proper course is to file a
6 substantive motion on that issue, not seek to circumvent that issue through
7 discovery.

8 DISCOVERY COMMISSIONER BULLA: I understand that which is why I
9 made that comment initially.

10 MR. FITTS: Your Honor's --

11 DISCOVERY COMMISSIONER BULLA: You're preaching to the choir.

12 MR. FITTS: Your Honor's report and recommendation also indicated that the
13 Bank is not required to disclose any information that would violate the Bank Secrecy
14 Act or any other federal authorities and that plaintiff is precluded from conducting
15 discovery regarding the reason why Wells Fargo closed its accounts.

16 DISCOVERY COMMISSIONER BULLA: Right, and I based that in part on the
17 Patriot Act, the Bank Secrecy Act, and the analysis of the one California case.

18 MR. FITTS: Right.

19 DISCOVERY COMMISSIONER BULLA: So I get that.

20 MR. FITTS: Okay. Now --

21 DISCOVERY COMMISSIONER BULLA: But now there's an issue of this
22 privilege log so that's what I've got to work on.

23 MR. FITTS: I understand. And just for the record, Your Honor, counsel
24 indicated that the state court case out of California, the *Union Bank of California*
25 case was not binding law. That's incorrect. What the California case addressed,

1 and this is the appellate court, is the California case was applying the federal
2 statute, the Bank Secrecy Act. And in that case the district court erroneously
3 ordered the bank to disclose protected documents and so the bank appealed it to
4 the appellate court and at that point the Department of Treasury, who was the
5 department and federal agency that was authorized under the Bank Secrecy Act to
6 promulgate federal regulations, they intervened vis-à-vis a motion -- amicus curiae
7 motion imploring the court that the court needs to take a look at the Department of
8 Treasury's federal regulations which are binding law.

9 And that's undisputed. Federal regulations -- federal agency's
10 regulations that have been made pursuant to congressional authority are binding
11 law.

12 DISCOVERY COMMISSIONER BULLA: And they preempt state law.

13 MR. FITTS: Yes. And in fact, the court went so far as to state that not only
14 are the federal regulations binding law, but if there's any ambiguity to the federal
15 regulations, the agency's own interpretation of that federal regulation is also
16 controlling.

17 And that's what this court said and therefore, the Department of
18 Treasury came in and said listen, this is our interpretation of the federal regulations.
19 They include you can't disclose whether or not a SAR was filed or one even exists.
20 The bank cannot disclose the contents of a SAR if one exists. The bank cannot
21 disclose any supporting documentation with respect to its investigation that was
22 conducted pursuant to the Bank Secrecy Act.

23 But the court did make a distinction and Your Honor correctly
24 recognized that last October. The court said well there are certain documents that
25 although may pertain to an investigation, they are not privileged. And the court

1 specifically said they were account documents or any transactional account --
2 transactional documents that would have been reflected in the account documents,
3 and the court said why are we allowing those to be disclosed? Because they would
4 have been created in the ordinary course of business regardless of whether or not a
5 bank was trying to fulfill its duties in the Bank Secrecy Act.

6 And so those are the only documents that are not privileged and Your
7 Honor ordered us to produce the account documents which we have done so. If
8 plaintiff would like specific transactional documents referenced in the account
9 documents, we can produce those. Her accounts though go back several years,
10 and so it's -- I think it's -- you know, I think if plaintiff wants certain account --
11 transactional documents, if they want to identify them, we'll be happy to produce
12 them.

13 But what the court stated and what the Department of Treasury stated
14 is that all other documents that are generated by the bank's anti-money laundering
15 investigative unit, those are protected. And the reason is because those documents
16 would have been generated or investigated -- they only would have been obtained
17 as a result of the Bank's efforts to comply with the Bank Secrecy Act.

18 And so if the Bank is required to disclose documents that they obtained
19 through their investigation and then they were to have to disclose that in civil
20 litigation, then anyone who's investigated would be allowed to circumvent the Bank
21 Secrecy Act and it would turn the act on its head and defeat its very purpose. And
22 that's the only position we have taken.

23 Now, Your Honor, in preparation for this hearing, I tried to find some
24 cases that would in fact reflect a privilege lot at least that the federal courts have
25 recognized as being appropriate under the Bank Secrecy Act, and if I may, I have a

1 copy and I'd give a copy to counsel.

2 MR. KISTLER: I haven't seen any of this, Your Honor.

3 MR. FITTS: Here you go.

4 MR. KISTLER: If in fact --

5 MR. FITTS: You've cited to it in your briefs.

6 May I approach?

7 MR. KISTLER: If it's --

8 DISCOVERY COMMISSIONER BULLA: That's fine. You may approach.

9 MR. KISTLER: If it's been cited in the briefs, then that is -- then I understand.

10 MR. FITTS: And as Your Honor can see, the limited privilege log that the
11 federal court apparently recognized is not the specific privilege log that has been
12 required in normal cases. In fact, the privilege log that was required was simply to
13 label the documents for identification purposes. If there's a specific date, provide
14 the specific date. If there's a whole bunch of dates on the document, just state that,
15 you know, there's a range of dates.

16 But then as far as the description, the court apparently recognized the
17 very -- very general description; i.e., okay, this document's a letter or so forth and it
18 has attachments. That's what was accepted in the federal case of *Cotton v.*
19 *PrivateBank and Trust Company*.

20 And the reason I bring that up, Your Honor, because I think it's very
21 important, plaintiff at the last hearing, and I think it's reflected in the minutes, said
22 well, at the very least we need the dates. Okay. But then he indicated well, I need
23 the author and the recipient. And we just can't do that and --

24 DISCOVERY COMMISSIONER BULLA: I understand the problem.

25 MR. FITTS: Okay.

1 DISCOVERY COMMISSIONER BULLA: I do.

2 MR. FITTS: And I just want to state for the record the reason why is if we
3 were to state the author and the recipient, it would disclose whether or not
4 something was reported to the Department of Treasury --

5 DISCOVERY COMMISSIONER BULLA: I understand that.

6 MR. FITTS: -- and then that would defeat the purpose, and so --

7 DISCOVERY COMMISSIONER BULLA: I get it.

8 MR. FITTS: -- I leave that with Your Honor.

9 DISCOVERY COMMISSIONER BULLA: Okay.

10 MR. FITTS: What the court did in this case is looked at the privilege log first
11 and then if the court had any questions, then what the court did is they asked the
12 bank to provide the documents the court had in question, along with an ex parte
13 letter describing why the bank thought that these documents were protected under
14 the Bank Secrecy Act and that's -- that's our argument, Your Honor. We simply will
15 want to abide by the case law and the federal statute and we'll do accordingly.

16 DISCOVERY COMMISSIONER BULLA: So let me ask this question: Are
17 you able to prepare a case log -- a privilege log in accordance with the log that was
18 prepared in the *Cotton* case?

19 MR. FITTS: Yes, Your Honor, I believe I could, yes, and --

20 DISCOVERY COMMISSIONER BULLA: Okay.

21 MR. FITTS: -- submit it to party -- to you and counsel.

22 DISCOVERY COMMISSIONER BULLA: So this is what you're going to do.
23 I'm going to continue this matter for 30 days. When is your trial date again?

24 MR. FITTS: It's January of next year.

25 DISCOVERY COMMISSIONER BULLA: Okay, thank you. Thirty days

1 continuance which will be?

2 THE CLERK: April 16, 9:30.

3 DISCOVERY COMMISSIONER BULLA: At 9:30 a.m. What I need you to do
4 in advance of that and it's possible you don't even have to come back although I
5 probably will so I can make a record of it, since if I have a conference call with you,
6 there won't be a record --

7 MR. FITTS: All right.

8 DISCOVERY COMMISSIONER BULLA: -- and I need to make a record of it.
9 What I need, Mr. Fitts, for you to do in preparation of that hearing is provide a
10 privilege log in accordance with the Cook case and --

11 MR. FITTS: Is that the *Cotton* case?

12 DISCOVERY COMMISSIONER BULLA: Or *Cotton*, I'm sorry.

13 MR. FITTS: Right.

14 DISCOVERY COMMISSIONER BULLA: The *Cotton* case. You need to
15 provide a copy of the privilege log to plaintiff's counsel. You need to provide a copy
16 to me, but I'm not going to have an ex parte communication. You need to just --

17 MR. FITTS: Very well.

18 DISCOVERY COMMISSIONER BULLA: -- submit the documents to me --

19 MR. FITTS: Happy to do so.

20 DISCOVERY COMMISSIONER BULLA: -- with the privilege log and I'll take a
21 look at it.

22 MR. FITTS: Is there a report and recommendation or is this just continued?

23 DISCOVERY COMMISSIONER BULLA: Just continued.

24 MR. FITTS: All right. Very well.

25 DISCOVERY COMMISSIONER BULLA: No report and recommendation.

1 MR. FITTS: Thank you, Your Honor.

2 DISCOVERY COMMISSIONER BULLA: Okay?

3 MR. KISTLER: Very well, Your Honor. Thank you.

4 DISCOVERY COMMISSIONER BULLA: Thank you very much. Thank you.

5 Sorry I can't offer CLE credit for Mr. Fitts's presentation.

6 MR. FITTS: Your Honor, I'm sorry for taking the time.

7 DISCOVERY COMMISSIONER BULLA: No, I --

8 MR. FITTS: But I -- I know it's a difficult issue.

9 DISCOVERY COMMISSIONER BULLA: I appreciate it. I'm just -- I enjoyed
10 it.

11 MR. FITTS: Sorry to bore everybody.

12 DISCOVERY COMMISSIONER BULLA: I'm sure everyone else did too. Now
13 they know more about federal law.

14 MR. KISTLER: And we know that a California intermediate appellate court
15 and -- opinion is binding on a Nevada court which is ridiculous, Your Honor.

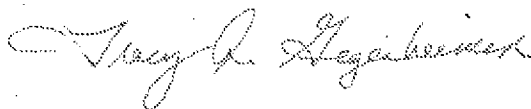
16 DISCOVERY COMMISSIONER BULLA: Yes, I --

17 MR. KISTLER: But thank you for your time.

18 DISCOVERY COMMISSIONER BULLA: You're welcome. Thank you.

19 [Proceedings concluded at 10:19 a.m.]

20 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
21 proceedings in the above-entitled case to the best of my ability.

22 

23
24 Tracy A. Gegenheimer, CERT*D-282
25 Court Recorder/Transcriber

SMITH LARSEN & WIXOM

A T T O R N E Y S

JAY EARL SMITH
KENT F. LARSEN
MICHAEL B. WIXOM
STEWART C. FITTS

SUZANNE R. FITTS
JOSEPH T. PRETE
KATIE M. WEBER
JORDAN J. BUTLER
CHET A. GLOVER

PAUL M. HAIRE
OF COUNSEL

HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134

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

www.slwlawfirm.com

March 26, 2013

VIA HAND DELIVERY

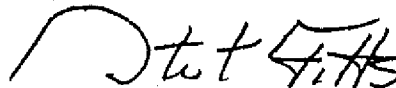
Discovery Commissioner, Bonnie Bulla
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

**Re: Lisa Johnson v. Wells Fargo Bank
Case No.: A-12-655393-C
Plaintiff's Motion to Compel and
Defendant's Countermotion for Protective Order**

Dear Commissioner Bulla:

Pursuant to your request during the March 12, 2013 hearing in this matter, I have attached Wells Fargo Bank's privilege log regarding documents which are privileged under the Bank Secrecy Act (31 U.S.C. 5811, *et seq.*) and related authorities. This privilege log has been served to Plaintiff.

Sincerely,



Stewart C. Fitts

SCF:dph

enclosures

cc: Joseph S. Kistler, Esq. / Tim Koval, Esq. (via facsimile only: 385-2086)

AA000732

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,)

CASE NO: A-12-655393-C

Plaintiff,)

DEPT: XXVI

v.)

~~SECOND SUPPLEMENTAL RULE~~

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

~~16.1 DISCLOSURES OF DEFENDANT
WELLS FARGO BANK N.A.~~

Defendants.)

Defendant Wells Fargo Bank National Association (herein, "Wells Fargo"), by and
through its attorneys, Smith Larsen & Wixom, hereby makes its Second Supplemental Rule

16.1 Disclosure as follows:

////

////

I. DOCUMENT

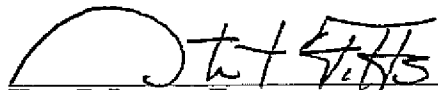
A. Privilege log regarding documents relating to the subject matter of this action which were generated by Wells Fargo in connection with its efforts to comply with the Bank Secrecy Act. This privilege log is pursuant to the scope set forth by the Discovery Commissioner at the March 12, 2013 discovery hearing and after the manner referenced in *Cotton v. PrivateBank and Trust Company*, 235 F.Supp.2d 809, 812 (N.D.Ill. 2002).

II. RESERVATIONS

The documents referenced in the privilege log are confidential and privileged pursuant to federal statutes, regulations, and applicable case law including, without limitation, the Bank Secrecy Act (31 U.S.C. §5318(g)), 12 C.F.R. §21.11(k), 31 C.F.R. §1020.320(e); the Gramm-Leach Bliley Act (15 U.S.C. §6801 et seq.), the applicable customer account agreements, and *Union Bank of California, N.A. v. Superior Court*, 130 Cal. App.4th 378, 29 Cal. Rptr.3d 894 (Cal. App. 2005). Wells Fargo is prohibited by the aforementioned law from disclosing this information.

DATED this 26 day of March, 2013.

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 Defendant
Wells Fargo Bank, N.A.

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

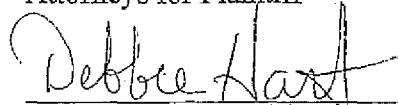
CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on March 26, 2013 a true copy of the foregoing

SECOND SUPPLEMENTAL RULE 16.1 DISCLOSURES OF DEFENDANT WELLS

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

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



an employee of Smith Larsen & Wixom

ATTORNEYS

HILLS CENTER BUSINESS PARK

1385 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

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

EXHIBIT A

EXHIBIT A
WELLS FARGO BANK, N.A. PRIVILEGE LOG RE BANK SECRECY ACT DOCUMENTS

AA000737

Bates Range	Date	Description of Document and Redactions	Privilege Claimed
WFB/BSA-0001-0199.	5/3/11	Memorandum/correspondence, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCP 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law.
WFB/BSA-0200-0211.	7/11/11	Memorandum and attachments, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCP 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law.
WFB/BSA-0212.	5/16/11; 9/24/12	Correspondence, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCP 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law.

Bates Range	Date	Description of Document and Redactions	Privilege Claimed
WFB/BSA-0213-0222.	12/6/11	Wells Fargo Bank Policies and Procedures re: Bank Secrecy Act, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCP 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law.
WFB/BSA-0223-0226.	Undated	Internal Memorandum and attachment regarding Bank Secrecy Act Policies and Procedures, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCP 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law.

End of document

SMITH LARSEN & WIXOM

ATTORNEYS

JAY EARL SMITH
KENT F. LARSEN
MICHAEL B. WIXOM
STEWART C. FITTS

SUZANNE R. FITTS
JOSEPH T. PRETE
KATIE M. WEBER
JORDAN J. BUTLER
CHET A. GLOVER

PAUL M. HAIRE
OF COUNSEL

HILLS CENTER BUSINESS PARK
1936 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134

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

www.slwlawfirm.com

April 9, 2013

VIA HAND DELIVERY BY LEGAL COUNSEL

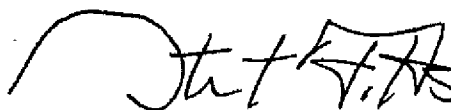
Discovery Commissioner, Bonnie Bulla
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: **Lisa Johnson v. Wells Fargo Bank**
Case No.: A-12-655393-C
Confidential Bank Secrecy Act
Documents for *In Camera* Review

Dear Commissioner Bulla:

To follow-up on your staff's written note in response to my prior letter of March 26, 2013, attached for *in camera* review are the documents referenced in Wells Fargo's privilege log. Wells Fargo has requested that I personally deliver these documents to Your Honor due to the highly confidential nature of this information under the Bank Secrecy Act (31 U.S.C. 5318(g)). If Your Honor deems it appropriate and necessary, I will be available to provide an *ex parte* explanation of these documents pursuant to the procedure adopted by the United States District Court in *Cotton v. PrivateBank and Trust Company*, 235 F. Supp. 2d. 809, 816 (N.D. Ill. 2002) (*ex parte* explanation by legal counsel of confidential Bank Secrecy Act documents is permissible where it is required by the court). Wells Fargo respectfully requests that these documents be returned to me after the conclusion of the *in camera* review.

Sincerely,



Stewart C. Fitts

SCF:dph

enclosures: Confidential Bank Secrecy Act documents referenced in Third Supplemental Rule 16.1 Disclosures of Defendant Wells Fargo Bank, N.A. Re: Amended Privilege Log of Documents Provided to the Discovery Commissioner for *In Camera* Review.

cc: Joseph S. Kistler, Esq. / Tim Koval, Esq. (via U.S. Mail and facsimile: 385-2086) (w/o enclosures of confidential *In Camera* review documents.)

AA000739

SMITH LARSEN & WIXOM

ATTORNEYS

HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

LAS VEGAS, NEVADA 89134

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

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

**THIRD SUPPLEMENTAL RULE 16.1
DISCLOSURES OF DEFENDANT
WELLS FARGO BANK N.A. RE:
AMENDED PRIVILEGE LOG OF
DOCUMENTS PROVIDED TO THE
DISCOVERY COMMISSIONER FOR
IN-CAMERA REVIEW**

Defendant Wells Fargo Bank National Association (herein, "Wells Fargo"), by and through its attorneys, Smith Larsen & Wixom, hereby makes its Third Supplemental Rule 16.1 Disclosure as follows:

///

///

I. DOCUMENT

A. Amended privilege log regarding documents relating to the subject matter of this action which were generated by Wells Fargo in connection with its efforts to comply with the Bank Secrecy Act. This privilege log is pursuant to the scope set forth by the Discovery Commissioner at the March 12, 2013 discovery hearing and after the manner referenced in *Cotton v. PrivateBank and Trust Company*, 235 F.Supp.2d 809, 812 (N.D.Ill. 2002). Pursuant to the Discovery Commissioner's request, the following documents referenced in the privilege log are concurrently being provided only to the Discover Commissioner for *in-camera* review:

1. WFB/BSA-0001-0199.
2. WFB/BSA-0200-0215.
3. WFB/BSA-0216.
4. WFB/BSA-0217-0226.
5. WFB/BSA-0227-0230.

II. RESERVATIONS

The documents referenced in the privilege log are confidential and privileged pursuant to federal statutes, regulations, and applicable case law including, without limitation, the Bank Secrecy Act (31 U.S.C. §5318(g)), 12 C.F.R. §21.11(k), 31 C.F.R. §1020.320(e); the Gramm-Leach Bliley Act (15 U.S.C. §6801 et seq.), the applicable customer account agreements, and *Union Bank of California, N.A. v. Superior Court*, 130 Cal. App.4th 378, 29 Cal. Rptr.3d 894 (Cal. App. 2005). Wells Fargo is prohibited by the aforementioned law

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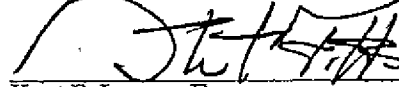
SMITH LARSEN & WIXOM

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

from disclosing this information.

DATED this 9th day of April, 2013.

SMITH LARSEN & WIXOM

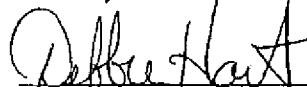


Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.
Nevada Bar No. 5635
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 252-5002
Fax: (702) 252-5006
Attorneys for Defendant
Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on April 9th, 2013 a true copy of the foregoing **THIRD SUPPLEMENTAL RULE 16.1 DISCLOSURES OF DEFENDANT WELLS FARGO BANK N.A. RE: AMENDED PRIVILEGE LOG OF DOCUMENTS PROVIDED TO THE DISCOVERY COMMISSIONER FOR IN-CAMERA REVIEW** was mailed, postage prepaid, to the following as noted:

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



an employee of Smith Larsen & Wixom

SMITH LARSEN & WIXOM

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

EXHIBIT A

EXHIBIT A
WELLS FARGO BANK, N.A. AMENDED PRIVILEGE LOG RE BANK SECRECY ACT DOCUMENTS

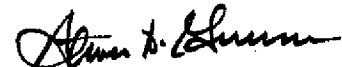
Bates Range	Date	Description of Document and Redactions	Privilege Claimed
WFB/BSA-0001-0199.	5/3/11	Memorandum/correspondence, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCB 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law, including, without limitation, <i>Union Bank of California v. Superior Court</i> 130 Cal. App. 4 th 378, 391-394, 29 Cal. Rptr.3d 894, 902-903 (Cal. App. 2005); <i>Cotton v. PrivateBank and Trust Company</i> , 235 F. Supp. 2d 809, 815, 816 (N.D.Ill. 2002) (reports, drafts, internal memoranda, and other documents prepared in connection with a financial institution's compliance with the Bank Secrecy Act reporting requirements are privileged).
WFB/BSA-0200-0215.	7/11/11	Memorandum and attachments, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCB 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law, <i>Union Bank of California v. Superior Court</i> 130 Cal. App. 4 th

Bates Range	Date	Description of Document and Redactions	Privilege Claimed
			378, 391-394, 29 Cal. Rptr.3d 894, 902-903 (Cal. App. 2005); <i>Cotton v. PrivateBank and Trust Company</i> , 235 F. Supp. 2d 809, 815, 816 (N.D.Ill. 2002) (reports, drafts, internal memoranda, and other documents prepared in connection with a financial institution's compliance with the Bank Secrecy Act reporting requirements are privileged).
WFB/BSA-0216.	5/16/11; 9/24/12	Correspondence, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRC 26(c)(7); Gramm-Leach-Bliley Act (15 U.S.C. 6801 <i>et seq.</i>), and related case law. <i>Union Bank of California v. Superior Court</i> 130 Cal. App. 4th 378, 392, 29 Cal. Rptr.3d 894, 903 (Cal. App. 2005) (communications pertaining to a financial institution's obligations under the Bank Secrecy Act are privileged).

Bates Range	Date	Description of Document and Redactions	Privilege Claimed
WFB/BSA-0217-0226.	12/6/11	Wells Fargo Bank Policies and Procedures re: Bank Secrecy Act, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCP 26(c)(7), and related case law, including, without limitation, <i>Union Bank of California v. Superior Court</i> 130 Cal. App. 4 th 378, 391-394, 29 Cal. Rptr.3d 894, 902-903 (Cal. App. 2005) (a financial institution's internal processes, policies and procedures pertaining to Bank Secrecy Act requirements are privileged).
WFB/BSA-0227-0230.	Undated	Internal Memorandum and attachment regarding Bank Secrecy Act Policies and Procedures, which Wells Fargo is legally prohibited from describing further.	Bank Secrecy Act (31 U.S.C. 5318(g)(2)); 12 C.F.R. 21.11(k); 31 C.F.R. 1020.320(e) Customer Account Agreements; NRCP 26(c)(7), and related case law, including, without limitation, <i>Union Bank of California v. Superior Court</i> 130 Cal. App. 4 th 378, 391-394, 29 Cal. Rptr.3d 894, 902-903 (Cal. App. 2005) (a financial institution's internal processes, policies, and procedures pertaining to Bank Secrecy Act requirements are privileged); attorney-client privileged.

End of Document

Page 4 of 4



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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9 LISA JOHNSON,

9

CASE NO. A-12-655393-C

10

Plaintiff,

11

vs.

12

13 WELLS FARGO BANK NATIONAL
ASSOCIATION,

13

14

Defendant.

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BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

16

17

TUESDAY, APRIL 16, 2013

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TRANSCRIPT OF PROCEEDINGS

19

DISCOVERY CONFERENCE

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APPEARANCES:

21

For the Defendant:

STEWART C. FITTS, ESQ.

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RECORDED BY: RICHARD KANGAS, COURT RECORDER

1 Tuesday, April 16, 2013 at 9:46 a.m.

2
3 MR. FITTS: Your Honor, Stewart Fitts on behalf of Wells Fargo. I have not
4 seen opposing --

5 DISCOVERY COMMISSIONER BULLA: Okay. That's okay because I'd
6 really like to get my other scheduling orders out of the way --

7 MR. FITTS: Okay.

8 DISCOVERY COMMISSIONER BULLA: -- and leave you all for last if that
9 would be okay.

10 [Off the record at 9:46 a.m.]

11 [Proceedings resumed at 9:56 a.m.]

12 DISCOVERY COMMISSIONER BULLA: Johnson. What are we going to do?

13 MR. FITTS: Your Honor, I walked outside to see if there were opposing
14 counsel. I didn't see anybody there.

15 DISCOVERY COMMISSIONER BULLA: Do you have the ability to call
16 opposing counsel's office?

17 MR. FITTS: Yes, I know their number.

18 DISCOVERY COMMISSIONER BULLA: Okay.

19 MR. FITTS: Do you want --

20 DISCOVERY COMMISSIONER BULLA: Why don't you do that and see
21 where they are.

22 MR. FITTS: Okay. Can I do that right here in the courtroom?

23 DISCOVERY COMMISSIONER BULLA: Sure.

24 MR. FITTS: Okay.

25 DISCOVERY COMMISSIONER BULLA: I'm just going to wait for you.

1 Who was the other lawyer that came in?

2 THE MARSHAL: That was Chris Sullivan with the Clark County Credit Union.

3 DISCOVERY COMMISSIONER BULLA: Okay. And I already called that

4 case.

5 THE MARSHAL: Yeah.

6 DISCOVERY COMMISSIONER BULLA: Is he out there or did he --

7 THE MARSHAL: I'll double check.

8 DISCOVERY COMMISSIONER BULLA: Okay.

9 MR. FITTS: I didn't even see him out there.

10 THE MARSHAL: He just came in briefly.

11 MR. FITTS: You know, I think my phone just ran out. Let me see. Wait a

12 minute here. See what happens.

13 DISCOVERY COMMISSIONER BULLA: Oh I -- I can call using my phone.

14 MR. FITTS: Here we go.

15 THE MARSHAL: I didn't see him.

16 DISCOVERY COMMISSIONER BULLA: Did you get it?

17 This is set for 10? 9:30?

18 THE CLERK: 9:30.

19 MR. FITTS: Thought it was 9:30.

20 DISCOVERY COMMISSIONER BULLA: Unfortunately, this is one of those

21 cases I really need both sides here on.

22 MR. FITTS: Hi Barbara, this is Stewart Fitts. I'm calling for either Sid Kistler

23 or Tim Koval, preferably Sid. I'm down at the -- okay, I'm down at the Discovery

24 Commissioner's courtroom and we had a 9:30 hearing and no one's appeared.

25 Okay.

1 THE MARSHAL: And I know that one guy looks like he's representing one of
2 the plaintiffs as well so --

3 THE CLERK: That's the one that was stipulated.

4 DISCOVERY COMMISSIONER BULLA: Yeah, that's the -- he's
5 (indiscernible) has a stipulated judgment.

6 MR. FITTS: I'm just on hold.

7 DISCOVERY COMMISSIONER BULLA: Thank you for doing this for me.

8 MR. FITTS: David. Is this David Childress? David, this is Stewart Fitts. I'm
9 calling on the Lisa Johnson versus Wells Fargo case. I'm actually down in the
10 Discovery Commissioner's courtroom. We had a hearing today at 9:30 and the
11 Discovery Commissioner has asked that I call to see if Sid or Tim Koval, who are
12 counsel of record, if they're planning on appearing today or if they're in route or what
13 the status -- okay. No, this was set for today at 9:30. We were here a few weeks
14 ago when the Discovery Commissioner ordered Wells Fargo to submit a privilege
15 log and the in camera documents and so today was the status hearing -- I think it
16 was March 12th that we were here last. All right.

17 I could put him on speaker if you want --

18 DISCOVERY COMMISSIONER BULLA: Or I can call on my phone. If we get
19 a number, I'll call and put him on my speaker phone.

20 MR. FITTS: Are they not in the office, either one? Oh. Okay. All right.

21 MR. CHILDRESS: Do you know if the Discovery Commissioner will allow
22 someone to be there telephonically?

23 MR. FITTS: I've got -- David, I have you on speaker. I don't know if -- in the
24 courtroom. No one else is here but myself and the Discovery Commissioner and
25 her staff.

1 MR. CHILDRESS: Hold on. Hold on one second.

2 MR. FITTS: They were asking if you would permit a telephonic appearance?

3 DISCOVERY COMMISSIONER BULLA: Yes, I will. I'll just need the phone
4 number that I need to call them and I'll call them on my phone so we can pick it up
5 easier.

6 MR. FITTS: Okay. I think their firm -- I have so many friends over there and I
7 deal with it. It's 385-2500, but I don't know if --

8 MR. CHILDRESS: Okay, I'm trying to raise Tim. Sid is on another line. Let
9 me go down there.

10 MR. FITTS: All right. David?

11 MR. CHILDRESS: Yes.

12 MR. FITTS: The Discovery Commissioner will allow a telephonic appearance.
13 She just needs to know what number the Court should call.

14 MR. CHILDRESS: It'll be the office number, but can I -- it'll be 385-2500.

15 MR. FITTS: Okay.

16 MR. CHILDRESS: And just have them ask for me and by that time I'll either
17 get Mr. Kistler or Mr. Koval.

18 MR. FITTS: All right. Do you want me to hold on or do you want the Court
19 just to --

20 MR. CHILDRESS: Can you hold on one minute?

21 MR. FITTS: Certainly.

22 MR. CHILDRESS: Thank you very much.

23 DISCOVERY COMMISSIONER BULLA: And who am I calling, David?

24 MR. FITTS: Oh that's David Childress. I believe he's the paralegal --

25 DISCOVERY COMMISSIONER BULLA: Okay, I don't want to call him.

1 MR. FITTS: -- for Mr. Kistler.

2 DISCOVERY COMMISSIONER BULLA: Who am I calling?

3 MR. FITTS: Oh, it's the law firm of Hutchison & Steffen. It'll be either Sid
4 Kistler or Tim Koval. I think that was what he's trying to find out.

5 DISCOVERY COMMISSIONER BULLA: Figure out. Okay.

6 [Pause]

7 MR. CHILDRESS: I'm sorry, Stewart -- Mr. Fitts. I can't get anyone for at
8 least 10:30 for another half hour. I don't know if that's going to be doable with the
9 Court.

10 DISCOVERY COMMISSIONER BULLA: No, it's not. We're going to reset it
11 and -- sir, can you hear me okay?

12 MR. FITTS: David, can you hear the Discovery Commissioner?

13 MR. CHILDRESS: I can hear her. I know she said she was going to reset it?

14 DISCOVERY COMMISSIONER BULLA: Yes, I'm going to reset it. Do you
15 have their calendars in front of you?

16 MR. CHILDRESS: Yes.

17 DISCOVERY COMMISSIONER BULLA: I would like to do it as soon as
18 possible. Mr. Fitts, when are you available?

19 MR. FITTS: Let's see here.

20 DISCOVERY COMMISSIONER BULLA: I'd like to do it either tomorrow or
21 Friday.

22 MR. CHILDRESS: (Indiscernible) can do it Thursday.

23 DISCOVERY COMMISSIONER BULLA: I don't have calendar on Thursday.
24 I have calendar Tuesday, Wednesday and Friday.

25 MR. CHILDRESS: Friday Mr. Koval is available.

1 DISCOVERY COMMISSIONER BULLA: Mr. Fitts?

2 MR. FITTS: I don't know how to do my calendar without hanging up.

3 DISCOVERY COMMISSIONER BULLA: Okay.

4 MR. FITTS: So I'll make myself available on Friday.

5 DISCOVERY COMMISSIONER BULLA: I'm sorry.

6 All right. I'm going to continue the matter to Friday at 9 a.m.

7 MR. CHILDRESS: Nine a.m. Thank you.

8 DISCOVERY COMMISSIONER BULLA: And if something changes because
9 Mr. Fitts needs to check his calendar after we hang up, he will let -- and it's Mr. --
10 who's going to be available, please? Sir, who's going to be here on Friday?

11 MR. CHILDRESS: Mr. Koval will be in attendance.

12 DISCOVERY COMMISSIONER BULLA: Mr. Koval?

13 MR. CHILDRESS: Yes.

14 DISCOVERY COMMISSIONER BULLA: Very good. Thank you so much.

15 MR. CHILDRESS: Sorry about that. Thank you.

16 DISCOVERY COMMISSIONER BULLA: Bye bye.

17 If that doesn't work, we'll move it.

18 MR. FITTS: Yeah, I'm free on Friday. Is today Tuesday?

19 DISCOVERY COMMISSIONER BULLA: Yes.

20 THE CLERK: Yes.

21 MR. FITTS: Thank goodness. Okay. So I'm open Friday morning.

22 DISCOVERY COMMISSIONER BULLA: Thank you very much. Would you
23 please also let me know what your hourly rate is next time --

24 MR. FITTS: Okay.

25 DISCOVERY COMMISSIONER BULLA: -- for this case?

1 MR. FITTS: Okay.

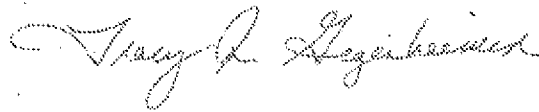
2 DISCOVERY COMMISSIONER BULLA: Thank you.

3 MR. FITTS: I will be back Friday morning. Thank you.

4 DISCOVERY COMMISSIONER BULLA: Okay.

5 [Proceedings concluded at 10:07 a.m.]

6 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
7 proceedings in the above-entitled case to the best of my ability.

8 

9
10 Tracy A. Gegenheimer, CERT*D-282
11 Court Recorder/Transcriber
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CLERK OF THE COURT

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9 LISA JOHNSON,

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Plaintiff,

11

vs.

12

13 WELLS FARGO BANK NATIONAL
ASSOCIATION,

13

14

Defendant.

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BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

16

17

FRIDAY, APRIL 19, 2013

17

18

TRANSCRIPT OF PROCEEDINGS

19

DISCOVERY CONFERENCE

20

APPEARANCES:

21

For the Plaintiff:

TIMOTHY R. KOVAL, ESQ.

22

For the Defendant:

STEWART C. FITTS, ESQ.

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25

RECORDED BY: RICHARD KANGAS, COURT RECORDER

1 Friday, April 19, 2013 at 9:50 a.m.

2
3 DISCOVERY COMMISSIONER BULLA: Jonson.

4 MR. KOVAL: Good morning, Commissioner.

5 DISCOVERY COMMISSIONER BULLA: Good morning. Could everyone
6 state their appearances, please?

7 MR. KOVAL: Tim Koval on behalf of plaintiff.

8 MR. FITTS: Stewart -- excuse me. Stewart Fitts on behalf of Wells Fargo
9 Bank.

10 DISCOVERY COMMISSIONER BULLA: You don't sound very good, Mr.
11 Fitts. Is it allergies?

12 MR. FITTS: I'll get through.

13 DISCOVERY COMMISSIONER BULLA: All right. So I don't know what
14 happened with your office the other day, but we set the motion over.

15 MR. KOVAL: Correct. Your Honor, I've never missed a hearing before. Sid
16 Kistler, he's been practicing for 30 plus years. I imagine that he hasn't before. It
17 was a mishap scheduling in our office. We've taken care of it. I assure you that it
18 won't happen again and we've addressed the issue fully.

19 DISCOVERY COMMISSIONER BULLA: Very good, and that's really why I
20 didn't penalize anyone and gave you a chance because your office is usually always
21 here. So I knew that there had to be something unusual about it. See if you're a --
22 if you're conscientious and I know you're always here, if something happens, I
23 usually do take that into account.

24 MR. KOVAL: And we've addressed it, Your Honor.

25 DISCOVERY COMMISSIONER BULLA: Okay. So at Judge Sturman's

1 request, I required defense counsel to provide a privilege log in accordance with
2 some case law that would allow a very simple privilege log to be prepared. At the
3 District Court Judge's request, I reviewed the privilege log and the documents in
4 camera, and based on my review, I am going to basically uphold my prior ruling and
5 reiterate the following:

6 To the extent that documents are either -- and we call them S-A-R, all
7 cap, reports and/or policies and procedures created to prepare the
8 S-A-R-S reports -- little s at the end, plural -- then these documents are protected.
9 And specifically the case law suggests and the statute suggests that any documents
10 that are prepared for the purpose of investigating or drafting or a possible S-A-R
11 report -- we don't need report on the end of that -- or a possible S-A-R are protected.

12 Number two, the factual supporting documentation that accompanies
13 any type of S-A-R that is prepared in the ordinary course of business; for example, a
14 deposit slip, is not privileged and must be produced. It is my belief that this is what I
15 previously recommended when I ordered that the customer -- in this case the
16 plaintiff's bank records be produced.

17 The other individual's records at issue, I indicated you probably needed
18 an authorization from that individual to get his banking records. But I had previously
19 ordered that. So there appeared to be some confusion at the District Court level
20 that maybe I said everything was privileged and that is not what I said. But I hope I
21 have clarified that now.

22 The Bank, however, does not have to identify which documents, if any,
23 accompanied a S-A-R or if any in fact existed.

24 Now, I don't know how much perhaps more clear I can make that.
25 Does anyone have any concerns, suggestions?

1 MR. KOVAL: Your Honor, if I may? With regard to the privilege log itself --
2 DISCOVERY COMMISSIONER BULLA: Yes.

3 MR. KOVAL: -- my understanding -- Sid Kistler was at the previous hearing.
4 My understanding is that there was reference to a case called *Cotton*, perhaps as
5 establishing a benchmark for what can be described in a privilege log. Correct.
6 With all due respect, I -- we've read *Cotton* and *Cotton* does not describe the
7 specific contents and it contains no analysis of the privilege log requirements. It
8 discusses what ultimately must be produced.

9 DISCOVERY COMMISSIONER BULLA: Right. Exactly. The -- and I said it
10 was a modified privilege log under federal rule. I mean I know this is shocking, but
11 federal law actually controls and trumps state law here. This is a matter of federal
12 substantive law that this Court is required to enforce.

13 So our privilege log requirements, yes, are much more detailed and
14 required and this privilege log would not pass muster under state court law
15 requirements, but it does pass muster under the federal laws because these S-A-Rs
16 which I've just abbreviated for ease but the suspicious activity reports which we're
17 talking about is governed by federal law. And in federal law, I can't have you have
18 access to that type of privilege log because it would what? It would undermine
19 federal law and it would create disclosures that you're not even allowed to know
20 about. If you don't like it, I would suggest you write Senator Reid, Senator Heller
21 and tell them to change the law.

22 MR. KOVAL: All right.

23 DISCOVERY COMMISSIONER BULLA: This is part of the Patriot Act. Love
24 the act. Love it.

25 MR. KOVAL: Well and with respect, Your Honor, that's my point is that the

1 case doesn't say that that's what the requirements of the privilege are. It passed --

2 DISCOVERY COMMISSIONER BULLA: Okay, right, but I'm saying that.

3 That's my recommendation.

4 MR. KOVAL: Fair enough.

5 DISCOVERY COMMISSIONER BULLA: I'm not even sure technically -- it's
6 very know -- difficult to know how to do a privilege log, but I read -- and it's just really
7 enjoyable reading. I read the transcript from Judge Sturman. I read the whole thing.
8 And what I think her plan was for me to fashion a privilege log that would be
9 consistent with the purposes of the federal rule. And that's what I did.

10 I could not utilize our privilege logs in the state court system because it
11 would have undermined the federal rule and possibly could have been in violation of
12 federal law. So that's why I adopted the privilege log as set forth in *Cotton* that
13 defense counsel recreated for the documents at issue here. I was ordered to do
14 that. I was ordered to review those documents and I was ordered to make a ruling,
15 and that's what I have done. So you're welcome to object to it, but I have to enforce
16 the federal law, which I'm going to do here.

17 So everything remains privileged for the reasons indicated, except for
18 the supporting factual documentation to any S-A-R that will need -- that is prepared
19 in the ordinary course of business and that would be turned over. But you will not
20 see it being turned over in conjunction with an S-A-R. They're not going to tell you
21 that. They're just going to give you the documents that they've prepared in the
22 ordinary course of business, which should have already been produced because I
23 previously ordered it.

24 MR. FITTS: Your Honor, what we did produce was all of the account --

25 DISCOVERY COMMISSIONER BULLA: Information.

1 MR. FITTS: I think we produced like the account application documents and
2 then the monthly account statements. They went back several years on the three
3 accounts at issue here.

4 DISCOVERY COMMISSIONER BULLA: Uh-huh.

5 MR. FITTS: And what I communicated with plaintiff's counsel is that there
6 could be a lot of -- you know, there could be a lot of checks. I mean there are a lot
7 of checks, numerous --

8 DISCOVERY COMMISSIONER BULLA: Well she's entitled to her own -- her
9 entire file. If she wants it, she can have it. You can make a cutoff point if you agree
10 to it. She'll have to pay the reasonable copy charges for --

11 MR. FITTS: Okay.

12 DISCOVERY COMMISSIONER BULLA: -- it under Rule 34. But if she wants
13 her entire banking record file, she can have it.

14 MR. FITTS: Okay.

15 DISCOVERY COMMISSIONER BULLA: I would recommend, plaintiff's
16 counsel, you really think about what you need.

17 MR. FITTS: And what I did is I just communicated to counsel if there were
18 specific transactions that they see in the monthly account statements to let us know,
19 or if they want all of them, let us know, but potentially there could be voluminous
20 documents going back several, several years.

21 DISCOVERY COMMISSIONER BULLA: Right.

22 MR. FITTS: But I'm happy to do that, Your Honor.

23 MR. KOVAL: And we can work that out.

24 DISCOVERY COMMISSIONER BULLA: All right. So now I need to go back
25 and see what motion I've got. Plaintiff's motion to compel and for award of

1 attorney's fees and I have the defendant's opposition and countermotion for
2 protective order. The motion to compel is denied. The motion for protective order is
3 granted. Based on a review of the privilege log that was provided pursuant to the
4 *Cotton*, C-o-t-t -- is it o-n or e-n?

5 MR. FITTS: I believe it's o-n.

6 DISCOVERY COMMISSIONER BULLA: I just had it here.

7 MR. KOVAL: C-o-t-t-o-n.

8 DISCOVERY COMMISSIONER BULLA: Thank you.

9 MR. KOVAL: Uh-huh.

10 DISCOVERY COMMISSIONER BULLA: *Cotton* decision, and based on a
11 review of the documents as required by the District Court Judge. Okay.

12 Mr. Fitts, you're preparing my report and recommendation. You're
13 going to run it by plaintiff's counsel to approve as to form and content. Please make
14 sure you clearly define the parameters that I've discussed.

15 MR. FITTS: I'd like to get a transcript so I'm absolutely perfect on this, and I'll
16 do it on an expedited basis. I hope I can get that within -- and submit it within 10
17 days. I hope that won't be a problem.

18 DISCOVERY COMMISSIONER BULLA: We'll get you a form.

19 MR. FITTS: Okay.

20 DISCOVERY COMMISSIONER BULLA: I know that you can actually have a
21 CD --

22 MR. FITTS: Thank you, sir.

23 DISCOVERY COMMISSIONER BULLA: -- and you can listen to it, if that
24 would be easier.

25 MR. FITTS: Okay.

1 THE CLERK: Status check is May 24th at 11 a.m. It's for the report and
2 recommendation only.

3 DISCOVERY COMMISSIONER BULLA: And so, plaintiff's counsel, you don't
4 need to be here, just defense counsel. Unless you get it done and then --

5 MR. FITTS: Okay.

6 DISCOVERY COMMISSIONER BULLA: -- you don't need to be here.

7 MR. FITTS: All right.

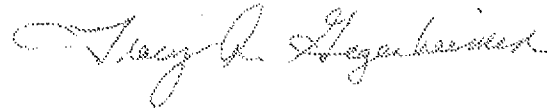
8 DISCOVERY COMMISSIONER BULLA: Okay? Thank you.

9 MR. FITTS: Thank you, Your Honor.

10 MR. KOVAL: Thank you.

11 [Proceedings concluded at 10:01 a.m.]

12 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
13 proceedings in the above-entitled case to the best of my ability.

14 

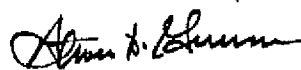
15 _____
16 Tracy A. Gegenheimer, CERT*D-282
17 Court Recorder/Transcriber
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ORIGINAL

1 DCRR

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.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

12 LISA JOHNSON, a Nevada resident,

13 Plaintiff,

14 v.

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

19 Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

DISCOVERY COMMISSIONER'S
REPORT AND
RECOMMENDATIONS ~~RE:~~
~~DISCOVERY LOG AND IN CAMERA~~
~~REVIEW OF DOCUMENTS~~

20
21 DISCOVERY HEARING DATE:

April 19, 2013

22 APPEARANCES:

23 1. Plaintiff Lisa Johnson:

Timothy R. Koval, Esq.
HUTCHISON & STEFFEN

24 2. Defendant Wells Fargo Bank, N.A.

Stewart C. Fitts, Esq.,
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

AA000764

I.

FINDINGS

1. On August 31, 2012, Plaintiff Lisa Johnson ("Plaintiff") filed a Motion to Compel.

2. On September 26, 2012, Defendant Wells Fargo ("Wells Fargo") filed an Opposition to Plaintiff's Motion to Compel and a Countermotion for Protective Order.

3. On October 5, 2012, the Discovery Commissioner conducted a hearing on Plaintiff's Motion to Compel and on Defendant's Countermotion for Protective Order.

4. On October 19, 2012, the Discovery Commissioner signed a Report and Recommendation which granted in part and denied in part Wells Fargo's Counter-Motion for Protective Order. Further, this Report and Recommendation granted in part and denied in part Plaintiff's Motion to Compel. This Report and Recommendation provided, in part, the following:

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

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

c. Wells Fargo is required to provide copies of all records pertaining to the accounts of Plaintiff that are the subject of this action, except that Wells Fargo is not required to provide any documents pertaining to the reasons why Wells Fargo closed Plaintiff's accounts.

5. On November 5, 2012, Plaintiff filed an objection to the Discovery Commissioner's Report and Recommendation regarding the scope of the protections afforded by the Bank Secrecy Act.

6. On February 8, 2013, the District Court Judge conducted a hearing on Plaintiff's Objection to the Discovery Commissioner's October 19, 2012 Report and Recommendations.

7. On March 7, 2013, the District Court Judge entered an Order affirming the Discovery Commissioner's October 19, 2012 Report and Recommendations. The Order also remanded this discovery matter to the Discovery Commissioner for the purpose of determining the scope of a privilege log that would not violate the provisions of the Bank Secrecy Act.

The Court further ordered that the Commissioner review an appropriate privilege log of the privileged documents in camera.

8. On March 12, 2013, the Discovery Commissioner conducted a hearing on the privilege log issue. At this hearing, the Discovery Commissioner requested that Wells Fargo submit a privilege log in a form similar to that which was considered by the federal court in *Cotton v. PrivateBank and Trust Company*, 235, F. Supp.2d 809, 816 (N.D.Ill. 2002).

9. On March 26, 2013, Wells Fargo submitted a privilege log to the Discovery Commissioner and to Plaintiff's counsel.

10. On April 9, 2013, Wells Fargo submitted an amended privilege log to the Discovery Commissioner and to Plaintiff's counsel. On this same date, Wells Fargo also submitted the documents referenced in the amended privilege log to the Discovery Commissioner for *in camera* review.

11. At a hearing on April 19, 2013, the Discovery Commissioner informed the parties that she had reviewed: (a) the transcript of the February 8, 2013 hearing that was conducted by the District Court Judge; (b) Wells Fargo's privilege log and the amendment thereto; and (c) had conducted an *in camera* review of the documents referenced in Wells Fargo's privilege log and the amendment thereto.

II. RECOMMENDATIONS

After reviewing the pleadings and papers on file herein, the briefs and documents submitted by the parties, and arguments of counsel, and with good cause appearing, the Discovery Commissioner issues the following recommendations:

...

1 IT IS HEREBY RECOMMENDED that the privilege log, and the amendment thereto,
2 submitted by Wells Fargo be deemed proper and adequate under the confidentiality provisions of the
3 Bank Secrecy Act (31 U.S.C. § 5311 *et. seq.*) and related federal regulations and case law.

4 IT IS FURTHER RECOMMENDED that the documents identified in Wells Fargo's privilege
5 log and in the amendment thereto (which documents have been reviewed *in camera* by the Discovery
6 Commissioner) be deemed confidential and protected under the provisions of the Bank Secrecy Act
7 (31 U.S.C. § 5311 *et. seq.*) and related federal regulations and case law. The Discovery
8 Commissioner reiterates that:
9

10 1. Documents which constitute a Suspicious Activity Report ("SAR"), if any SAR
11 exists, and/or the policies and procedures that are created to prepare a possible SAR are confidential
12 and protected. Further, any documents that are prepared in conjunction with investigating or drafting
13 a SAR (if one exists) or possible SAR are confidential and protected.
14

15 2. Factual supporting documentation that accompanied a SAR, if one exists, or possible
16 SAR, which have been prepared in the ordinary course of business are not protected. Specifically,
17 Plaintiff's bank records which have been created in the ordinary course of business are discoverable.
18 If Plaintiff requests that these ordinary bank records be produced, Wells Fargo will not be required
19 to identify which documents, if any, accompanied the investigation of a SAR (if one exists) or
20 possible SAR. Pursuant to NRCP 34(d), Plaintiff is required to pay the reasonable cost of copying
21 these type of ordinary bank records for purposes of disclosure.
22

23 3. Bank records of customers other than Plaintiff are not discoverable without the
24 consent of that customer. In this regard, the records pertaining to the joint-account which Plaintiff
25 opened at Wells Fargo with Michael Kaplan are discoverable inasmuch as Mr. Kaplan has signed
26 a written consent authorizing the disclosure of these records.
27
28 ...

1 IT IS FURTHER RECOMMENDED that Plaintiff's August 31, 2012 Motion to Compel is
2 DENIED with respect to the production of documents identified in Defendant's privilege log and
3 the amendment thereto, and any SAR-related information pertaining to these documents. .

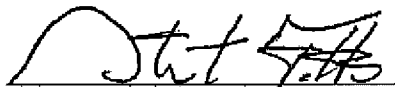
4 IT IS FURTHER RECOMMENDED that Defendant's September 26, 2012 Counter-Motion
5 for Protective Order is GRANTED with respect to the non-production of the documents identified
6 in Defendant's privilege log and the amendment thereto, and any SAR-related information pertaining
7 to these documents.

9 DATED this 1 day of May, 2013.



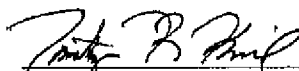
DISCOVERY COMMISSIONER

14 Submitted by:
SMITH LARSEN & WIXOM



17 Kent F. Larsen, Esq.
Nevada Bar No. 3463
18 Stewart C. Fitts, Esq.
Nevada Bar No. 5635
19 Hills Center Business Park
20 1935 Village Center Circle
Las Vegas, Nevada 89134
21 Attorneys for Defendant
Wells Fargo Bank, N.A.

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



Mark A. Hutchison, Esq.
Nevada Bar No. 4639
Joseph S. Kistler, Esq.
Nevada Bar No. 3458
Timothy R. Koval, Esq.
Nevada Bar No. 12014
Peccole Professional Park
10080 West Alta Drive, Suite 200
Attorneys for Plaintiff Lisa Johnson

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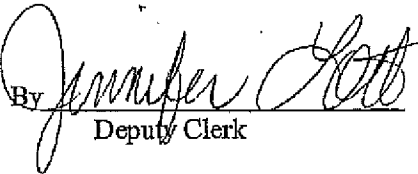
NOTICE

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 _____, 2013.

X Placed in the folder of Plaintiff's/Defendant's counsel in the Clerk's office on the 7 day of may 2013.

STEVEN D. GRIERSON, Clerk of the Court

By  Deputy Clerk

SMITH LARSEN & WIXOM

ATTORNEYS
HILLS CENTER BUSINESS PARK
1885 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

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

ORDER

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

_____ The parties having waived the right to object thereto,

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

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

* * *

AND

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

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

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set
for _____, 2013, at _____ a.m.

DATED this 20 day of May, 2013.



DISTRICT JUDGE

1 MSJD

2 Kent F. Larsen, Esq.

3 Nevada Bar No. 3463

4 Paul M. Haire, Esq.

5 Nevada Bar No. 5656

6 SMITH LARSEN & WIXOM

7 1935 Village Center Circle

8 Las Vegas, Nevada 89134

9 Tel: (702) 252-5002

10 Fax: (702) 252-5006

11 Email: kfl@slwlaw.com12 pmh@slwlaw.com

13 Attorneys for Defendant

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 LISA JOHNSON,

17 Plaintiff,

18 v.

19 WELLS FARGO BANK, NATIONAL
20 ASSOCIATION,

21 Defendant.

22 CASE NO.: A-12-655393-C
23 DEPT. NO.: 2624 DEFENDANT'S MOTION
25 FOR SUMMARY JUDGMENT26 Hearing Date: January 8, 201427 Hearing Time: 9:00 a.m.28 Defendant Wells Fargo Bank, National Association, by and through its undersigned
counsel, moves the Court for summary judgment pursuant to NRCP 56.

DATED: November 26, 2013

SMITH LARSEN & WIXOM

By: 

Kent F. Larsen, Esq.

Nevada Bar No. 3463

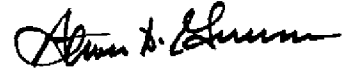
Paul M. Haire, Esq.

Nevada Bar No. 5656

1935 Village Center Circle

Las Vegas, Nevada 89134

Attorneys for Defendant



CLERK OF THE COURT

NOTICE OF MOTION

PLEASE TAKE NOTICE that DEFENDANT'S MOTION FOR SUMMARY JUDGMENT will be heard in Department 26 on the 8 day of Jan., 2014, at 9:00 a.m.

DATED: November 26, 2013

SMITH LARSEN & WIXOM

By: 

Kent F. Larsen, Esq.
Nevada Bar No. 3463
Paul M. Haire, Esq.
Nevada Bar No. 5656
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant

POINTS AND AUTHORITIES**Introduction**

Wells Fargo Bank ("WFB") elected to close three of Lisa Johnson's bank accounts. Johnson's long-time boyfriend, Michael Kaplan, approached WFB on Johnson's behalf to find out why. When he did, a WFB employee allegedly made defamatory statements about Johnson. Johnson has sued WFB for *defamation* and *false light*. Because WFB has declined to disclose the reason for closing the three accounts, Johnson has also sued for *declaratory relief* requiring WFB to disclose the reason. Summary judgment should be granted in favor of WFB as follows:

1. **Defamation:** A defamation claim requires unprivileged publication of a defamatory statement to a third person. First, the alleged statements made by WFB's employees were evaluative opinions, or were not directed at Johnson, and therefore not defamatory. Second, there was no unprivileged publication of the statements to a third person.
2. **False Light:** A false light claim requires publicity before the public of matters that place the plaintiff in a false light that a reasonable person would find highly offensive. First, the alleged offensive statements were not statements of fact. Second,

1 there was no publicity of any matters concerning Johnson before the general public
2 sufficient to support the claim.

- 3 3. **Declaratory Relief:** The Court has already determined that WFB cannot be compelled
4 to disclose the reason for closing Johnson's accounts because that information is
5 protected under the Bank Secrecy Act and other federal law. Because Johnson cannot
6 realize the aim of her declaratory relief claim, summary judgment is appropriate.

7 Statement of Allegations and Material Facts

8 For purposes of the motion only, the following allegations and statements are accepted as
9 true:

- 10 1. Johnson is Kaplan's girlfriend. The two have lived together since 2000. Kaplan
11 supports Johnson financially.¹ [*Kaplan Dep. Tr.* 10:25; *EX. 1: Johnson Dep. Tr.*
12 26:7-9; 31:20-24]
- 13 2. Johnson and Kaplan had a joint bank account with WFB. Johnson also had a
14 credit card account and an operating account with WFB for a business Johnson
15 owned called Guitarfile, LLC. [*Comp.* ¶¶ 4-5]
- 16 3. In August 2011, WFB notified Johnson in writing that it was closing the three
17 accounts (collectively the "Accounts"). [*EX. 2: Am. Resp to Interrog. No. 1; EX.*
18 1: *Johnson Dep. Tr.* 45:13 – 46:9]
- 19 4. After receiving notice of WFB's election to close the Accounts, Johnson
20 contacted WFB numerous times to find out why the Accounts were closed. WFB
21 refused to disclose the reason. [*EX. 2: Am. Resp to Interrog. No. 1*]
- 22 5. Kaplan also contacted WFB to find out why the Accounts were closed. Kaplan's
23 communications with WFB included the following:
- 24 a. On October 6, 2011, Kaplan met with WFB employee, Arash Dounel, and
25 asked him why the Accounts were closed. Dounel told Kaplan that he could
26
27

28 ¹ Johnson describes Kaplan as her "common law partner." [*EX. 1: Johnson Dep. Tr.* 14:18-19]

- 1 not see any reason why WFB closed the Accounts. Dounel also told Kaplan
2 that Johnson "must have some type of criminal background or have arrest
3 warrants out for her, implying that [WFB] closed the accounts due to
4 [Johnson's] alleged criminal activity." Dounel also told Kaplan that he
5 "should hire a private investigator to investigate [Johnson], as [Johnson] must
6 be in trouble with the law for the accounts to have been closed." [Comp. ¶¶
7 10-14; EX. 2: *Am. Resp to Interrog.* No. 1]
8
9 b. On October 11, 2011, Kaplan spoke with WFB employee, Cheryl Taylor,
10 assistant to WFB's president, Kirk Clausen. Kaplan also spoke with WFB
11 vice-president and district manager, Kate Wright, as well as WFB vice-
12 president, Andrew Noll. WFB's employees could not determine why the
13 Accounts had been closed. [EX. 2: *Am. Resp to Interrog.* No. 1]
14
15 c. On November 8, 2011, Kaplan met with an unidentified WFB employee,
16 perhaps named Josita Freeman, at a branch location who indicated the
17 Accounts were closed for "improper activity." [EX. 2: *Am. Resp to Interrog.*
18 No. 1; EX. 3: *Kaplan Dep. Tr.* 99:19 – 101:9]
19
20 d. On November 30, 2011, Kaplan wrote to WFB's vice-president of private
21 wealth, Chad Maze, about re-establishing a joint account with Johnson. Maze
22 responded that Kaplan could not open an account "if [Johnson] was associated
23 with it." Maze indicated that Kaplan could open an account in Kaplan's name,
24 or in the name of Kaplan's trust, "but including [Johnson] could not be one of
25 the options." [Comp. ¶¶ 21-22; EX. 2: *Am. Resp to Interrog.* No. 1]
26
27 6. Whenever Kaplan contacted WFB to find out why WFB closed the Accounts,
28 Kaplan was contacting WFB at Johnson's request and with her authority. [EX. 1:

- 1 *Johnson Dep. Tr.* 58:11 – 58:23; 58:24 – 59:2; 63:12-19; 66:21 – 67:20; 69:3-9]
- 2 7. Kaplan also acts as Johnson's attorney, so he had "full authority to check on
- 3 [Johnson's bank] accounts." Kaplan is Johnson's financial advisor as well. [EX.
- 4 1: *Johnson Dep. Tr.* 71:23 – 72:4; 85:12-13]
- 5 8. Kaplan also contacted persons outside WFB to find out why the Accounts were
- 6 closed. Kaplan's communications with non-WFB persons included the following:
- 7
- 8 a. Kaplan communicated with his BNY Mellon personal banker, Robert Martin,
- 9 about the closure of the Accounts. As a favor to Kaplan, Martin contacted
- 10 Kirk Clausen, president of WFB, about the Accounts. Clausen told Martin,
- 11 who then told Kaplan, that he did not know why WFB closed the Accounts,
- 12 but that "it must have been really serious...for [WFB] to take the action."
- 13 Clausen also told Martin that he wondered if "[Johnson] could even get on an
- 14 airplane and fly with whatever it [was]."² [EX. 1: *Johnson Dep. Tr.* 89:1-14;
- 15 91:19-25; EX. 3: *Kaplan Dep. Tr.* 88:22 – 91:12]
- 16
- 17 b. Kaplan contacted former U.S. Senator Richard Bryan about the Accounts,
- 18 who declined to assist Kaplan. [EX. 3: *Kaplan Dep. Tr.* 75:10 – 77:2]
- 19
- 20 9. Kaplan's contact with Martin and Martin's contact with Clausen was made on
- 21 Johnson's behalf and with her knowledge and authority. [EX. 1: *Johnson Dep. Tr.*
- 22 89:11-22; EX. 3: *Kaplan Dep. Tr.* 90:4-25]
- 23 10. Johnson has sued Wells Fargo for *defamation*, *false light* invasion of privacy, and
- 24 declaratory relief. [Comp. ¶¶ 28-41]
- 25
- 26
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² Johnson's recollection of Kaplan's recount of Martin's comments to him after speaking with Clausen were that Clausen did not know why the Accounts were closed but that "she [Johnson] must have done something very bad, must have a criminal record" for WFB to have closed the Accounts. [EX. 1: *Johnson Dep. Tr.* 89:1-5; 91:19-23] Johnson's written discovery responses state that Clausen indicated "it must be a serious national security issue for the [Accounts] to have been closed in that manner." [EX. 2: *Am. Resp. to Interrog.* No. 1]

11. Johnson's causes of action for *defamation* and *false light* are based upon (a) the statements WFB employee Dounel made to Kaplan about Johnson, and (b) the statements WFB president Clausen made to Martin about Johnson. [EX. 1: *Johnson Dep. Tr.* 87:17 – 92:19]

12. WFB's employees refused to disclose any information to Johnson or Kaplan regarding the reason for WFB's closure of the Accounts. Because of WFB's refusal to disclose the reasons for closing the Accounts, Johnson seeks declaratory relief to compel WFB's disclosure of the information. [Comp. ¶¶ 17, 42-46]

Argument and Authority

A. Standard of Review

Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1031 (2005). The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.* If a fact is not material, an issue over it does not defeat summary judgment. *Id.*

When a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must "do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment. *Id.* (quoting *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). The non-moving party "must, by

1 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for
2 trial.” *Id.*, (quoting *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)).
3 The non-moving party’s documentation must be admissible evidence, as he or she “is not entitled
4 to build a case on the gossamer threads of whimsy, speculation and conjecture.” *Id.* (quoting
5 *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1986)). However,
6 all of the non-moving party’s evidence must be accepted as true and all reasonable inferences
7 from the evidence are to be drawn in the non-moving party’s favor. *Id.*; *Weiner v. Beatty*, 121
8 Nev. 243, 246, 116 P.3d 829, 830 (2005).

10 **B. Summary judgment should be granted as to Johnson’s *defamation* claim because (1)**
11 **the alleged statements were not defamatory or otherwise do not support the claim,**
12 **and/or (2) there was no “publication” of the alleged defamatory statements or the**
13 **statements were “privileged.”**

14 Johnson claims WFB, through its employees, defamed her by stating or suggesting that
15 she has or is engaged in criminal activity. To prove defamation, a plaintiff must establish the
16 following: (1) the defendant made a false and defamatory statement concerning the plaintiff; (2)
17 an unprivileged publication of the statement was made to a third person; (3) the defendant was at
18 least negligent in making the statement; and (4) the plaintiff sustained actual or presumed
19 damages as a result of the statement. *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282
20 (2005); *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002) (emphasis
21 added).

- 22 1. The alleged statements made by WFB were not defamatory because either they
23 were merely statements of evaluative opinion or they were made in the context of
24 an internal reporting requirement that did not ascribe impropriety to any
particular person or entity.

25 Whether a statement is defamatory is a question of law. *Chowdhry v. NLVH, Inc.*, 109
26 Nev. 478, 484, 851 P.2d 459, 463 (1993). The words alleged to be defamatory are to be reviewed
27 in their entirety and in context to determine whether they are susceptible of a defamatory
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1 meaning. *Chowdhry*, 109 Nev. at 484, 851 P.2d at 463. Defamation involves a publication of a
2 false statement of fact. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87 (emphasis added). Statements of
3 opinion are not actionable because "there is no such thing as a false idea or a wrong opinion.
4 *PETA v. Bobby Berossini, Ltd.*, 111 Nev. 615, 622, 895 P.2d 1269, 1275 (1995). The test for
5 whether a statement constitutes fact or opinion is "whether a reasonable person would be likely
6 to understand the remark as an expression of the source's opinion or as a statement of existing
7 fact." *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (quoting *Nevada Ind.*
8 *Broadcasting v. Allen*, 99 Nev. 404, 410, 664 P.2d 337, 342 (1983), and *PETA*, 111 Nev. at 624,
9 895 P.2d at 1275). An evaluative opinion conveys "the publisher's judgment as to the quality of
10 another's behavior and, as such, it is not a statement of fact." *Id.*

11
12 Here, the statements attributed to WFB employees Dounel and Clausen are not
13 statements of fact but are statements of evaluative opinion. Dounel reportedly stated that Johnson
14 "must have some type of criminal background or have arrest warrants out for her" and that
15 Kaplan "should hire a private investigator to investigate [Johnson], as [Johnson] *must be* in
16 trouble with the law for the accounts to have been closed." Dounel's qualifying use of the terms
17 "must have" and "must be" belie statements of fact. Instead, the phrases clearly evidence
18 Dounel's lack of factual information, which, in turn, led to his offering an evaluative opinion in
19 response to Kaplan's inquiry about the Accounts.
20

21
22 Clausen's alleged statements to Martin are similarly statements of evaluative opinion.
23 Nothing in Kaplan's recount of what Martin told him Clausen said suggests that Clausen's
24 statements were based in fact. Clausen's statements were prefaced with his acknowledgement
25 that he did not know why WFB closed the Accounts. Thereafter, like Dounel, Clausen invoked
26 the qualifying clause "*must have*," which plainly evinced that what followed was merely his
27 evaluative opinion. He merely indicated his opinion that the closure of the Accounts must have
28

1 stemmed from something serious. In other words, Clausen expressed his judgment as to the
2 quality of the behavior that may have led to the closure of the Accounts.

3 Finally, the statement attributed to an unidentified employee of WFB that the Accounts
4 were closed due to "improper activity" is not subject to a defamatory construction either. In
5 response to Kaplan's inquiry about the Accounts, the unidentified employee at best merely
6 revealed WFB's internally reported nomenclature for the basis of the Accounts' closure. An
7 essential element of a defamation claim is that the allegedly defamatory statement(s) refer to the
8 plaintiff. *See Talbot v. Mack*, 41 Nev. 245, 272, 169 P. 25 (1917) ("the actionable words or
9 assertion must refer to the party bringing the action, at least with reasonable certainty"). Here,
10 the WFB employee attributed no improper activity to Johnson. The statement contained in
11 WFB's computer system merely represented a generic categorization of the reason for the
12 Accounts' closure. The statement of "improper activity" is not identified with any particular
13 person or entity. Because the statement was not specifically directed to Johnson, the words
14 cannot support Johnson's defamation claim.
15
16

- 17 **2. Assuming WFB's statements were defamatory, their communication to**
18 **Johnson's agent, Kaplan, in response to a request for information did not**
19 **constitute "publication" to a third-party; alternatively, the alleged defamatory**
20 **statements were "privileged."**

21 A defamatory statement is actionable only if it has been published. *M & R Inv. Co., Inc.*
22 *v. Mandarino*, 103 Nev. 711, 715, 748 P.2d 488, 491 (1987). "Publication...is the
23 communication of the defamatory matter to some third person..." *Id.* (quoting *Jones v. Golden*
24 *Spike Corp.*, 97 Nev. 24, 26, 623 P.2d 970, 971 (1981). Defamatory statements made only to the
25 person alleging defamation are not actionable. *Simpson v. Mars Inc.*, 113 Nev. 188, 192, 929
26 P.2d 966, 968 (1997) (adopting position of Restatement (Second) of Torts § 577(1) that
27 "publication of defamatory matter is its communication intentionally or by negligent act to one
28 other than the person defamed"). Defamatory statements made to the agent of a defamed person

1 are similarly not actionable. Two approaches exist to support this determination.

2 The first approach adopts the view that publication of defamatory statements to an agent
3 of the defamed plaintiff who is acting at plaintiff's behest and on her behalf is tantamount to a
4 publication to the plaintiff herself, and as such does not fulfill the publication requirement. *See*
5 *Ning Ye v. Holder*, 667 F.Supp.2d 103, 105 fn. 2 (D.C.D.C. 2009); *30 River Court East Urban*
6 *Renewal Co. v. Capograsso*, 383 N.J.Super. 470, 477, 892 A.2d 711, 715 (2006); *Delval v. PPG*
7 *Industries, Inc.*, 590 N.E.2d 1078, 1080-81 (Ct.App.Ind. 1992); *Kirk Jewelers v. Bynum*, 222
8 Miss. 134, 139, 75 So.2d 463, 464 (1954); *Beck v. Tribert*, 312 N.J.Super. 335, 350, 711 A.2d
9 951, 959 (1998); *McDaniel v. Crescent Motors*, 249 Ala. 330, 332, 31 So.2d 343, 344 (1947);
10 *Mims v. Metropolitan Life Ins. Co.*, 200 F.2d 800, 802 (5th Cir. 1952); *see also Restatement*
11 *(Second) of Torts* § 577 cmt. (e) (1977) ("[I]f the [allegedly defamatory] communication is in
12 answer to a letter or a request from the other or his agent, the publication may not be actionable
13 in defamation").
14
15

16 The second approach adopts the view that where the defamatory communication is in
17 answer to an inquiry or demand by the defamed party, or her agent, the communication is
18 privileged and not actionable unless the privilege is abused by defendant's publication of the
19 communication with actual malice. This view follows because, by reason of the relationship of
20 the agent to the person defamed, both the agent and defendant have a common interest in the
21 subject matter of the inquiry. *See Thomas v. Kaufmann's*, 436 F.Supp. 293, 297 (W.D.Pa. 1977)
22 (alleged defamatory statements by defendant to plaintiff's father made as a result of demand for
23 explanation after plaintiff was accused of stealing were privileged); *Millsaps v. Bankers Life Co.*,
24 35 Ill.App.3d 735, 742, 342 N.E.2d 329, 335 (1976) (alleged defamatory letter directed to
25 plaintiff's duly authorized agent in response to agent's inquiry was equivalent to a publication to
26 plaintiff himself and therefore privileged and not actionable); *Hellesen v. Knaus Truck Lines*,
27
28

1 *Inc.*, 370 S.W.2d 341 (Mo. 1963) (publication of defamatory statement to plaintiff's union agent
2 was privileged and thus not actionable because it was procured or invited by plaintiff or his
3 agent); *see also* Restatement (Second) of Torts § 596 (an occasion makes a publication
4 conditionally privileged if the circumstances lead any one of several persons having a common
5 interest in a particular subject matter correctly or reasonably to believe that there is information
6 that another sharing the common interest is entitled to know).

7
8 The Nevada Supreme Court has not addressed the issue of whether a defamatory
9 statement made only to an agent of a defamed person qualifies as a publication to a third person.
10 However, Nevada recognizes a common interest privilege that protects publication of defamatory
11 statements if the defendant made the statement "in good faith on any subject matter in which the
12 person communicating has an interest, or in reference to which he has a right or a duty, if it is
13 made to a person with a corresponding interest or duty." *Lubin v. Kunin*, 117 Nev. 107, 115, 17
14 P.3d 422, 428 (2001) (citing *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d
15 101 (1983) and *Bank of America Nevada v. Bourdeau*, 115 Nev. 263, 982 P.2d 474 (1999));
16 *Williams v. Univ. Med. Ctr of Southern Nev.*, 688 F.Supp.2d 1134, 1146-47 (D.Nev. 2010).
17 Whether such a privilege applies is a question of law. If the court determines that the privilege
18 applies, the plaintiff bears the burden of proving the defendant abused the privilege by
19 publishing the defamatory communication with actual malice. *Pope*, 121 Nev. at 317, 114 P.3d
20 at 283-84.

21
22
23 In this case, whether Nevada would adhere to the no-publication approach or would apply
24 the qualified privilege approach does not matter. The result is the same. Johnson's defamation
25 claim is unsustainable. Johnson admits that Kaplan was acting as her agent in each instance
26 where a WFB employee allegedly defamed Johnson. Kaplan plainly acted with Johnson's
27 knowledge and authority in making inquiry on behalf of Johnson regarding the reason for WFB
28

1 closing the Accounts. See Restatement (Second) of Agency § 1 (1958) (agency results from the
2 manifestation of consent by one person to another that the other shall act on his behalf and
3 subject to his control, and consent by the other so to act). Under the no-publication approach,
4 Johnson's claim for defamation is therefore barred. As Johnson's agent, Kaplan cannot be
5 regarded as a "third-party" for purposes of satisfying the *prima facie* publication element for a
6 defamation claim.
7

8 Johnson's defamation claim is also without merit under the qualified privilege approach.
9 The common interest privilege would apply to protect WFB's alleged defamatory statements
10 because the communications were made in response to Johnson's inquiries through her
11 designated agent, Kaplan. Accordingly, Johnson consented to, authorized, invited or procured the
12 publications. Moreover, the communications involved a subject matter in which the parties had a
13 common interest, namely the Accounts.³ Therefore, as a matter of law, WFB's communications
14 to Kaplan were privileged unless Johnson can prove that WFB acted with actual malice.
15

16 Under the doctrine of conditionally privileged communication, an absence of malice is
17 presumed. Malice on the part of a defendant sufficient to negate the privilege is the burden of the
18 person allegedly defamed. See e.g., *Lever v. Community First Bankshares, Inc.*, 989 P.2d 634,
19 638-39 (Wyo. 1999) (statements made by bank loan officer allegedly impugning character of
20 prospective borrower's real estate agent were conditionally privileged and agent failed to
21 demonstrate actual malice). Actual malice is a stringent standard that is proven by demonstrating
22 that a "statement is published with knowledge that it was false or with reckless disregard for its
23 veracity. *Pope*, at 317 (quoting *Pegasus*, 118 Nev. at 722, 57 P.3d at 92). Such malice involves
24 the subjective state of mind of the defendant and "focuses on the defendant's belief." *Schwartz v.*
25 *estate of Greenspun*, 110 Nev. 1042, 1046 n. 2, 881 P.2d 638, 641 n. 2 (1984). It is within the
26
27

28 ³ In the case of Martin, Kaplan bestowed upon him authority to make inquiry of Clausen, which authority he derived from Johnson.

1 power of the court to say as a matter of law that the motive of the alleged defamatory
2 communication was without malice. *Williams v. Standard-Examiner Pub. Co.*, 83 Utah 31, 27
3 P.2d 1, 17 (1933); *Hellesen*, 370 S.W.2d at 345. In this case, Johnson cannot establish that WFB
4 acted with actual malice. Indeed, on their face, the words used by WFB's employees suggest no
5 malicious intent. Because Johnson cannot present any evidence supporting a finding of actual
6 malice sufficient to move WFB's alleged defamatory statements out from under the common
7 interest privilege, summary judgment is appropriate.

9 **C. Summary judgment should be granted as to Johnson's *false light* claim because (1)
10 the alleged offensive statements were not statements of fact, and/or (2) there was no
11 "publicity" of the matters to the general public sufficient to support the claim.**

12 False light is one of several torts under the category of invasion of privacy that is "an odd
13 hybrid of defamation and intentional infliction of emotional distress." *Flowers v. Carville*, 310
14 F.3d 1118, 1132 (9th Cir. 2002). Nevada has adopted the Restatement (Second) of Torts elements
15 of a false light invasion of privacy claim. *See PETA v. Bobby Berosini, Ltd.*, 111 Nev. 615, 628-
16 29, 895 P.2d 1269, 1278 (1995). The Restatement provides:

17 One who gives publicity to a matter concerning another that places the other
18 before the public in a false light is subject to liability to the other for invasion of
19 privacy, if (a) the false light in which the other was placed would be highly
20 offensive to a reasonable person, and (b) the actor had knowledge of or acted in
reckless disregard as to the falsity of the publicized matter and the false light in
which the other would be placed.

21 Restatement (Second) of Torts § 625E (1977).

22 **1. The statements allegedly casting Johnson in a false light were not statements of**
23 **objective fact.**

24 Like defamation, false light invasion of privacy requires a statement of objective fact.
25 *Flowers*, 310 F.3d at 1132 (citing Restatement (Second) of Torts § 652E(b) (1977)); *see also*
26 *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1082-84 (9th Cir. 2002). As discussed above, the
27 statements attributed to Dounel, Clausen and the unidentified WFB employee were not
28

1 statements of fact. Rather, the statements were evaluative opinions or were generic
2 categorizations of the basis for the Accounts' closure that cannot be construed as necessarily
3 directed at Johnson. Therefore, Johnson cannot make out a claim for false light invasion of
4 privacy and summary judgment should be entered.

5
6 **2. There was no "publicity" of the matters to the general public sufficient to support the claim.**

7 What constitutes "publicity" giving rise to a false light claim is defined in Comment *a* of
8 Restatement (Second) of Torts § 652D as follows:

9
10 'Publicity'...means that the matter is made public, by communicating it to the
11 public at large, or to so many persons that the matter must be regarded as
12 substantially certain to become one of public knowledge...It is one of a
13 communication that reaches, or is sure to reach, the public. Thus, it is not an
14 invasion of the right of privacy...to communicate a fact concerning the plaintiff's
15 private life to a single person or even to a small group of persons.

16 Restatement (Second) of Torts § 652D, comm. a (1977); see Restatement (Second) of Torts §
17 625E, comment a (1977) ("On what constitutes publicity [under § 625E] and the publicity of
18 application to a simple disclosure, see § 652D, Comment *a*, which is applicable to the rule stated
19 [in § 625E]."). In other words, "it is not an invasion of the right of privacy, within the rule stated
20 in [§ 652D], to communicate a fact concerning the plaintiff's private life to a single person or
21 even a small group of persons." *Kuhn v. Account Control Technology, Inc.*, 865 F.Supp. 1443,
22 1448 (D.Nev. 1994) (quoting Restatement (Second) of Torts § 652D, comm. a (1977)); see also,
23 *Holmes v. Town of East Lyme*, 866 F.Supp.2d 108, 131 (D.Conn. 2012) ("publicity means that
24 the matter is made public, by communicating it to the public at large, or to so many persons that
25 the matter must be regarded as substantially certain to become one of public knowledge"); *Young*
26 *v. Barker*, 158 Mich.App. 709, 722, 405 N.W.2d 395, 401 (1987) ("communication must be
27 broadcast to the public in general or publicized to a large number of people"); *Lemnah v.*
28 *American Breeders Service, Inc.*, 144 Vt. 568, 575, 482 A.2d 700, 704 (1984) (a tortious

1 statement made to one person is insufficient to constitute the publicity necessary for an invasion
2 of privacy claim); *Robins v. Conseco Finance Loan Co.*, 656 N.W.2d 241, 244 (Ct.App.Minn.
3 2003).

4 In this case, the only publicity given by WFB to its allegedly offensive statements was to
5 Kaplan. The dissemination of the statements beyond Kaplan, if any, resulted strictly from
6 Kaplan's choice to publicize the statements to others. Johnson has produced no evidence to
7 establish that WFB's statements were communicated beyond her own agent, Kaplan. Because
8 Johnson cannot demonstrate this requisite element of a false light invasion of privacy claim,
9 summary judgment is appropriate.
10

11 **D. Summary judgment should be granted as to Johnson's *declaratory relief* claim**
12 **because the Court has already determined that WFB is not required to disclose the**
13 **reason for closing the Accounts as that information is protected under the Bank**
14 **Secrecy Act and other federal law.**

15 Johnson's declaratory relief claims seeks an Order from the Court mandating that WFB
16 provide her with "a detailed explanation as to why [WFB] decided to close her accounts and why
17 it alleged she was/is involved in criminal activities." [*Comp.* ¶ 46] Johnson's claim is already
18 resolved and therefore moot. On May 20, 2013, the Court affirmed and adopted the Discovery
19 Commissioner's Report and Recommendation (DCRR), which *inter alia* found and determined
20 as follows:

- 21 1. "[WFB] is not required to disclose the reasons why it closed [Johnson's] accounts, as
22 this information is protected under the Bank Secrecy Act and other federal law
23 authorities;" [EX. 4: DCRR 2:14-16] and
24
25 2. "the documents identified in [WFB's] privilege log and in the amendment thereto
26 (which documents have been reviewed in camera by the Discovery Commissioner)
27 [are] deemed confidential and protected under the provisions of the bank Secrecy Act
28 (31 U.S.C. § 5311 et seq.) and related federal regulations and case law." [EX. 4:

1 DCCR 4:4-9]

2 Because the Court has determined that WFB is not required to disclose the reason for its closure
3 of the Accounts, WFB is entitled to summary judgment as to Johnson's declaratory relief cause
4 of action.

5 **Conclusion**

6
7 The purpose of summary judgment is to avoid unnecessary trials when they would serve
8 no useful purpose. *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212,
9 984 P.2d 164 (1999). Summary judgment is also appropriate to "secure the just, speedy and
10 inexpensive determination" of an action. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106
11 S.Ct. 2548, 2555, 91 L.Ed.2d 265 (1986); NRCP 1. Here, the uncontroverted facts plainly entitle
12 WFB to judgment as a matter of law, making the time and expense associated with a trial
13 unnecessary.
14

15 DATED: November 26, 2013

16 SMITH LARSEN & WIXOM

17 By: 
18

19 Kent F. Larsen, Esq.
20 Nevada Bar No. 3463
21 Paul M. Haire, Esq.
22 Nevada Bar No. 5656
23 1935 Village Center Circle
24 Las Vegas, Nevada 89134
25 Attorneys for Defendant
26
27
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EXHIBIT 1

EXHIBIT 1

LISA JOHNSON
JOHNSON vs. WELLS FARGO

August 29, 2013
1-4

<p>1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 4 LISA JOHNSON, a Nevada 5 resident, 6 Plaintiff, 7 vs. 8 WELLS FARGO BANK, NATIONAL 9 ASSOCIATION; DOES 1 through 10 X, inclusive; and ROE 11 CORPORATIONS, 1 through X, 12 inclusive, 13 Defendants. 14 15 16 VIDEOTAPED DEPOSITION OF LISA JOHNSON 17 Taken at Smith, Larson & Wixom 18 at 1935 Village Center Circle 19 Las Vegas, Nevada 89134 20 21 On Thursday, August 29, 2013 22 at 2:16 p.m. 23 24 25 Reported by: Jualitta Stewart, CCR No. 807, RFR</p>	<p>Page 1 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 3 1 INDEX 2 3 WITNESS 4 LISA JOHNSON 5 Examination by Mr. Fitts 6 7 8 9 10 EXHIBITS 11 DEFENDANT'S 12 A - Handwritten Notes (Not Provided) 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>PAGE 5 112</p>
<p>1 APPEARANCES: 2 For the Plaintiff, Lisa Johnson: 3 4 JOSEPH S. KISTLER, ESQ. 5 Hutchison & Steffen 6 10080 West Alta Drive 7 Suite 200 8 Las Vegas, Nevada 89145 9 (702) 385-2500 10 11 For the Defendant, Wells Fargo Bank, N.A.: 12 13 STEWART C. FITTS, ESQ. 14 Smith, Larson & Wixom 15 1935 Village Center Circle 16 Las Vegas, Nevada 89134 17 (702) 252-5602 18 19 Also Present: Patti Lucchesi, videographer 20 21 22 23 24 25</p>	<p>Page 2 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 4 1 LAS VEGAS, NEVADA; 2 Thursday, August 29, 2013; 2:16 P.M. 3 4 THE VIDEOGRAPHER: This is Tape No. 1 to 5 the videotaped deposition of Lisa Johnson in the 6 matter of Lisa Johnson, a Nevada resident, versus 7 Wells Fargo Bank National Association, et al., being 8 heard before the District Court, Clark County, 9 Nevada. Case No. A-655393. 10 This deposition is being held at Smith, 11 Larsen & Wixom, 1935 Village Center Circle, Las 12 Vegas, Nevada 89134 on August 29th, 2013, at 13 2:16 p.m. 14 I'm Patti Lucchesi, I'm the videographer. 15 The court reporter is Jualitta Stewart. 16 Counsel, will you please introduce 17 yourselves and affiliations and the witness will be 18 sworn. 19 MR. KISTLER: Joseph Kistler of the law 20 firm of Hutchison & Steffen here in Las Vegas, 21 Nevada, appearing for and behalf of Ms. Johnson. 22 MR. FITTS: Stewart Fitts on behalf of 23 Wells Fargo Bank. 24 LISA JOHNSON, 25 having been first duly sworn, testified as follows:</p>

<p>1 EXAMINATION Page 5</p> <p>2 BY MR. FITTS:</p> <p>3 Q. Ms. Johnson, my name is Stewart Fitts,</p> <p>4 we've met before. And today is the day set for your</p> <p>5 deposition in the lawsuit you filed against Wells</p> <p>6 Fargo Bank.</p> <p>7 Is that the understanding of why you're</p> <p>8 here today?</p> <p>9 A. Yes.</p> <p>10 Q. Will you please state your full name for</p> <p>11 the record?</p> <p>12 A. Lisa Suzanne Johnson.</p> <p>13 Q. Can you spell that for us?</p> <p>14 A. L-i-s-a, S-u-z-a-n-n-e, J-o-h-n-s-o-n.</p> <p>15 Q. Have you used any other names or gone by</p> <p>16 other aliases?</p> <p>17 A. No. Oh, I was once married and I went by</p> <p>18 Lisa Johnson Hoogland.</p> <p>19 Q. Can you spell that for us?</p> <p>20 A. L-i-s-a; J-o-h-n-s-o-n; Hoogland,</p> <p>21 H-o-o-g-l-a-n-d.</p> <p>22 Q. What is your address?</p> <p>23 MR. KISTLER: One question. Ms. Johnson,</p> <p>24 it's kind of hard for me to hear.</p> <p>25 THE WITNESS: Okay.</p>	<p>1 residence? Page 7</p> <p>2 A. Yes. 301 Loma Metisse Road, Malibu,</p> <p>3 California 90265.</p> <p>4 Q. Any other addresses?</p> <p>5 A. No.</p> <p>6 Q. Out of the two addresses, where do you --</p> <p>7 can you give us an idea --</p> <p>8 A. My primary residence is Las Vegas,</p> <p>9 Nevada.</p> <p>10 Q. Okay. And you spend most of your time in</p> <p>11 Las Vegas?</p> <p>12 A. Yes. I spend -- it's probably 50/50</p> <p>13 Vegas, California right now.</p> <p>14 Q. Okay. What is your date of birth?</p> <p>15 A. October 20th, 1963.</p> <p>16 Q. Have you ever had your deposition taken</p> <p>17 before today?</p> <p>18 A. No, I have not.</p> <p>19 Q. You understand you're here today under</p> <p>20 oath and under the penalty of perjury if you were</p> <p>21 not to tell the truth?</p> <p>22 A. Yes, I understand.</p> <p>23 Q. You understand that your deposition today</p> <p>24 is being conducted to determine what your testimony</p> <p>25 is regarding the subject matter of your lawsuit?</p>
<p>1 MR. KISTLER: So you may need to speak up Page 6</p> <p>2 just a little bit more.</p> <p>3 THE WITNESS: Sure.</p> <p>4 MR. KISTLER: Try to think about speaking</p> <p>5 loudly enough so that this young lady down at the</p> <p>6 end of the table --</p> <p>7 THE WITNESS: Oh, okay.</p> <p>8 MR. KISTLER: That way --</p> <p>9 THE WITNESS: You're trying to get -- is</p> <p>10 there a mic on that camera?</p> <p>11 MR. KISTLER: It's not -- it's not an</p> <p>12 amplified mic, so if you can speak up so maybe I can</p> <p>13 hear you then.</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. KISTLER: You're very soft spoken.</p> <p>16 THE WITNESS: I'll try to speak up.</p> <p>17 MR. FITTS: Can you hear me okay?</p> <p>18 THE WITNESS: Pardon?</p> <p>19 MR. FITTS: Can you hear me okay?</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. FITTS:</p> <p>22 Q. Okay. Can you please state your address?</p> <p>23 A. My address is 9517 Canyon Mesa Drive, Las</p> <p>24 Vegas, Nevada 89144.</p> <p>25 Q. Any other addresses where you have a</p>	<p>1 A. Yes, I understand that. Page 8</p> <p>2 Q. There's a court reporter here, we have</p> <p>3 the videographer here as well, and there's a</p> <p>4 transcript being made of your testimony today and</p> <p>5 indeed of everything that's being said during the</p> <p>6 deposition today.</p> <p>7 You understand that?</p> <p>8 A. I do.</p> <p>9 Q. And so as your counsel just stated, we</p> <p>10 would like you to please speak loud enough so that</p> <p>11 for the benefit of the folks here that are helping</p> <p>12 us make that transcript.</p> <p>13 A. Sure.</p> <p>14 Q. Will you do that for us?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. One thing that the court reporter</p> <p>17 cannot do is transcribe two people speaking at the</p> <p>18 same time. And so I would like to propose just a</p> <p>19 very simple rule. And that is, I would ask that you</p> <p>20 wait until I'm completely done with my question</p> <p>21 before you provide me with your answer.</p> <p>22 A. Sure.</p> <p>23 Q. I will then do the same. I will wait</p> <p>24 until you're completely done with your answer before</p> <p>25 I ask you the next question.</p>

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1 A. No problem.
2 Q. Is that fair enough?
3 A. Fair enough.
4 Q. From time to time your counsel may raise
5 an objection and that is common during a deposition,
6 but you'll still need to answer the question even
7 though there's an objection, unless that objection
8 is raised on grounds of privilege and your counsel
9 instructs you not to answer.
10 Does that make sense to you?
11 A. Sure.
12 Q. We also need clear and audible responses.
13 For example, sometimes we nod our head during
14 general conversations or we say au-huh or huh-uh,
15 and we think we're communicating, but it's very hard
16 for the court reporter to make a clear record of
17 that. So I ask you to make clear audible responses.
18 A. Sure.
19 MR. KISTLER: The traditional answer to
20 that question or that advisement is "au-huh."
21 THE WITNESS: I know, I wanted to, but I
22 didn't. Thanks.
23 MR. FITTS: I appreciate that you are.
24 BY MR. FITTS:
25 Q. And I will ask that you give me full and

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1 complete answers based on your personal knowledge.
2 A. Sure will.
3 Q. I don't want you to speculate. If you
4 don't know an answer, please let me know. Okay?
5 A. H'm-h'm.
6 Q. If you don't understand a question that I
7 ask, will you please let me know?
8 A. Yes.
9 Q. And then I'll do my very best to rephrase
10 that question so that it's understandable.
11 A. You got it.
12 Q. Although I don't want you to speculate, I
13 am entitled to your best testimony based upon your
14 experience and your best estimate. And I'll give
15 you an example.
16 If I were to ask you today to estimate
17 the dimensions of this conference room, you could
18 probably give me a pretty good estimate but probably
19 not the precise measurement.
20 Does that make sense?
21 A. Yeah.
22 Q. So I'm entitled to your best estimate
23 based upon your experience.
24 In contrast, if I were to ask you the
25 dimensions of another conference room in this office

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1 that you've never been in, you would be speculating
2 because you've never been there, right?
3 A. Correct.
4 Q. Do you understand the difference between
5 speculation and giving me your best --
6 A. I think so, yeah.
7 Q. -- testimony based upon your experience?
8 A. Yes, I believe I do.
9 Q. If you need to take a break during your
10 deposition today, will you please let us know?
11 A. Yes.
12 Q. I'll try to take a periodic break because
13 our court reporter and videographer, they need
14 breaks periodically, so I'll try to do that. But if
15 you need a break before then, if you will please let
16 us know, we'll do the best to accommodate you.
17 A. Okay.
18 Q. Is that fair enough?
19 A. Yep. Yes, thank you.
20 Q. I do -- will ask you of one -- one
21 contingency on that is if I've asked you a question,
22 we'll need you to provide me an answer before we
23 take the break.
24 Is that fair enough?
25 A. Yes.

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1 Q. Okay. You're also going to have an
2 opportunity to review the transcript of your
3 deposition in a couple of weeks after it's prepared.
4 And you'll be able to make changes if you feel that
5 anything is incorrect. But I do want to let you
6 know that if you were to change the substance of an
7 answer, say if you change a yes to a no, I may be
8 able to comment on that and that may affect your
9 credibility at the trial in this matter.
10 Does that make sense?
11 A. It does.
12 Q. Okay. And that's why it's really
13 important to make sure that you understand my
14 questions and if you don't understand a question to
15 please let me know and I'll --
16 A. I will let you know.
17 Q. -- do the best to rephrase.
18 Are you on any medications or drugs or
19 alcohol that would impair your ability to understand
20 and answer questions?
21 A. No.
22 Q. Okay. Is there any reason why we cannot
23 go ahead with your deposition today?
24 A. No.
25 Q. Have you spoken with anyone other than

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1 your legal counsel in preparing for your deposition
2 today?
3 A. My partner, Michael Kaplan.
4 Q. Okay.
5 A. My accountant, my bookkeeper.
6 Q. And who is your bookkeeper?
7 A. Stacie Hummel.
8 Q. Stacie Hummel. Will you spell that for
9 us?
10 A. S-t-a-c-i-e, H-u-m-m-e-l.
11 Q. She's your accountant?
12 A. She's my bookkeeper.
13 Q. Bookkeeper. Is she with a particular
14 company?
15 A. Hummel & Associates.
16 Q. And what is her address?
17 A. I don't have it offhand right now. It's
18 on Charleston Boulevard in Las Vegas.
19 Q. Here in Las Vegas?
20 A. Yeah.
21 Q. Okay. And you've also spoken with
22 Michael Kaplan?
23 A. Correct.
24 Q. What did you discuss with Stacie Hummel
25 regarding your deposition?

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1 A. I explained to her what was happening
2 because I needed to get her to pull some references
3 from my bank statements for me.
4 Q. Okay. Anything else?
5 A. No.
6 Q. What did you discuss with Mr. Kaplan?
7 A. The entire scenario. Obviously, he's my
8 partner. I live with him so it started with
9 explaining to him the letters I was receiving and
10 his experience at the bank. So we've discussed
11 everything.
12 Q. So it sounds like you discussed it in
13 pretty detail?
14 A. Of course, he's my partner, so yes. He
15 knows everything.
16 Q. All right. When you say he's your
17 partner, what do you mean by that?
18 A. He's my common law partner, I live with
19 him.
20 Q. As opposed to a business partner or a
21 business --
22 A. Correct.
23 Q. -- associate?
24 Were there any particular issues that you
25 and Mr. Kaplan discussed where he suggested what

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1 facts occurred and when?
2 A. Yes, of course.
3 Q. Okay. Can you tell us what that was?
4 A. Any specifics?
5 Q. Yes.
6 A. Yes. We've spoken about every single
7 detail about everything that's happened.
8 Q. Is there anything that you did not recall
9 from your individual rec -- recollection that he
10 told you was a certain factual circumstance in this
11 case?
12 A. I'm not sure I understand your question.
13 Q. Okay. Did Mr. Kaplan suggest what you
14 should say in your deposition today?
15 A. No.
16 Q. Okay. Did you look at any documents in
17 preparing for your deposition today?
18 A. I have reviewed all of the documents, all
19 the legal documents that have gone back and forth
20 between our law firms, so yes, of course, I reviewed
21 all the documents.
22 Q. Anything outside the scope of those
23 documents?
24 A. Yes, I've looked online about other cases
25 like this.

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1 Q. Okay. Tell us what you've -- what you
2 looked at online.
3 A. Oh, well, you can search online and Wells
4 Fargo has a habit of closing people's bank accounts
5 for no reason. Sloppy risk -- risk assessment on
6 it. So I'm not the only one it's happening to.
7 Q. Did you make any copies of any research
8 that you've conducted?
9 A. Not as of yet. Anyone can go on the
10 Internet and find these things.
11 Q. What site did you go on?
12 A. Just Google it. I don't have a
13 particular site in front of me right now.
14 Q. Give me your best recollection.
15 A. Google Wells Fargo account of closures.
16 Q. Any others?
17 A. Risk assessment.
18 Q. You did not -- you did not copy or print
19 out any --
20 A. No.
21 Q. -- Information you read?
22 A. No. It's readily available on the
23 Internet.
24 Q. You -- you indicated that Wells Fargo,
25 it's common knowledge that Wells Fargo closes

<p style="text-align: right;">Page 17</p> <p>1 accounts for --</p> <p>2 A. Don't put words in my mouth. I didn't</p> <p>3 say it's common knowledge. I said that you can</p> <p>4 search online and you can see that Wells Fargo has a</p> <p>5 habit, is what I said, of closing people's accounts</p> <p>6 and putting risk assessment on it. I'm not the only</p> <p>7 one, there's many cases.</p> <p>8 Q. What do you mean by a habit?</p> <p>9 A. Exactly that. That there are many cases</p> <p>10 of Wells Fargo closing people's accounts for no</p> <p>11 reason.</p> <p>12 Q. How many cases did you read about?</p> <p>13 A. I couldn't say right now. Probably 20 or</p> <p>14 30.</p> <p>15 Q. Okay. And you said for no reason?</p> <p>16 A. For risk assessment and for no reason.</p> <p>17 These are words that are used by other people on the</p> <p>18 Internet. "Wells Fargo closed my bank for no</p> <p>19 reason." By the way, it's not just Wells Fargo,</p> <p>20 it's other banking institutions as well.</p> <p>21 Q. Do you have any personal knowledge</p> <p>22 regarding any of those other instances that you read</p> <p>23 online other than what you read about online?</p> <p>24 A. Just what's online.</p> <p>25 Q. Okay. And do you know who created those</p>	<p style="text-align: right;">Page 19</p> <p>1 story.</p> <p>2 Q. So you're -- you're -- you're really just</p> <p>3 speculating, then, when you're saying that Wells</p> <p>4 Fargo has a habit of closing customer accounts --</p> <p>5 A. No, I'm not speculating.</p> <p>6 Q. I'm not done -- without -- you don't have</p> <p>7 any personal knowledge. You're reading what other</p> <p>8 people have said and you don't know who those</p> <p>9 individuals are, do you?</p> <p>10 A. No, I don't.</p> <p>11 Q. Okay. You don't know what their</p> <p>12 motivations are, do you?</p> <p>13 A. Yes, I do.</p> <p>14 Q. What are their motivations?</p> <p>15 A. They're trying to find out why Wells</p> <p>16 Fargo is closing their account and not giving them</p> <p>17 answers why.</p> <p>18 Q. Have you -- have you ever met any of</p> <p>19 those people?</p> <p>20 A. Have not.</p> <p>21 Q. You can't vouch for their credibility one</p> <p>22 way or another, can you?</p> <p>23 A. No, I cannot.</p> <p>24 Q. So you really don't know much about the</p> <p>25 underlying facts or circumstances?</p>
<p style="text-align: right;">Page 18</p> <p>1 online comments?</p> <p>2 A. You can read about it all online. All</p> <p>3 the people's names and e-mails are on there.</p> <p>4 Q. I'm asking you if you know who the</p> <p>5 authors are?</p> <p>6 A. I don't personally know them, no.</p> <p>7 Q. So you don't know with any personal</p> <p>8 knowledge regarding the validity regarding any</p> <p>9 account closure that you read about online?</p> <p>10 A. Online, I think that there's so many</p> <p>11 cases that are listed, I don't know any of those</p> <p>12 people personally. I don't think all of them are</p> <p>13 wrong.</p> <p>14 Q. And why don't you think all of them are</p> <p>15 wrong?</p> <p>16 A. Because if you take 10, 15, 20, 30 people</p> <p>17 and they're all saying the same thing and they're</p> <p>18 all different people from all over the country, I</p> <p>19 don't think all of them are wrong. That's my</p> <p>20 opinion.</p> <p>21 Q. But you don't have any personal knowledge</p> <p>22 as to whether those people are in collusion or not,</p> <p>23 do you?</p> <p>24 A. Since I don't know any of these people</p> <p>25 no, I don't. I just know that I have a similar</p>	<p style="text-align: right;">Page 20</p> <p>1 A. No, I think I know quite a bit.</p> <p>2 Q. Based on what?</p> <p>3 A. Based on my own experience and backup</p> <p>4 that this is happening to a lot of other people.</p> <p>5 Q. Okay. Based solely on what you read?</p> <p>6 A. Based on my research on the Internet,</p> <p>7 yes.</p> <p>8 Q. And that's it?</p> <p>9 A. It's based on my personal experience and</p> <p>10 research on what's on the Internet. And that's</p> <p>11 quite a lot, it's not just it.</p> <p>12 Q. Do you know how many customers Wells</p> <p>13 Fargo has?</p> <p>14 A. I don't.</p> <p>15 Q. Okay. But you've read 15 or 20 on online</p> <p>16 that have been closed?</p> <p>17 A. Or more, yeah.</p> <p>18 Q. And you've never met these folks?</p> <p>19 A. No, I haven't.</p> <p>20 Q. You have no personal knowledge regarding</p> <p>21 the reasons they were closed?</p> <p>22 A. No.</p> <p>23 Q. But you're making a firm judgment that</p> <p>24 these folks that you've never met must be telling</p> <p>25 the truth?</p>

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1 A. Seems clear that there's a problem with
2 banking institutions closing people's accounts.
3 Q. Is this common how you make your
4 determinations in life?
5 A. I look at all areas of evidence and
6 factual things that I read and so I base my
7 decisions and my judgments on things in life on,
8 first of all, my own personal experiences, the
9 experiences of others, and how I feel about the
10 situations and how I see things play out in the
11 world.
12 Q. But we're talk -- we're not talking about
13 your own experience with your own accounts, we're
14 talking about people you don't know, right?
15 A. That have posted very similar stories
16 online, so it validates what's happened to me.
17 Q. All right. Is that your complete answer?
18 A. Yes.
19 Q. Where were you born?
20 A. Corning, California.
21 Q. What are the names of your parents?
22 A. Doreen Johnson.
23 Q. Will you spell that?
24 A. D-o-r-e-e-n, J-o-h-n-s-o-n. And my
25 father's name is Garry, G-a-r-r-y; Johnson,

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1 J-o-h-n-s-o-n.
2 Q. What is their address?
3 A. My mother lives in Penticton British
4 Columbia Canada, P-e-n-t-i-c-t-o-n, British
5 Columbia. You can put B.C., Canada. And my father
6 lives in Rochester, R-o-c-h-e-s-t-e-r, Alberta,
7 Canada.
8 Q. Are your parents divorced?
9 A. Yes.
10 Q. Do you have any siblings?
11 A. Yes.
12 Q. Who are they?
13 A. I have one sister Colette, C-o-l-e-t-t-e;
14 Johnson, J-o-h-n-s-o-n.
15 Q. Where does she live?
16 A. She lives in Toronto, Ontario, Canada.
17 Q. Any other siblings?
18 A. I have a stepbrother and a stepsister.
19 Q. What are their names?
20 A. Arlin, A-r-l-i-n, Quinton, Q-u-i-n-t-o-n.
21 And Maureen, M-a-u-r-e-e-n, Wyatt, W-y-a-t-t.
22 Q. Where do they live?
23 A. Maureen Wyatt lives in Brantford,
24 Ontario, Canada. And Arlin lives in St. Albert,
25 it's S-t, period, Albert, Alberta, Canada.

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1 Q. And who is the natural -- who are the
2 natural parents?
3 A. Doreen Johnson and Garry Johnson.
4 Q. Where did you live growing up? Are you
5 from Canada?
6 A. I lived in California until I was seven.
7 I was born here. And then my family, who are all
8 from Canada, moved back to Canada. So I grew up in
9 Canada from age 7 to 23. I'm a dual citizen. I
10 moved back to the United States when I was 23.
11 Q. Did you graduate from high school?
12 A. I did.
13 Q. What high school?
14 A. St. Albert High.
15 Q. City?
16 A. St. Albert, Alberta, Canada.
17 Q. Are you currently married?
18 A. No.
19 Q. Were you previously married?
20 A. Yes.
21 Q. And you told us your husband's -- your
22 prior husband's name. What was his name again?
23 A. His first name is Wouter, W-o-u-t-e-r,
24 last name Hoogland, H-o-o-g-l-a-n-d.
25 Q. And where does he live?

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1 A. Holland.
2 Q. When did you marry Wouter?
3 A. Oh, I believe that was 1995.
4 Q. And how long were you married to him?
5 A. Year and a half.
6 Q. Where did you live with Wouter while you
7 were married?
8 A. Memphis, Tennessee.
9 Q. Do you have any children?
10 A. No.
11 Q. You live here in Las Vegas and also in
12 Malibu?
13 A. I live in Las Vegas.
14 Q. Okay.
15 A. The Malibu is a vacation home.
16 Q. You spend half your time at each place?
17 A. Roughly.
18 Q. Okay. Will you identify for us the
19 people who live with you here in Las Vegas?
20 A. Michael Kaplan.
21 Q. Is he the only individual?
22 A. Yes.
23 Q. And is there anybody that lives in your
24 vacation residence?
25 A. Michael Kaplan and I share the vacation

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1 home.
2 Q. Okay. Who owns the residence here in Las
3 Vegas?
4 A. Michael Kaplan.
5 Q. He owns a hundred percent of the
6 property?
7 A. Yes.
8 Q. Who owns the property in California?
9 A. Both of us.
10 Q. And what percentage?
11 A. It's my understanding it's -- well both
12 names are equally owned.
13 Q. Okay. And you refer to Michael as your
14 partner?
15 A. Yes.
16 Q. Okay. Did you say common law partner?
17 A. Yes.
18 Q. Okay. Again, I don't -- I don't --
19 A. Wouldn't that be the correct term?
20 Q. I don't want to put words in your mouth,
21 and I know people they refer to --
22 A. Yeah. I think they refer to common law
23 when you live together an extended period of time
24 without being married.
25 Q. When did you meet Michael?

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1 A. In 1998.
2 Q. And where --
3 A. In New York City.
4 Q. How did you meet him in New York City?
5 A. I was introduced to Michael by a
6 girlfriend.
7 Q. And when did you and Michael start
8 sharing a residence?
9 A. In the year 2000.
10 Q. Do you or Mr. Kaplan have any type of
11 written agreement regarding your partnership?
12 A. No.
13 Q. Are you involved in any businesses with
14 Michael?
15 A. No.
16 Q. Do you have any posthigh school training
17 or education?
18 A. Yes.
19 Q. Can you tell us what that is?
20 A. I went to Brevard Community College in
21 Florida.
22 Q. Can you spell that?
23 A. B, like boy; r-e-v, like Victor; a-r-d,
24 Brevard Community College in Florida.
25 Q. When did you attend Brevard Community

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1 College?
2 A. I believe it was 1987.
3 Q. Okay.
4 A. To '89.
5 Q. Did you obtain any type of degree or
6 certification from that --
7 A. I didn't finish, no.
8 Q. What did you study there?
9 A. Photography.
10 Q. Any other type of posthigh school
11 education or training or certification of any type?
12 A. Yes, I'm certified as a Bikram yoga
13 teacher. Bikram, B-i-k-r-a-m.
14 Q. And where did you obtain that
15 certification?
16 A. In Los Angeles, California.
17 Q. Anything else?
18 A. No.
19 Q. After -- what year did you graduate from
20 high school?
21 A. Oh, gosh, I think that was 1984.
22 Q. Okay. Are you currently employed?
23 A. I'm self-employed.
24 Q. Okay. Can you describe your
25 self-employment for us?

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1 A. I'm a photographer.
2 Q. Do you have your own company?
3 A. Yes.
4 Q. Is that Guitarfile, LLC?
5 A. Yes, it is.
6 Q. And that's located here in Las Vegas?
7 A. Yes.
8 Q. And how long have you been self-employed
9 with Guitarfile, LLC?
10 A. I believe that was established in 2009.
11 Q. Okay. Do you specialize in any
12 particular type of photography?
13 A. Yes.
14 Q. What type?
15 A. I photograph guitars specifically.
16 Q. Is your self-employment -- your work as a
17 photographer, is that primarily here in Las Vegas or
18 where does that take you?
19 A. It's primarily in Las Vegas, but I do
20 travel on a global level to photograph guitars.
21 Q. Can you enlighten me a little bit about
22 photographing guitars? Are these like professional
23 musicians and you photograph their guitars or is it
24 antiques or what?
25 A. Yes, correct. I photograph professional

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1 musician's guitars.
2 Q. Okay. I believe the book that I believe
3 either you're working on or is coming out is
4 something like 108 guitars or something. Can you --
5 A. Yes. I'm publishing a book that will be
6 released on October 8th of this year and it's called
7 108 Rock Star Guitars.
8 Q. Okay. I would assume that you may have
9 met some pretty interesting and perhaps well-known
10 folks?
11 A. I have.
12 Q. Who are some of the folks that you've
13 engaged in photography with with respect to rock
14 stars and so forth?
15 A. Jimmy Page, Eric Clapton, Jeff Beck,
16 Bonnie Raitt, Chrissie Hynde, Les Paul, Lou Reed,
17 Zakk Wyld.
18 Q. Do you play the guitar yourself?
19 A. I take lessons.
20 Q. And how did you get involved in that?
21 A. It's a bit of a long story.
22 Q. I don't need the long story, but you have
23 to --
24 A. I was living in Memphis, Tennessee
25 working for Eastman Kodak Company and I met the

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1 guitar player at church and he asked me out, started
2 dating him. My father told me never to date
3 musicians. I called my dad, I told him, "I'm dating
4 a musician, but he owns a vintage guitar and goes to
5 my church." And he said, "Oh, well that's
6 different, he owns a business."
7 So as my dad being a musician said if he
8 ever gets a Gibson Mandolin, I've always wanted one,
9 let me know. Within two weeks, my boyfriend got in
10 a Gibson Mandolin, 1917, mint condition. I asked,
11 "May I buy that for my dad as a gift and how much is
12 it?" And he said, "You can't afford it, but if you
13 photograph some guitars for me the way you've been
14 doing this other artwork" -- this other photography
15 that I've been doing -- "and make me a piece, I'll
16 trade you." So I said okay.
17 So I photographed guitars for him. Fell
18 in love with photographing guitars and shortly after
19 that, Kodak transferred me to New York City and I
20 decided I may as well photograph famous guitars. So
21 I went down to meet Les Paul and he let me
22 photograph his guitar and I've been shooting guitars
23 ever since.
24 Q. Congratulations.
25 A. Thank you.

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1 Q. That sounds like very interesting and
2 exciting. I used to live in Nashville.
3 A. Great place.
4 Q. Have you ever been to the Grand Ole Opry?
5 A. I have.
6 Q. Are you making a wage claim at all in
7 this case? Are you seeking lost wages or income
8 from your business?
9 A. I guess that remains to be seen. We'll
10 see how things go.
11 Q. Okay. Have you experienced any lost
12 income or wages to the present date?
13 A. In Guitarfile? With Guitarfile?
14 Q. Yes.
15 A. Not with Guitarfile, no.
16 Q. Other than your self-employment with
17 Guitarfile, do you have any other type of business
18 that you're engaged in?
19 A. No.
20 Q. Okay. Do you have any other source of
21 income?
22 A. No. Other than, you know, my partner
23 supports me. Michael supports me, so he's my source
24 of income.
25 Q. Okay. But Guitarfile, LLC, is that a

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1 source of income to you as well?
2 A. Well, not yet. Hopefully it will be.
3 Q. Okay. Do you have -- are there any other
4 employees at Guitarfile, LLC?
5 A. No.
6 Q. Okay. It's you, you run the whole show?
7 A. And I have freelance people that work for
8 me.
9 Q. On an independent contractor basis?
10 A. Correct.
11 Q. Okay. Have you ever filed bankruptcy?
12 A. No, I have not.
13 Q. And please, I know you're -- you're
14 very -- and please don't judge me on this, this is a
15 common question. And you seem very strong-minded.
16 And I have six daughters and I want them to be like
17 that too. But I'm not trying to offend you with
18 this question, but it's a common question.
19 Have you ever been charged with a crime
20 before?
21 A. No, I have not.
22 Q. So you've never been charged with a
23 felony or a crime involving dishonesty?
24 A. Absolutely not.
25 Q. Have you been a party to any other type

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1 of lawsuit other than this present lawsuit?
2 A. No.
3 Q. Have you ever been sued before?
4 A. No.
5 Q. Okay. Now, part of why we're here today
6 concerns the accounts that you had at Wells Fargo
7 Bank in up until 2011, correct?
8 A. Correct.
9 Q. Okay. Prior to 2011 and the closure of
10 your accounts at Wells Fargo, had you ever had any
11 bank accounts closed by any other financial
12 institution?
13 A. No.
14 Q. Okay. Have you had or held bank accounts
15 of any type in any other financial institution?
16 A. Yes.
17 Q. And what banks are those?
18 A. Nevada State Bank, Chase. You mean in
19 Las Vegas?
20 Q. Yeah, it's kind of an unfair question
21 because we could go back forever, couldn't we? Just
22 say the last -- you know, five-year period before
23 2011.
24 Do you recall any other banking
25 institutions?

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1 A. All my bank accounts -- Nevada State Bank
2 was my business banking account for my yoga studios.
3 And Chase -- because Wells Fargo closed my accounts,
4 I opened an account at Chase. And Chase used to be
5 called Washington Mutual prior, so I believe that's
6 all I can recall right now bank account-wise.
7 Q. So the Chase account was opened after
8 your Wells Fargo accounts were closed?
9 A. Actually, I had a Wells -- I mean, I had
10 a Chase account at the same time I had a Wells Fargo
11 account. And then I just decided there's no point
12 in having this Washington Mutual account, it was
13 Washington Mutual at the time, so I transferred my
14 personal checking to a Wells -- or I closed that
15 account because I had the checking account with
16 Michael and me and then I had my business account
17 with Wells Fargo, so I just reduced it to that one.
18 And when Wells closed my accounts, I went back to
19 Chase and I opened again there.
20 Q. Okay. And so that's currently where you
21 do your banking?
22 A. That's correct.
23 Q. Is that for Guitarfile, LLC?
24 A. It's for Guitarfile and my personal
25 checking.

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1 Q. I know you had a joint account with
2 Michael at Wells Fargo Bank that was closed,
3 correct?
4 A. That's correct.
5 Q. And so when you say you have a personal
6 account at Chase, does that include a joint account
7 with Michael?
8 A. I do not have a joint account with
9 Michael.
10 Q. And who were the personal or authorized
11 signers on your Guitarfile, LLC?
12 A. Myself only.
13 Q. And how about your Chase account?
14 A. Myself only.
15 Q. Aside from the -- I think there's three
16 accounts at issue that were closed at Wells Fargo
17 Bank.
18 Is that your understanding?
19 A. It was two accounts.
20 Q. I know there was the joint account with
21 Michael.
22 A. The joint account, and my Guitarfile bank
23 account.
24 Q. My understanding with Guitarfile, there
25 was an operating account?

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1 A. There was a credit card. Okay. If you
2 want to call that an account, sure. Yes, three
3 accounts.
4 Q. I was referring to --
5 A. One credit card and two banking accounts,
6 yes.
7 Q. Okay. Were there any other authorized
8 signers on any of those accounts other than knowing
9 that Michael was a signer on the joint account?
10 A. No.
11 Q. Okay. Aside from those accounts, and
12 I'll call them three accounts, will that make sense?
13 A. Sure.
14 Q. Have you ever had any other type of
15 account or business relationship with Wells Fargo?
16 A. Yes.
17 Q. Can you tell us what those were?
18 A. I had an IRA account. And just prior to
19 the bank closing my accounts, they offered me a --
20 another credit card account. I closed both of those
21 about six or eight months after Wells Fargo closed
22 my accounts. I transferred them to -- I closed the
23 credit card, which I never used, and I transferred
24 the IRA into a different IRA.
25 Q. Any other accounts that either you had

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1 personally or with a business with Wells Fargo?
2 A. Yes.
3 Q. What?
4 A. There was one account with business that
5 I had for a very brief period of time under the name
6 of Quad Digital.
7 Q. Can you spell that for us?
8 A. Q-u-a-d, Digital, D-I-g-i-t-a-l.
9 Q. Okay. Is that the full name, Quad
10 Digital?
11 A. Yes.
12 Q. Okay. And was that your business?
13 A. It was a four-person equal share
14 25 percent partnership.
15 Q. Okay. I think you referenced that now in
16 your interrogatories?
17 A. Yeah, I believe so, yes.
18 Q. Okay. And so that was an account with
19 Wells Fargo in Las Vegas or where was that opened?
20 A. It was actually established in Calabasas
21 where the three other partners lived.
22 Q. I'm sorry, where?
23 A. Calabasas, California.
24 Q. I don't know where that is.
25 A. It's the home of all the stars, Brittany

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1 Spears lives there and Justin Beiber. Calabasas,
2 C-a-l-a-b-a-s-a-s.
3 Q. It must be near L.A.?
4 A. H'm-h'm.
5 Q. Okay.
6 A. Yes.
7 Q. And when did you open up that account?
8 A. Let's see, that was probably in 2011 or
9 '10. I don't know the exact date right now.
10 Q. Was that after the three accounts closed
11 at Wells Fargo?
12 A. No, prior.
13 Q. And when -- so that opened up in 2011, do
14 you know when it was closed?
15 A. I couldn't tell you right now, I'm sorry.
16 I don't have the exact dates, but it was closed
17 shortly after it was opened. Like, that account was
18 probably open for two months maximum.
19 Q. Okay. Because one of the -- and the
20 reason I ask is because your counsel had asked me
21 for copies of all transactions and statements
22 regarding the three accounts.
23 MR. FITTS: But, Sid, I didn't see a
24 request for that. Do you need us to produce
25 anything with the IRA account, credit card account,

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1 or Quad Digital?
2 MR. KISTLER: Did Wells Fargo use any --
3 use any information concerning any of those accounts
4 in making good determination to close the three
5 accounts at issue in this case?
6 MR. FITTS: I can't answer that.
7 MR. KISTLER: If you did, then I think
8 you're required to provide that information. If you
9 didn't, then you're not.
10 MR. FITTS: I think the requirement that
11 we were given was to -- is that you had an
12 opportunity to tell us whether you wanted
13 transactional -- copies of transactional with
14 accounts at Wells Fargo. And Tim Poval told me he
15 wanted copies of the three accounts at issue.
16 And I know this is a little bit of break
17 in your depo, but I'm happy -- now that I know of
18 these three other accounts, I'm happy to provide
19 transactional documents on those three accounts if
20 you would like.
21 MR. KISTLER: Yeah, I believe our
22 discovery request are probably broad enough to where
23 you should have provided those already. And clearly
24 if Wells Fargo has taken the position that those
25 three accounts have any relevancy to -- to -- to

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1 the -- to the allegations contained in the complaint
2 in this case, then Wells Fargo has an affirmative
3 obligation to provide that information to us
4 pursuant to NRCP 16.1.
5 So it's really, you know, you can proceed
6 or not proceed at your own danger in providing the
7 documents or not providing the documents. If
8 they're relevant to this case, then you have an
9 obligation to provide them to us.
10 MR. FITTS: I was at the discovery
11 commissioner conference with Tim Poval.
12 MR. KISTLER: That's my position. I'm
13 not going to argue with you, that's our position.
14 MR. FITTS: And I'll disagree with your
15 position.
16 MR. KISTLER: Then we can disagree.
17 MR. FITTS: All right.
18 MR. KISTLER: I ask that you move on with
19 this deposition.
20 BY MR. FITTS:
21 Q. Lisa, with respect to the IRA account
22 that -- was that an independent account that you
23 had?
24 A. Yes.
25 Q. That you would just contribute yourself?

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1 A. Yes, it was.
2 Q. When was that opened?
3 A. A long time ago. I would have to look at
4 the documents. Long before any of this ever
5 happened.
6 Q. Okay.
7 A. Probably in 2000, maybe '1 or '2 or '3,
8 something around there.
9 Q. Okay. And then the credit card?
10 A. My business card, the Guitarfile business
11 card?
12 Q. Well, you mentioned a credit -- is
13 that --
14 A. Which credit card account?
15 Q. I'm a little bit confused because I had
16 asked you aside from the three accounts at issue in
17 this case that were closed if you had any other
18 accounts at Wells Fargo. And I thought, and correct
19 me if I'm wrong, number one was the IRA account; is
20 that right?
21 A. Right.
22 Q. Okay. And my understanding was that was
23 closed about six months after --
24 A. I closed it approximately --
25 Q. You closed it?

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1 A. -- six months after because I -- Wells
2 Fargo didn't deserve to have my IRA funds after
3 closing my accounts. And then the other credit card
4 was one that I walked into the branch and I was just
5 doing a regular transaction and the guy said, "Oh,
6 your credit is so amazing and you're such a great
7 client, we'd like to offer you a credit card. We
8 wouldn't even check your credit because your credit
9 is so great. Let us give you a credit card."
10 And I said, "No, I don't need another
11 credit card." And then he kept saying, "But we
12 won't check your credit." And I thought to myself,
13 you know, I only have one credit card that's in my
14 name. My other credit cards are associated with
15 Michael's accounts. So, okay. I'll go for it.
16 You're not going to check my credit.
17 Because I don't like it when people check
18 my credit because it affects my credit rating. I
19 had a very high credit rating, I still do. And I
20 agreed to taking the credit card. And guess what?
21 They checked my credit and my credit got ding-dong.
22 Q. Okay.
23 A. I never used that credit card and I
24 canceled it again at the same time that I canceled
25 the IRA account.

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1 Q. It seems to me that would be sometime in
2 2012, approximately?
3 A. It was in 2011 -- oh, the closure of the
4 account?
5 Q. Yeah. It was six months after?
6 A. Yeah, maybe. I don't have the exact
7 date, so I can't say if was '11 or '12, but --
8 Q. And then on the Quad Digital, do you have
9 the dates that that was opened?
10 A. I don't.
11 Q. Okay. You said something about 2011, but
12 sometime in that area, I think.
13 A. Yeah, it could have been '10 or '11, I'm
14 not sure.
15 Q. Were you the authorized signer on that
16 account?
17 A. All four partners were authorized
18 signers.
19 Q. Okay. And what type of business was Quad
20 Digital in?
21 A. It wasn't. It was just something we were
22 talking about. We founded it. We equally funded it
23 and nothing happened with it.
24 Q. Was there ever a purpose for it?
25 A. You know, it was established with two

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1 friends of ours. One that's very famous, John
2 Melendez and his wife. We either creative people in
3 the industry, you know, my partner Michael works
4 with John Melendez from the Tonight Show, Jay Leno,
5 very creative people. We had dinner several times.
6 We threw around fun ideas that we could do, and it
7 never materialized. I closed the business.
8 Q. Was that a corporation, Quad Digital?
9 A. I think it was set up as an LLC, but I
10 can't remember now.
11 Q. Who would the officers have been?
12 A. There were four of us. I was one.
13 Suzanna Melendez, Debbie Baer (Phonetic), and
14 Michael Ellman was the partner, but he had to put
15 his wife Jeri Ellman down. So those were the four
16 people associated with the business.
17 Q. How do you spell Ellman?
18 A. I believe it's spelled E-H-m-a-n.
19 Q. Okay. Had you ever had any prior
20 disputes with Wells Fargo before the three accounts
21 were closed?
22 A. No.
23 Q. Okay. I'm going to refer to those three
24 accounts as the subject accounts.
25 A. Sure.

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1 Q. Will you understand what I mean by that?
2 A. You're -- just to reiterate, the subject
3 accounts would be my personal checking account that
4 was joint with Michael?
5 Q. Au-huh.
6 A. My business account Guitarfile, and the
7 Guitarfile credit card.
8 Q. Yes.
9 A. Those are the three accounts as the
10 subject.
11 Q. Yes.
12 A. Okay. Yes, I understand that.
13 Q. Okay. Now, there obviously came a time
14 when the subject accounts were closed, do you recall
15 when that was?
16 A. I think that I -- the letter in my head
17 is March 2011 that I received a letter or August.
18 March or August.
19 Q. Okay. Is that when you received notice?
20 A. I believe, yeah. I think it was August,
21 I want to say, 2011.
22 Q. So there were letters in the mail?
23 A. Yes.
24 Q. And can you tell us generally what the
25 substance of the letters --

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1 A. It said something to the effect your bank
2 accounts will be closed due to a risk assessment.
3 This is our final decision. If you have questions,
4 you can call this 1-800 number. The accounts will
5 be closed effective immediately on such and such
6 date.
7 Q. Was there a separate letter for each of
8 the three accounts?
9 A. Yes, there was.
10 Q. And what did do you after you received
11 the closure letters?
12 A. Michael called the 800 numbers to find
13 out why they had closed the account because they
14 closed his account and he didn't receive any
15 letters. And he is actually the person that
16 established that bank account in the first place
17 with my name on it. So he proceeded to call the 800
18 number to which he received no information.
19 Q. Was there an answer to the number?
20 A. A person answering?
21 Q. Yes.
22 A. He made the call, but I believe, yes, he
23 did get through to a person.
24 Q. Do you have an understanding of what was
25 said on that telephone conversation?

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1 A. The bottom line was, "Sorry, we don't
2 have any information. We can't tell you anything."
3 Q. Okay. Do you know when that telephone
4 call occurred, approximately?
5 A. Date, no, I don't. It would have been
6 immediately after we received that letter.
7 Q. And so what happened after that telephone
8 call that Michael placed to Wells Fargo?
9 A. I'm not sure of the exact series of
10 events, but I can go through several events that
11 happened. I can't tell you exactly which sequen --
12 you know, they'll be in sequential order. But he --
13 Michael then proceeded to pursue calling other
14 representatives within Wells Fargo bank to reach a
15 higher level of someone that may be able to provide
16 an answer. And everywhere that he went, we were
17 told, "There's no information that we have available
18 to explain anything to you."
19 That was very frustrating. And then
20 Michael went to his business banker at Mellon and
21 spoke to him and said, "Can you -- do you know
22 anyone at Wells Fargo Bank?" The guy knows -- knew
23 the president at Wells Fargo bank in Las Vegas.
24 He contacted the president and the
25 president said to Bob at Mellon -- I believe the

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1 president's name is Chad said, "Oh, well, I don't
2 know what's wrong with the account, but it must be
3 something really terrible, really bad otherwise we
4 wouldn't have closed the account." Something to
5 that effect. "There must be a problem with Lisa
6 that we closed her account."
7 Then Michael went into the bank, he
8 happened to be in Malibu and he went into the Malibu
9 branch and commonly the tellers will always say to
10 him, "Mr. Kaplan, you're leaving too much money in
11 your bank account. Please, will you come and speak
12 to one of our bankers to see how we may be able to
13 serve you and all of your excess money?"
14 And so Michael was escorted over to a
15 gentleman named Arash Dounel as a business banker at
16 the Malibu branch. And he said, "You know, it's
17 funny you guys want my funds, yet you've just closed
18 my bank account, my girlfriend's bank account.
19 What's going on?"
20 And Arash Dounel went into our personal
21 account that had been -- that was a joint account
22 that had been closed, and he said to Michael
23 something to the effect of, "Oh, it shows unusual
24 activity here. There must have been something
25 really bad with Lisa. She must have a criminal

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1 background."
2 Or, "You looked to be a man of means,
3 you're a wealthy man. Why don't you hire a private
4 investigator and find out if Lisa's been in jail or
5 has warrants out for her arrest," something to that
6 effect.
7 Michael was horrified by these
8 accusations, and he came home and discussed those
9 with me. And at that time as well while he was
10 sitting there, Arash Dounel asked for a copy of the
11 letter. He said, "Do you have the letter?" And I
12 ended up copying it and faxing it or e-mailing it to
13 him that day that showed the letter stating Wells
14 Fargo closing my account.
15 So after that, Michael was very upset and
16 he asked for -- when he came home and started
17 questioning me about this stuff, obviously he's
18 known me for many, many years and knows certainly in
19 the span of time that he's known me, which is
20 15 years this weekend, I have never had any arrests
21 or any criminal activity, nothing.
22 And he was highly offended and he asked
23 Arash Dounel for a letter of apology. Over the
24 phone, Arash Dounel apologized for the things that
25 he said about me and Michael asked him to put that

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1 in writing, which he did, apparently, but he never
2 sent that letter to Michael. Michael e-mailed him
3 and said, "Where is my apology letter for the things
4 that you said about Lisa specifically?" We have
5 that e-mail.
6 And Arash Dounel wrote back and
7 said, "Mr. Kaplan, I hope that my phone apology will
8 suffice because I was required to send this letter
9 to our legal department and they won't allow me to
10 send it to you."
11 And I might add that Arash Dounel is no
12 longer employed by Wells Fargo Bank. Was he fired
13 for the things that he said about me? He slandered
14 me.
15 Q. This is your deposition and I'm not a
16 witness, but that's your understanding.
17 Is there anything else that would be in
18 the series of events, anything else that you recall?
19 A. Specifically as far as what did Michael
20 do or --
21 Q. You or Michael after you received the
22 closure notice -- notices.
23 A. We went to every avenue possible. Many
24 people within Wells Fargo Bank, calling, researching
25 trying to find out why they would close my account,

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1 our account and my business account and credit card.
2 Q. Okay. Let me just ask you a few
3 follow-up questions.
4 A. Sure.
5 Q. But I want to make sure, is that the full
6 story that you recall --
7 A. That's pretty much the gist of it, you
8 know.
9 Q. Okay. So Michael called the 1-800 number
10 shortly after you got the closure notices?
11 A. Correct.
12 Q. Okay. And was told essentially, "We
13 don't have any additional information"?
14 A. That's correct.
15 Q. Okay. And Michael was on the telephone,
16 not you; is that correct?
17 A. That's correct.
18 Q. Okay. And so were you there listening to
19 Michael while he was on the phone?
20 A. On some of those occasions. On some of
21 the calls, I was.
22 Q. I'm just talking about the first call
23 that was made to the 1-800 --
24 A. I don't think I was.
25 Q. Okay. Other than the individual on the

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1 other end saying, "I don't have any other -- more
2 information," do you remember has Michael -- strike
3 that.
4 Do you have an understanding of what else
5 was said on that telephone call?
6 A. That's basically what I told you is what
7 was said on the call.
8 Q. Okay. And then I believe you said, at
9 least my notes show that -- indicate that after
10 that, Michael called other people at Wells Fargo
11 higher up the ladder?
12 A. That's correct.
13 Q. Okay. Do you know specifically who he
14 called?
15 A. I don't, but Michael knows specifically.
16 Q. Okay. Do you know the general time frame
17 in which he contacted these other people higher up
18 the ladder?
19 A. Over several weeks of time that initially
20 with -- with -- several calls were made within one
21 and two weeks to try to find out what was going on,
22 and every avenue was a dead end.
23 Q. Okay. So that was one or two weeks after
24 you got the closure notices?
25 A. I can't exactly say how long it was.

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1 Initially it was probably the first couple of weeks
2 where he was making many calls and trying to figure
3 out what was going on. And the, you know, still --
4 still things are going on. We're still trying to
5 find out what is going on. It's a daily -- a daily
6 issue we're dealing with right now.
7 Q. Then you indicated that -- that Michael
8 called someone at Mellon Bank?
9 A. That's correct.
10 Q. And who was that person?
11 A. Bob Martin.
12 Q. And what title does he have at Mellon
13 Bank?
14 A. I'm not sure.
15 Q. Okay. And was that a telephone call that
16 Michael made to Mr. Martin?
17 A. I'm not sure if he spoke to him on the
18 phone about that the first time or if it was in
19 person, but I know that he has discussed it with him
20 both on the phone and in person.
21 Q. Were you present --
22 A. No.
23 Q. -- during any of those conversations?
24 A. No, I was not.
25 Q. Were you on the telephone when Michael

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1 called any of the folks at Wells Fargo who are
2 higher up the ladder?
3 A. Yes, I was.
4 Q. Okay. And who -- who were you on the
5 phone with?
6 A. I don't have their names. Michael will
7 have that data.
8 Q. All right. Did Michael keep notes of
9 this?
10 A. Yes.
11 Q. Did you keep notes?
12 A. No. I have -- I have Michael's, you
13 know, notes in our files. We have everything in a
14 Wells Fargo file. So.
15 Q. Okay. Have you disclosed those to your
16 attorney?
17 A. Yes.
18 Q. When did you make those notes?
19 A. Over the course of the last two -- year
20 and a half, two years.
21 Q. Did you take the notes of these company
22 calls as they occurred?
23 A. Michael did, yes.
24 Q. Okay. And did you add anything to those
25 notes?

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1 A. No.
2 Q. And one of the accounts was a joint
3 account that both you and Michael had?
4 A. Correct.
5 Q. And so were those notes kept as part of a
6 joint effort to keep a record of the communications
7 that you and Michael had with Wells Fargo?
8 A. Yes.
9 Q. And that was shortly after receiving the
10 closure notices?
11 A. Yes, and onward.
12 Q. I'm sorry?
13 A. Yes, and onward. Onward in time.
14 Q. Okay. Are you aware of whether any of
15 those notes have been disclosed in this case?
16 A. Disclosed to?
17 Q. To Wells Fargo.
18 A. No, I don't think so.
19 Q. Have you reviewed -- reviewed all the
20 documents disclosed in this case? Have you seen any
21 of those notes that --
22 A. Of course.
23 Q. Okay. Are they handwritten notes?
24 A. Some handwritten, some e-mails.
25 Q. What do you mean by e-mails?

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1 A. Well, e-mails.
2 Q. And I'm not trying to be cute here. Are
3 they e-mails between you and Michael?
4 A. E-mails between Michael and
5 representatives of Wells Fargo Bank.
6 Q. Okay.
7 A. And his bankers.
8 Q. So those are like correspondence to other
9 people?
10 A. Correct.
11 Q. Right now I'm talking about notes that
12 you and --
13 A. You'll have to ask Michael those
14 questions because Michael is the one who took the
15 notes, and so he'll have the notes.
16 Q. And some of these notes were made before
17 retaining legal counsel?
18 A. Yes.
19 MR. FITTS: Counsel, I would ask that
20 those notes be disclosed in this matter under 16.1.
21 MR. KISTLER: I don't know that they
22 haven't been. We'll look and see. We'll review
23 your request and, you know, if we have documents
24 that -- that are relevant to your request, then we
25 will -- if they have not been produced, we will

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1 produce them.
2 MR. FITTS: Thank you.
3 MR. KISTLER: But as I sit here today, I
4 don't know that there are any documents that you've
5 requested that have not been produced that are in
6 our possession.
7 MR. FITTS: Well, there would be an
8 affirmative duty, of course, under 16.1.
9 MR. KISTLER: I'm saying that whatever
10 documents we have, I'm not conceding that we haven't
11 produced all documents that were either requested or
12 required to be produced pursuant to 16.1.
13 MR. FITTS: Thank you.
14 MR. KISTLER: That being said, I will
15 conclude that if we have documents -- if we have
16 documents that -- that correspond to Ms. Johnson's
17 testimony, those have been produced.
18 BY MR. FITTS:
19 Q. Ms. Johnson, going back to --
20 THE VIDEOGRAPHER: Excuse me, Counsel.
21 MR. FITTS: Oh, we need to go -- take a
22 break.
23 THE WITNESS: Oh, sure.
24 THE VIDEOGRAPHER: This marks the end of
25 Tape No. 1. It's 3:16 p.m.

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1 We're off the record.
2 (Recess.)
3 THE VIDEOGRAPHER: Back on the record.
4 The time is 3:26 p.m. This marks the beginning of
5 Tape No. 2.
6 BY MR. FITTS:
7 Q. Ms. Johnson?
8 A. Yes.
9 Q. May I call you Lisa?
10 A. Sure.
11 Q. When Michael called the 1-800 number, he
12 was calling about his joint account with you as well
13 as your accounts?
14 A. Yeah, he was calling to find out why was
15 our joint account closed.
16 Q. Okay. So he was calling on behalf of --
17 A. Both of us.
18 Q. Both of you. And that was your
19 understanding that he was calling on your behalf as
20 well as his?
21 A. Yeah.
22 Q. Did you ask him to do that?
23 A. Yeah.
24 Q. And when Michael called the other folks
25 at Wells Fargo higher up the ladder, he was also

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1 calling on behalf of you as well?
2 A. That's correct.
3 Q. Okay. And you were on some of those
4 calls, but you don't recall exactly which ones or
5 who you spoke with?
6 A. Right.
7 Q. Okay. And then when Michael contacted
8 Bob Martin at Mellon Bank, was he contacting
9 Mr. Martin on behalf of both of you again?
10 A. Yes.
11 Q. And you had discussed that with Michael?
12 A. Yes.
13 Q. Okay. And do you know what Michael
14 told Mr. Martin at Mellon Bank?
15 A. I don't. But I'm -- I believe he told
16 him what happened, probably not in every minute
17 detail, but he gave him the gist of what was going
18 on, yeah.
19 Q. Okay. And do you know how many separate
20 conversations --
21 A. I don't, no.
22 Q. Remember our rule.
23 A. Okay. Go ahead. Sorry.
24 Q. I just want to make sure it's clear on
25 the record.

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1 But do you know or recall how many
2 conversations that Michael had with Mr. Martin on
3 your behalf?
4 A. No.
5 Q. Okay. Were you either on the phone or
6 present during any of those conversations between
7 Michael and Mr. Martin?
8 A. No.
9 Q. Okay. And then we get to the
10 conversation that Michael had in the Malibu branch
11 with Arash Dounel.
12 Have I missed anything up to the time
13 before that conversation in the Malibu branch
14 occurred?
15 A. He spoke with several representatives of
16 Wells Fargo Bank. He work with Bob Martin at
17 Mellon. I believe he may have also spoke with the
18 president at Wells Fargo Bank or exchanged e-mails
19 with him. And he spoke with the banker Arash Dounel
20 at Malibu. And also there was another woman at the
21 bank in Malibu that was a part of that conversation,
22 and I don't know who she was.
23 Q. Okay. Let me just make sure I understand
24 that part because you're right, you did say that
25 Michael had spoken with -- oh, strike that.

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1 I thought that you had said Mr. Martin
2 then talked to someone at Wells Fargo Bank.
3 A. Yeah. Mr. Martin did speak with the
4 president at Wells Fargo Bank. But I think Michael,
5 you'll have to ask him, but I believe he also had a
6 direct conversation, but I can't be sure.
7 Q. Do you -- do you know why Mr. Martin
8 contacted the president of Wells Fargo Bank?
9 A. As a favor to Michael.
10 Q. Okay. So is he -- was Mr. Martin asked
11 by Michael to make that call?
12 A. Yes.
13 Q. And so was Mr. Martin calling on behalf
14 of both you and --
15 A. Yeah.
16 Q. -- Michael?
17 A. H'm-h'm.
18 Q. And then you indicated you think that
19 Michael may have had a conversation with the
20 president of Wells Fargo?
21 A. I think he did. I know that he called
22 his office and spoke with his secretary, and I -- I
23 think that he did speak with the president as well,
24 but I can't be sure.
25 Q. Again --

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1 MR. KISTLER: There's no pending
2 question.
3 MR. FITTS: I'm sorry, what?
4 MR. KISTLER: There's no pending
5 question.
6 MR. KISTLER: This isn't the Family Feud,
7 so wait until he completes his question until you
8 answer. You're kind of beating him to the punch.
9 THE WITNESS: Okay.
10 MR. FITTS: And I appreciate that. It's
11 difficult --
12 THE WITNESS: I'm very quick-minded, so
13 I'm, like, on it.
14 MR. KISTLER: It's not like Family Feud
15 where you have to hit the buzzer before the
16 question's asked.
17 THE WITNESS: Okay.
18 MR. KISTLER: So wait until the question
19 is --
20 THE WITNESS: All right.
21 MR. KISTLER: -- thoroughly expressed and
22 then --
23 THE WITNESS: Okay.
24 MR. KISTLER: -- give the answer.
25 MR. FITTS: And that's a hard rule. I

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1 had my deposition taken, and it's hard rule to -- to
2 follow. But that will just help us. You'll see
3 when the transcript comes out, it just comes out a
4 lot clearer that way.
5 BY MR. FITTS:
6 Q. So I think we were talking about your
7 belief that Michael had also spoken with the
8 president of Wells Fargo Bank.
9 Was -- did Michael contact the president
10 again on your behalf as well as Michael's?
11 A. Yes, of course.
12 Q. Okay. So when Michael's contacting these
13 individuals, he has your authority. He's just
14 not --
15 A. Of course.
16 Q. And your knowledge, he's not going around
17 asking people about your accounts without your
18 knowledge and permission?
19 A. Correct.
20 Q. Okay. Do you have a recollection as to
21 when Michael had that conversation or contact with
22 the president of Wells Fargo Bank?
23 A. It would have been within -- within a
24 week or a couple of weeks of receiving that letter.
25 Q. Okay. And then we get to the Malibu

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1 branch. And I want to make sure I've got everything
2 up until the Malibu branch, is their conversation.
3 Is there anything that I've missed that
4 we haven't talked about?
5 A. I don't think so.
6 Q. Okay.
7 MR. KISTLER: I think the question goes
8 to sequencing. Was -- was that the sequence because
9 I think you originally said you weren't sure about
10 the sequence.
11 THE WITNESS: Yeah, like -- I'm not going
12 to -- you can't put me down like exactly this
13 happened in this row. I can't tell you sequentially
14 that I put it in all the correct sequential order,
15 but those were the things that occurred.
16 MR. FITTS: Thank you.
17 BY MR. FITTS:
18 Q. I seem to recall from your interrogatory
19 answers, and I think your complaint, is that the
20 conversation with Mr. Dounel at the Malibu branch
21 was on -- on or about Aug -- October 6th --
22 A. Okay.
23 Q. -- 2011. So I was just trying to figure
24 out, okay, well, at least generally what occurred
25 between the time you --

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1 A. Right.
2 Q. -- received the closure letter.
3 A. All of these calls to Wells Fargo, to Bob
4 Mellon -- Martin at Mellon, the president, I think
5 all that stuff happened before the Arash Dounel
6 incident.
7 Q. Okay.
8 A. But you can confirm that with Michael in
9 his deposition.
10 Q. And so then we get to on or about
11 October 6th, 2011, at the Malibu branch.
12 What was the purpose of Michael going to
13 that branch?
14 A. I think he went in to do a simple banking
15 transaction. I'm not sure why, if it was a deposit
16 or what.
17 Q. And someone made the comment that you
18 should do something more with your money, or
19 something to that effect, to Michael?
20 A. Often the bank tellers will make a
21 comment to Michael. "Mr. Kaplan, you're leaving too
22 much money in your personal checking account. Why
23 don't you let us have some of that money and put it
24 in a other type of account?"
25 Q. Okay. And that's when Michael was

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1 introduced to Arash Dounel?
2 A. Correct.
3 Q. Now, were you present at the branch --
4 A. No.
5 Q. -- in Malibu -- it's okay.
6 Were you present in the Malibu branch on
7 or about October 6th, 2011 when this conversation
8 took place?
9 A. No.
10 Q. Okay. But you said there was a time when
11 you were asked to send a copy of the closure notices
12 to Mr. Dounel when Michael was there?
13 A. That's correct.
14 Q. Okay. Can you tell me how that unfolded?
15 A. I believe Michael called me from the
16 bank, and he said, "Can you please e-mail that
17 letter to this e-mail, Arash Dounel?" And I did.
18 Q. Okay. So were you in Las Vegas or where
19 were you when that call came?
20 A. I was in Malibu.
21 Q. So you were aware that Michael was then
22 at the branch and there was some type of discussion
23 between Michael and Mr. Dounel regarding the account
24 closures?
25 A. That's correct.

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1 Q. And Michael was making this inquiry on
2 both your behalf and his; is that right?
3 A. That's correct.
4 Q. Okay. And he -- he had your authority to
5 do so?
6 A. Yes. It's also his account, so he has
7 the authority to check it himself.
8 Q. Well, but there were two other accounts
9 that were just yours, right?
10 A. He was specifically talking about that
11 personal checking account.
12 Q. Okay. Did you send him the closure
13 notices on your two personal accounts as well as --
14 A. No.
15 Q. -- the joint account?
16 A. I don't think so, no.
17 Q. Okay. And so it was just the closure
18 letter on the joint account that you sent to --
19 e-mailed to Mr. Dounel?
20 A. Yes.
21 Q. And that was at the Malibu branch?
22 A. Yes.
23 Q. And Michael was there at the branch at
24 the time?
25 A. Correct.

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1 Q. Okay. Do you recall anything else that
2 you discussed with Michael on the telephone at that
3 point in time?
4 A. No.
5 Q. Did you speak with Mr. Dounel on the
6 telephone at all?
7 A. You know, I think I did. I think Michael
8 put him on the phone and he gave me his e-mail, so I
9 took the e-mail down.
10 Q. Okay. Do you recall anything else about
11 that telephone call?
12 A. No.
13 Q. But it was your understanding that
14 Mr. Dounel was trying to look into the reason why
15 the account had been closed?
16 A. Yes.
17 Q. Okay. And did you then stay on the phone
18 while -- while Michael and Mr. Dounel were talking
19 or did you hang up and --
20 A. I hung up and took care of the action
21 item which was to scan and to fax -- e-mail the item
22 to Mr. Dounel.
23 Q. And what happened after you scanned and
24 e-mailed the document to Mr. Dounel?
25 A. I continued with my workday.

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1 Q. Okay. So you -- you hung up?
2 A. Correct.
3 Q. Okay. And so you knew Michael was there
4 trying to find out for himself and on your behalf
5 why the joint account was closed?
6 A. Yes.
7 Q. And Michael -- you had given Michael your
8 authority to find out for me?
9 A. Yeah.
10 Q. And was there a time that they ever
11 called you back to tell you why the accounts -- the
12 account was closed?
13 A. No.
14 Q. Do you have an understanding of what
15 occurred in the Malibu branch after you hung up the
16 phone?
17 A. Yes.
18 Q. And that is, in general, comments that
19 Michael told you that Mr. Dounel had made?
20 A. Yes.
21 Q. Okay. Do you know what Michael did after
22 those comments were made?
23 A. No.
24 Q. Okay. And did Michael then --
25 A. I mean, he came home.

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1 Q. He came home. Okay.
2 And at that time, I think you said that
3 you and Michael had discussed Michael's conversation
4 with Mr. Dounel?
5 A. Yes, when he came home.
6 Q. Do you remember the substance of the
7 conversation that you had with Michael?
8 A. Yes.
9 Q. Can you tell us to the best of you're
10 recollection?
11 A. Sure.
12 Q. Okay.
13 A. Michael came home, he said, "You're not
14 going to believe this. I just came home from the
15 bank and this guy over there is basically saying
16 that the reason the account must have been closed is
17 because you have a criminal background and that I
18 should hire a private investigator to find out
19 what's going on with you. If you have criminal
20 activity, if you have warrants out for your arrest.
21 What's going on?"
22 Q. Anything else you remember about that
23 conversation?
24 A. He was very upset.
25 Q. What was your response?

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1 A. I was shocked that someone would say
2 something like that about me. They don't know me.
3 I never had any issues with the law aside from maybe
4 a speeding ticket in my Porsche Turbo 911, it's hard
5 to not speed sometimes.
6 The only thing I've ever had is a
7 speeding ticket, so I was very shocked and very
8 upset because already I was very frustrated about
9 the lack of reaction or ability or willingness from
10 all of the people that we spoke to at Wells Fargo
11 Bank to provide any information as to why my account
12 was closed.
13 And now I have this guy telling my
14 boyfriend that I must be a criminal, that I must
15 have some kind of shady background or he better
16 check me out and hire a private investigator. I was
17 highly shocked, highly offended.
18 Q. What did you do after that?
19 A. What do you mean?
20 Q. Did you call Mr. Dounel up and talk to
21 him?
22 A. No, I did not call Mr. Dounel.
23 Q. Did you contact anybody at the bank
24 after Mr. Kaplan told you of what happened?
25 A. Repetitively we contacted the bank.

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1 Michael also acts as my attorney so he has full
2 authority to check on my accounts. And yes, after
3 that, we made several more calls back to Wells Fargo
4 Bank.
5 Q. Did you do anything that day that you
6 and Mich- -- when Michael came home and told you
7 about what happened, did you do anything that day?
8 A. Such as make a phone call?
9 Q. Yes.
10 A. You know, I don't recall. I think it was
11 probably towards the end of the day, so I don't know
12 anything would have happened that day, but I think
13 the next day we were back on.
14 Q. What did you tell Michael when Michael
15 said, hey, this person at the bank said this, what
16 did you tell Michael?
17 A. I said that's outrageous. I've never had
18 anything -- problem with the law or anything like
19 that.
20 Q. Okay. And do you remember anything else
21 about the conversation that you had with Michael?
22 A. "We have to find out what's going on
23 here. This is a mistaken identity situation.
24 There's -- this is insane. This is crazy.
25 Absolutely have not done anything to warrant my

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1 accounts being closed."
2 You know, Michael was upset. He was
3 making statements like, you know, is there stuff I
4 need to know about or worry about, you know, putting
5 me a little bit on the defense. And I'm having to
6 say to him, "Hey, you know, like, I have nothing, I
7 have nothing to hide."
8 So no, this guy has really offended me
9 and it has affected by life and really do not
10 appreciate him slandering me like that and causing
11 issues with my relationship. So yeah, a lot of
12 things were said, a lot of things were discussed and
13 it's an ongoing discussion in my home --
14 Q. Do you --
15 A. -- to this day.
16 Q. Do you believe Michael believed you --
17 A. Yes, I do.
18 Q. I'll finish that.
19 A. Sorry. But you pause quite long in
20 between your sentences so I think you're done.
21 Q. And I'm sorry. You're really quick and
22 I'm really slow.
23 A. Yeah, I can see that.
24 Q. So, I'll try to do better.
25 Did you have a sense that Michael

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1 believed you that no, you didn't have any criminal
2 background?
3 A. Yes. Michael and I, at that time, had
4 been together for 12, 13 years. And during that
5 time span, he knows that I've never had any kind of
6 situation with the law. So yes, he does believe me.
7 But, you know, when things like that are
8 said about you, it makes anyone look sideways and
9 go, you're sure there's not something I don't know
10 about?
11 Q. Okay.
12 A. But yes, I do believe that he believes
13 me, otherwise he wouldn't be trying to help me.
14 Q. Okay. Do you believe that Michael
15 believed then Arash Dounel's comments?
16 A. I think he was highly offended by Arash
17 Dounel's comments.
18 Q. Because he didn't believe they were true?
19 A. Yes.
20 Q. Yes what, I'm sorry?
21 A. I don't believe he thought they were
22 true. He was highly offended by the comments.
23 Q. All right.
24 A. He knows my character.
25 Q. And then after that day, which is on or

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1 about October 6th 2011, you said that you and/or
2 Michael made more contacts to Wells Fargo; is that
3 right?
4 A. Yes.
5 Q. And I'm not asking for exact dates, but
6 can you give me the general sequence of the
7 additional contact that you and/or Michael had --
8 A. You would have to ask Michael that.
9 Q. All right.
10 A. I don't know.
11 Q. So it's my understanding from your
12 answers, you recall there were additional contact,
13 you just don't recall the details?
14 A. Correct.
15 Q. All right. You did mention, though, that
16 earlier that Michael was communicating with Arash
17 Dounel and asked for an apology?
18 A. Yes.
19 Q. Okay. Was -- was that a conversation
20 that you witnessed?
21 A. It was.
22 Q. Or was it on the phone just between
23 Mr. Dounel and Michael?
24 A. Michael spoke with Mr. Dounel on the
25 phone. Mr. Dounel apologized to Michael for the

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1 comments that he made about me on the phone.
2 Michael requested that he put those comments -- that
3 apology in a letter form. He e-mailed Mr. Dounel
4 two or three times saying, "Where's the letter you
5 promised me?" And finally he sent a final e-mail
6 that said, "Where is the letter you keep promising
7 me apologizing for the comments you made about
8 Lisa?"
9 And Dounel e-mailed him back and said, "I
10 had to submit the letter to my legal department.
11 They will not allow me to send you the letter. I
12 hope that my phone apology will suffice."
13 Q. Okay. And you know this is what Michael
14 told you, you were not on the phone, correct?
15 A. Correct.
16 Q. I believe there were some e-mails,
17 though, that you referenced as well?
18 A. Correct.
19 Q. So your testimony is coming from what
20 Michael's told you and what you read in e-mails?
21 A. Correct.
22 Q. Are there any other sources that you base
23 your testimony on other than what Michael's told you
24 and the e-mails that you --
25 A. No.

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1 Q. -- read?
2 And I'm talking about the conversation
3 that Michael had with respect to an apology from
4 Mr. Dounel.
5 A. Yes.
6 Q. Okay. All right. Aside from all those,
7 do you remember any other contact that you or
8 Michael had with Wells Fargo about the account
9 closures or any comments that Mr. Dounel had made?
10 A. No.
11 Q. Okay. And, again, were you making kind
12 of -- were you making notes as these events
13 occurred? Was it you and Michael making the notes?
14 Tell me about that just so I understand correctly.
15 A. Michael took notes, I did not.
16 Q. Okay. Would you read those notes?
17 A. Sure.
18 Q. Okay.
19 A. I mean, Michael would write notes and I
20 saw his notes, yes.
21 Q. Is there anything else that you recall
22 other than what we discussed that either you or
23 Michael did regarding the closure notices that we
24 haven't talked about?
25 A. No. We contacted Wells Fargo Bank. We

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1 tried to speak with members of the bank personally
2 and got nowhere, so we had to file a lawsuit.
3 Q. Okay. Do you recall when -- when you
4 retained legal counsel with respect to this subject
5 matter of this lawsuit?
6 A. I'm not sure of the exact date.
7 Q. I saw a letter from a Dirk Ravenholt.
8 A. Better known as Dirk the jerk, yeah. He
9 refused the case.
10 Q. Okay. Those are your words, not mine.
11 Okay. So did you and Michael have a
12 conversation with Mr. Ravenholt?
13 A. Michael had a conversation with him.
14 Q. Okay. It sounds like it wasn't very
15 positive.
16 A. He -- I think he said it's -- it was a
17 conflict -- or I can't remember. He -- he was
18 afraid of Wells Fargo Bank, actually. There was a
19 specific statement that he said to Michael, and it
20 was something to the effect that he didn't want to
21 have issues with Wells Fargo Bank for taking Wells
22 Fargo Bank on.
23 Q. Did you ever meet Dirk?
24 A. No.
25 Q. Did Michael meet with him?

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1 A. Yes.
2 Q. And was there a point in time where
3 Dirk -- he wrote a letter on behalf of you and
4 Michael, do you remember that?
5 A. I don't.
6 Q. Okay.
7 A. Yeah, I think he did. He write -- he
8 wrote one -- one letter, went nowhere.
9 Q. Okay. And so what happened after that?
10 A. Then we found Sid.
11 Q. And how did you find Sid?
12 A. Michael unearthed him because I believe
13 he did work with Hutchison before.
14 Q. Okay. And do you recall the approximate
15 time that you retained Hutchison & Steffen?
16 A. I don't know exactly.
17 Q. Okay.
18 MR. KISTLER: For the record, I'm the Sid
19 that she was referring to. That's my middle name,
20 that's what I go by.
21 MR. FITTS: I'm sorry. Thank you,
22 Counsel.
23 BY MR. FITTS:
24 Q. After these accounts were closed, and I
25 think -- do you recall at Wells Fargo on the notice

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1 letters they indicated the accounts would be closed
2 approximately 30 days?
3 A. I believe it was 30 days, yeah.
4 Q. Okay. Just so I'm clear on this, did you
5 take any action to open replacement accounts?
6 A. I did.
7 Q. And can you -- and I apologize if you've
8 already told me about some of those, but, you know,
9 we had three accounts. One was your joint account
10 that you and Michael had and then your two business
11 accounts.
12 With respect to your personal account,
13 it's my understanding you then opened up a
14 replacement account at Chase?
15 A. That's correct.
16 Q. But instead of a joint account, it was
17 just your own personal account?
18 A. That's correct.
19 Q. Is there a reason why you and Michael
20 didn't just switch your joint account to Chase?
21 A. Yes.
22 Q. And what was that?
23 A. Because Michael only banks with Wells
24 Fargo Bank. He only banks with three institutions,
25 and he's banked with Wells Fargo Bank for over

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1 25 years. And he values his banking relationship
2 and he chooses to not change his banking accounts.
3 I also value my banking account
4 relationships, and I'm horrified that Wells Fargo
5 has closed my accounts for an obscure reason.
6 Q. So Michael still has his -- his accounts
7 at Wells Fargo Bank?
8 A. Correct.
9 Q. Okay. Do you know what other banks he
10 has accounts at?
11 A. Mellon and Schwab.
12 Q. And does Michael have a personal banker
13 or a business banker at Wells Fargo that he deals
14 with?
15 A. I don't know.
16 Q. So you opened up your personal account at
17 Chase, and then what did you do with the two
18 accounts with Guitarfile?
19 A. I opened a guitar business account with
20 Chase. And I opened a Guitarfile credit card,
21 business credit card with Chase.
22 Q. Okay. And did Chase have any problems
23 with opening an account for you?
24 A. No.
25 Q. Did you have to fill out applications to

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1 open up these three accounts with Chase?
2 A. Sure, the regular forms were required.
3 Q. Did Chase ask you or require you to
4 disclose whether any other bank had decided to close
5 your accounts?
6 A. No.
7 Q. And so you were not required to mention
8 the account closure in any form to Chase when you
9 opened up your replacement accounts?
10 A. No.
11 Q. That was a bad question, I'm sorry. It
12 will come out as a double negative, so I'll ask that
13 again.
14 Did you make any reference at all to
15 Chase with respect to the three accounts that were
16 closed by Wells Fargo?
17 A. No.
18 Q. Were -- did Chase require you or inquire
19 of you as to whether or not any bank had decided to
20 close any accounts of yours in the past?
21 A. No.
22 Q. Has any financial institution denied any
23 application by you to open up any type of account
24 with them since you received the closure notices
25 from Wells Fargo Bank in August of 2011?

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1 A. Not as of yet.
2 Q. Do you anticipate that's -- that a future
3 application will be denied?
4 A. I'm highly concerned that in the future,
5 I could be denied lines of credit by a banking
6 institution. And I wish to clear this so that that
7 does not happen in the future.
8 Q. Since August of 2011, have you applied
9 for any type of line of credit?
10 A. No.
11 Q. Okay. Do you anticipate applying for a
12 line of credit in the future?
13 A. Yes.
14 Q. And what line of credit would that be?
15 A. I don't understand the question. What do
16 you mean?
17 Q. I--
18 A. What would it be for?
19 Q. Yes.
20 A. I'm launching a book called 108 Rock Star
21 Guitars. I've trademarked that as my brand. And
22 it's my intention to launch an entire line of
23 products under the 108 Rock Star Guitar umbrella.
24 Q. Have you had any discussions with any
25 financial institutions? And when I say discussions,

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1 any preliminary discussions with any financial
2 institution with respect to this credit line that
3 you would like to open up in connection with your
4 book?
5 A. No. I wish to get this matter cleared
6 before I do that. And my book needs to launch
7 before I do that.
8 Q. When is the book scheduled for launching?
9 A. October 8th, 2013.
10 Q. And when you say you'd like to get this
11 matter cleared, what do you mean by that?
12 A. I want this situation cleared with Wells
13 Fargo Bank because I've done nothing wrong. I'm not
14 a risk assessment of any kind. I don't want to have
15 future issues with bank institutions so I want this
16 situation resolved aka cleared with Wells Fargo
17 Bank. So Wells Fargo says, We seem to have made an
18 error here and your name is cleared. Because right
19 now I don't feel like I've got a very good name
20 within the Wells Fargo banking institution.
21 Q. Do you want to do future banking with
22 Wells Fargo?
23 A. It depends on how they act here in the
24 future.
25 Q. Are you looking to get the line of credit

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1 from Wells Fargo?
2 A. Well, right now I don't have an account
3 with Wells Fargo.
4 Q. Have you -- and I, again, sometimes I'll
5 forget, I apologize. But have you had any type of
6 financial advisor give you advice as to what will be
7 required with respect for a line of credit for your
8 book and the merchandise?
9 A. Within Wells Fargo Bank, no.
10 Q. How about any other financial
11 institution?
12 A. I mean, my financial advisor is my
13 partner, Michael Kaplan.
14 Q. Okay.
15 A. So we have a pretty good understanding of
16 what's required when you go to reach out for lines
17 of credit, so I've discussed it with him only.
18 Q. All right.
19 A. And my bookkeeper.
20 Q. Stacie?
21 A. Right.
22 Q. Stacie Hummel. Okay.
23 And so your concern regarding the line of
24 credit for your book and your merchandise arises out
25 of your conversations that you've had with Michael

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1 in his capacity as a financial advisor to you?
2 A. No.
3 Q. Okay. Tell me where I'm wrong so I can
4 understand.
5 A. My own personal concern. Michael gives
6 me his opinion and I discuss it with him, but I'm
7 the one that raised the point what if down the line
8 I'm trying to reach -- get my lines of credit to
9 launch my products and a banking institution says,
10 Oh, I see Wells Fargo has closed your accounts due
11 to a risk assessment. No, we can't loan you a
12 million dollars.
13 Q. Is that what --
14 A. That's my only feeling. And then
15 Michael, who advises me on things, affirms that. My
16 bookkeeper, affirms that.
17 Q. When you say they affirm that, do they --
18 A. Agree with me.
19 Q. Michael and Stacie Hummel have told you
20 that when you apply for a line of credit, you would
21 have to disclose that Wells Fargo had closed three
22 of your accounts in the past?
23 A. Not have to, but it could be a question
24 that's raised.
25 Q. All right. Do you know what your -- the

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1 amount of the line of credit that you would need for
2 your book and merchandise?
3 A. Not at the time.
4 Q. You mentioned a million dollars.
5 A. Just throwing a number out.
6 Q. Fair enough.
7 A. Could be easily that.
8 Q. And so you're -- and I don't want to
9 downplay it, but when you say could, it could be a
10 problem, you're not sure whether or not, right, but
11 there's a possibility?
12 A. That's correct, the possibility is there.
13 Q. Okay. And so that I -- I know what we're
14 talking about what you said Mr. Dounel slandered
15 you. I'm not putting words in your mouth, am I?
16 A. No.
17 Q. Okay. I know you have a defamation claim
18 in this case, right?
19 A. Correct.
20 Q. And you have a claim for false light?
21 A. Sorry?
22 Q. False light.
23 A. False light like you're shedding false
24 light on my character.
25 Q. I'm not asking you a legal opinion at

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1 all, but there's a claim that says false light in
2 your complaint?
3 A. Oh, yeah.
4 Q. And then you have a third complaint for
5 declaratory relief.
6 A. Yes.
7 Q. So with respect to the defamation claim
8 and the false light claim, it appears from my
9 reading of your complaint that it's based upon the
10 statements that Mr. Dounel -- and I'm going to use
11 the word "allege," and I hope you're not offended,
12 but that's what's alleged in your complaint. It
13 seems like those two complaint -- those two claims
14 are based upon the statements that's Mr. Dounel
15 allegedly made to Michael.
16 Is my understanding correct?
17 A. Yes.
18 Q. Are there any statements outside of
19 what Mr. Dounel said that you're basing those claims
20 on?
21 A. No.
22 Q. Okay. And so they were all made by Arash
23 Dounel, all of the defamatory statements?
24 A. Actually, no.
25 Q. Okay. Tell me.

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1 A. The president of Wells Fargo Bank also
2 said that I must have done something very bad, must
3 have a criminal record. He didn't know what it was,
4 but it must be very bad in order for them to close
5 my accounts.
6 Q. And again, was that statement made to
7 Robert Martin --
8 A. Correct.
9 Q. -- of Mellon Bank?
10 A. Yes.
11 Q. And, again, Robert Martin was contacting
12 the president of Wells Fargo Bank with authority
13 from you and Michael --
14 A. Correct.
15 Q. -- to do so?
16 A. H'm-h'm.
17 Q. And he was making that inquiry on your
18 behalf?
19 A. Yes.
20 Q. And you knew he would be making that
21 contact?
22 A. Yes.
23 Q. Any other statements that you are basing
24 your defamation and false light claims on?
25 A. Other people that Michael spoke with at

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1 Wells Fargo Bank. There was one woman, I don't
2 remember her name, but I was on the phone with her
3 and, again, she was also saying, you know, there --
4 "We have very good reasons for closing accounts and
5 I'm not at liberty to discuss them with you."
6 Q. Okay. Did you feel that was defamatory?
7 A. I suppose not, not defamatory.
8 Q. Okay. She didn't get into anything
9 like --
10 A. She didn't say you done something bad.
11 Q. -- criminal.
12 A. Yeah. No, she did not.
13 Q. I stopped because I didn't want us to
14 speak over each other.
15 And so the conversation with this lady
16 that I believe -- did you have the conversation?
17 You said you spoke to her on the phone?
18 A. Yes. We had a conference call.
19 Q. Okay. And so that was between you and
20 Michael was on the phone?
21 A. Correct.
22 Q. And then this lady?
23 A. Yes.
24 Q. Okay. And this lady said that we have
25 very good reasons to close accounts and she said she

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1 couldn't say anything else?
2 A. Correct.
3 Q. All right. So she didn't say anything
4 about, okay, there must be some type of criminal
5 problem here with Lisa?
6 A. No.
7 Q. All right. So we have the comments by
8 Arash and then we have the alleged statement by --
9 to Robert Martin of Mellon Bank?
10 A. Yes. By the president of Wells Fargo
11 Bank.
12 Q. And, again, I'm trying to figure out what
13 because that's a little bit new to me.
14 So I know about the comments that were
15 allegedly made by Mr. Dounel, but what -- do you
16 recall specifically what the statement was to
17 Mr. Martin? Something -- something -- it must have
18 been something serious or what?
19 A. Yeah. The president of Wells Fargo Bank
20 said to Bob Martin, "I don't know why they closed
21 the account, but it must be something very serious
22 in order for us to close the account." Something to
23 that effect. There may have been more in there,
24 Michael would be able to confirm exactly what he
25 said.

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1 Q. All right. Thank you. Anything else?
2 A. No.
3 Q. These were all oral statements, meaning
4 conversing either on the phone or in person, right?
5 A. Or on e-mail, yes.
6 Q. Were there statements in an e-mail that
7 talked about a --
8 A. Defamatory statements, no.
9 Q. Okay. That's what I'm talking about.
10 A. Oral, yes. They were oral statements.
11 Other than Michael referencing in an e-mail to Arash
12 Dounel, "Where is my apology letter for the things
13 you said about Lisa," that is in an e-mail.
14 Q. Okay. So we've covered all of the
15 alleged statements that you have a concern about; is
16 that right?
17 A. Yes.
18 Q. Is there anything else?
19 A. We've covered all of the statements, yes.
20 Q. I'm sorry. I'm a little bit slow. I
21 know you're probably wanting to go faster. I will
22 go as fast as I can.
23 Now, you've told me that those statements
24 were offensive to you. Am I --
25 A. That's correct.

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1 Q. Am I putting words in your mouth or would
2 you describe it. I thought you said offensive. You
3 told me earlier not to put words in your mouth, so I
4 don't want to do that, but I want to make sure I
5 understand what you're saying.
6 A. Arash Dounel's statements were highly
7 offensive.
8 Q. Okay. What about the statements to Bob
9 Martin?
10 A. Highly offensive. And further statements
11 were made that, you know, this is another way that
12 I've been harmed by this is that Michael was going
13 to open up a -- another joint account that had a
14 substantial amount of funding in it and Wells Fargo
15 Bank said, "We will take the money if it's under
16 your name, but if Lisa Johnson's name is on there,
17 we will not open that account."
18 Q. All right.
19 A. So Wells Fargo Bank is refusing three
20 million or more dollars, which is unheard of in
21 these days especially, because my name is going to
22 be on the account.
23 Q. That kind of brings up an interesting
24 situation, doesn't it?
25 A. It does, doesn't it?

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1 Q. Because Wells Fargo is in the business of
2 wanting to do banking, right?
3 A. That's right.
4 Q. They would like to do banking with --
5 with Michael, right?
6 A. Right.
7 Q. Do you feel like they have any ill will
8 toward you?
9 A. They must.
10 Q. You say must. What do you mean? Are you
11 saying that for sure you know or -- because the word
12 "must" can be defined in different ways. Must can
13 be a definitive term or it can be, well, what else
14 is it, it must be this?
15 A. Wells Fargo has closed my bank accounts
16 because they feel that I'm a risk assessment of some
17 sort they won't reveal. So they must have something
18 against me if they refuse to do business with me.
19 Q. Do you have any personal knowledge that
20 they have any -- anyone at Wells Fargo has actual
21 ill will or malice toward you?
22 A. No. Other than the statements Arash
23 Dounel made about me. That's kind of ill will,
24 isn't it?
25 Q. Do you -- did you get the idea or get the

1 sense from what you learned about
2 stated that he actually did want to
3 account at one point?
4 A. At one point he said, "We can open new
5 accounts, but it will be new -- different account
6 numbers." We were given conflicting stories. One
7 person would say, "Oh, we'll open new accounts for
8 you." And then the next day somebody else would
9 say, "Oh, no, Mr. Kaplan even, we can't open a new
10 account for you."
11 So which is it? We can open an account
12 or not open an account?
13 Q. So when you said you were getting
14 conflicting statements, you were -- were you getting
15 conflicting statements from the same person?
16 A. No, different.
17 Q. Okay. So one person at the bank would
18 say one thing and then another person at the bank
19 would contradict that?
20 A. That's correct.
21 Q. And the contradiction has to be whether
22 or not they could reopen your accounts?
23 A. They never agreed to reopen my original
24 accounts. They said we can open up you a new
25 account today.

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1 Q. When you say they said that, who is they
2 or who are they?
3 A. Members of the bank. I don't know their
4 specific names right now.
5 Q. Are these conversations or statements
6 made to you or to Michael?
7 A. To Michael. Actually, also made to me
8 by, I believe it was another banker via e-mail that
9 said -- and I said -- I said, "I want my original
10 bank accounts because those are my bank accounts
11 that I've had for several years and I don't want new
12 bank accounts. I want my bank accounts. So I don't
13 want new bank accounts with Wells Fargo, I want my
14 accounts reestablished because I've done nothing
15 wrong."
16 Q. And do you recall who made that statement
17 you could have new accounts opened in different --
18 A. Not right now, no.
19 Q. It's not Arash?
20 A. I can't remember.
21 Q. Okay. But anyway whoever it was said
22 that new accounts would be -- could be open but it
23 would have to have different account numbers?
24 A. Correct.
25 Q. And were those accounts ever opened?

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1 A. No.
2 Q. Why not?
3 A. Because I want the situation cleared
4 before I do anymore further banking with Wells Fargo
5 Bank.
6 Q. So is it your understanding that you
7 could if you wanted to, you could have other
8 replacement accounts opened at Wells Fargo and
9 different accounts numbers if you wanted to?
10 A. I'm not sure.
11 Q. All right.
12 A. Because they certainly would not take an
13 account that had \$3 million in it with my name on
14 it. So at this point, my understanding is they
15 don't want to do any banking with me.
16 Q. Is that how much you had in your joint
17 account with Michael?
18 A. No.
19 Q. Where did you get the three million?
20 A. Because Michael and I had -- Michael was
21 going to open and establish an account and did not
22 because he was told by someone at Wells Fargo Bank,
23 I believe it was the president said that no, they
24 would not take an account with that value even if my
25 name was on -- if my name was on it. They would

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1 take it with Michael's name only but not with my
2 name.
3 Q. Okay. So are you telling me that there
4 was a fourth account that you and Michael -- I
5 should stop there, I'm not saying that correctly.
6 There was actually a second joint account
7 that you and Michael were going to open up at Wells
8 Fargo in the amount of approximately three million?
9 A. Correct.
10 Q. But Wells Fargo said, no, not if Lisa's
11 name is on it?
12 A. That is correct.
13 Q. And, again, these are general statements
14 we're talking about without identifying anyone
15 specifically at Wells Fargo, correct?
16 A. Correct.
17 Q. And you don't --
18 A. Michael knows specifically who.
19 Q. Michael knows those people but you don't
20 know who those people are?
21 A. Correct.
22 Q. Is that because Michael is the one that
23 had the conversations and you were not present?
24 A. Yes.
25 Q. I wanted to ask you generally about the

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1 damages that you're alleging in this case. And
2 we've talked about the statements you said were
3 highly offensive.
4 A. Yes.
5 Q. I want you to identify for me, if you
6 would, talk about any injury or damages that you
7 believe these statements have resulted in damages or
8 injury to you. And what I'd like to do is have you
9 start with, you know, what you consider the most
10 serious first and then just kind of go down in
11 order.
12 Can you do that for us?
13 A. H'm-h'm. Sure can.
14 Q. Okay.
15 A. Well, first of all, I've been slandered
16 and defamatory statements have been made about me
17 that I find highly offensive that suggests that my
18 character is one of criminal activity and that would
19 indicate to me that someone thinks that I have an
20 unsavory background or a criminal background, shady
21 background of some kind. I find that highly
22 offensive.
23 I'm a highly principled person, honest
24 person, and I do good for people and it's highly
25 offensive that someone would say that about me to

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1 my -- my common law partner.
2 Q. Okay.
3 A. And number two, those statements have
4 caused tremendous stress and strain on my personal
5 relationship with my partner Michael Kaplan for the
6 duration of this entire episode. And, you know, a
7 lot of anxiety has been, fear and just unease of --
8 of conversation has resulted in my relationship, my
9 personal relationship that I value very much.
10 Number three --
11 Q. Can I -- I just wanted to ask you more
12 about that, if I could.
13 A. Sure.
14 Q. Have -- have you received any type of
15 medical treatment or anything of that sort with
16 respect to any of the stress or anxiety that you
17 felt?
18 A. Not medical treatment, no. But I do seek
19 counsel with someone, and I work -- I'm working
20 through those issues with that person.
21 Q. When you say counsel, I don't know what
22 you mean by that. Are you talking about your legal
23 counsel or are you talking about --
24 A. No, just someone that is -- knows how to
25 deal with stress and anxieties.

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1 Q. Is this like a spiritual advisor or is it
2 a psychologist? What -- can you help me out more?
3 A. I would say someone that's been schooled
4 in how to deal with stress and anxiety. It's not a
5 social worker or a psychiatrist or psychologist, but
6 someone that is schooled in dealing with stress and
7 anxiety and fear. Helps you to meditate and calm
8 down and not worry.
9 Q. Is this a place that you go where you
10 have to -- or is this just a friend that talks to
11 you?
12 A. Sometimes I speak with her on the phone
13 and sometimes I see her in person.
14 Q. So is this -- do you have to pay for
15 this?
16 A. No.
17 Q. So this is -- would this be someone that
18 you characterize as a friend that provides support
19 to you?
20 A. It's someone that is trained, like I
21 said --
22 Q. Right.
23 A. -- in dealing with this kind of stuff.
24 And she right now does not charge me for it because
25 she doesn't charge. It's just a service that she's

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1 offering me.
2 Q. All right. And how often do you get
3 that?
4 A. Once a week.
5 Q. Once a week.
6 Can you identify that person for us?
7 A. Is that necessary? Why does she need to
8 have her name?
9 Q. I guess it's up to you whether you're
10 claiming that's part of your damage. And if it is,
11 then I -- I need to --
12 A. I'm not claiming that as part of my
13 damage.
14 Q. Okay.
15 A. I'm claiming my stress and anxiety, but
16 my time with her is not part of my damage. I'm not
17 paying her so there's not damages there as far as
18 financial. The damage is my internal self is being
19 damaged.
20 Q. Right. And when you -- when you go and
21 talk to someone who's schooled in dealing with those
22 types of issues, I mean, is this person -- you know,
23 you say schooled, is this person trained as an
24 expert in stress relief? That's what I'm trying to
25 find out because if it goes to -- if you're alleging

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1 stress, emotional stress, then it would be my
2 position, at least, that that person if that person
3 is schooled and trained that that person that would
4 be relevant as to, okay, well, what is this stress
5 that Lisa's feeling? How much stress is it? Can
6 you quantify it and what's the source of the stress?
7 Do you see what I'm saying?
8 A. Then maybe you'd like to talk to my yoga
9 teacher, too, because I go to yoga for stress as
10 well.
11 Q. See, that's what I'm trying to figure
12 out, is this someone -- is this a yoga teacher or is
13 this someone who has some type of medical or
14 psychological training and license?
15 A. I would say it's psychological training,
16 but she's not a psychiatrist. You know, today we
17 live in a different world. There is a lot of --
18 there are a lot of spiritual teachings and we use
19 meditation to deal with stress and anxiety, so one
20 doesn't necessarily have to go to a doctor or
21 medical team for that.
22 I'm also trained in yoga and meditation
23 myself, but sometimes it helps to reach out to
24 someone else to help you even if -- I'm personally
25 trained, which I am, it helps to be able to work out

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1 and speak your internal processes with someone else.
2 And that's how this person is servicing me.
3 Q. So it's -- it's my understanding you
4 would -- you didn't want to disclose who this person
5 is?
6 A. I just don't see the point of it.
7 Q. Okay.
8 MR. FITTS: Sid, do you have a position
9 at this point as to the disclosure of that person?
10 I don't want to get in an argument at 4:30 in the
11 afternoon. But I think --
12 MR. KISTLER: I say press on with your
13 deposition at this point. If there's an issue
14 concerning this, we can address it later.
15 MR. FITTS: Fair enough. Is that all
16 right?
17 THE WITNESS: That's fine.
18 MR. FITTS: That's what we'll do.
19 BY MR. FITTS:
20 Q. So you have stress?
21 A. Yes. So --
22 Q. And you've been speaking to this friend
23 who is trained in that area of dealing with stress.
24 And then you talked about your yoga teacher. I
25 mean, were you going to list your yoga teacher as

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1 number -- in that or were you being maybe sarcastic
2 and so forth? And I don't mean that in any
3 disrespectful way, but I want to find out what you
4 seriously believe you're doing for the stress.
5 A. I wasn't being sarcastic at all.
6 Q. Okay.
7 A. You were asking me, you know, about the
8 relationship with a person that was helping me with
9 dealing with my stress, and I'm adding to you that I
10 also practice yoga and I do that for stress release.
11 I also exercise every day for my stress release and
12 my anxiety which helps me tremendously and there's
13 no cost incurred with that. So I was just making a
14 comparison. I speak with someone and I exercise to
15 relieve my stress and anxiety, which is tremendous.
16 I live with tremendous anxiety every day.
17 Q. And -- and does that anxiety -- I imagine
18 having a new book come out and a merchandise line
19 that's stressful in and of itself.
20 A. It's stressful to think my book is going
21 to launch and I'm not going to be able to complete
22 my future vision of launching my product line
23 because Wells Fargo says that I'm a risk assessment
24 and I'm not going to be able to get the lines of
25 credit that I require to launch my full on line of

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1 merchandise.
2 Q. All right. Again, you're using the word
3 "could," you don't know yet, do you?
4 A. It's a potential possibility that I am
5 trying my best to prevent.
6 Q. All right. Okay. So we've got the
7 highly offensive and then you have the stress and
8 you were going to mention number three.
9 A. Yes. I've had to hire an attorney to
10 protect me. It's cost me at this point upwards of
11 \$60,000 I've had to spend on attorney's fees, and we
12 haven't even gone to trial yet. So that's
13 tremendous harm to my financial situation.
14 Q. Anything else?
15 A. Yes. As mentioned, but I just want to
16 make sure that I'm very clear on this, I've been
17 involved in a common law relationship, partnership
18 with Michael Kaplan for 15 years as of this weekend,
19 Labor Day weekend. It's been a source of contention
20 with me and the relationship that we've not been
21 married.
22 And I think, you know, how am I
23 protected? I've given 15 years of my life to this
24 person, I'm not married. If something should ever
25 happen to him, where does that leave me? We have

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1 two homes, two mortgages. We have a lot of
2 expenses. If anything happens to him, I'm, first of
3 all, going to be beside myself, very upset. And how
4 am I going to handle all of our household expenses?
5 So this is a complaint that I've had to
6 Michael for a number of years. "Hey, you need to
7 set up some kind of account so I'm not going to be
8 put in a position when I'm devastated that
9 something's happened to you and then I have this
10 other pressure where I don't have access to the
11 funds, appropriate funds that I need to take of our
12 household expenses."
13 And so we've had this discussion
14 throughout the years numerous times and now right
15 when he's about to set up this account that's got
16 substantial funding in it of three some-odd million
17 dollars, that's come to a halt. I still do not have
18 access to my household funds or if anything happens
19 to him or my security, I don't have that now because
20 Wells Fargo Bank has closed our accounts.
21 And right now, until this is cleared,
22 Michael doesn't want to open up another joint account
23 with me. So that's harmed me. I'm harmed because I
24 do not have access to the substantial amount of
25 funding that he was going to provide to me.

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1 MR. FITTS: And I apologize to interrupt
2 you, but we have to go on a break because our tape
3 needs to be replaced. Okay?
4 THE WITNESS: Okay.
5 MR. FITTS: All right.
6 THE VIDEOGRAPHER: This marks the end of
7 Tape No. 2. The time is 4:25 p.m.
8 We're off the record.
9 (Recess.)
10 THE VIDEOGRAPHER: The time is 4:36 p.m.
11 This marks the beginning of Tape No. 3.
12 We're back on the record.
13 BY MR. FITTS:
14 Q. Ms. Johnson, before we broke, took a
15 break, you were talking about your relationship --
16 A. Yes.
17 Q. -- with Michael. And I want to make sure
18 you have an opportunity to fully explain how you --
19 you believe that your relationship with Michael has
20 been damaged as a result of the alleged comments
21 we've talked about.
22 A. Yes. We already cleared that. What we
23 were discussing at the break was the fact that I had
24 to hire an attorney.
25 Q. Okay. Very good. You're right.

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1 You talked about that before you got into
2 your relationship --
3 A. No, Michael was my second issue. The
4 third was my lawyer -- my lawyer.
5 Q. And then the fourth was your relationship
6 with Michael?
7 A. Just to confirm, number one was the
8 slander, defamation.
9 Q. Right.
10 A. Number two was the strain in my
11 relationship with Michael Kaplan.
12 Number three is that I had to hire an
13 attorney and I've paid substantial legal fees at
14 this point in time, already nearing \$60,000.
15 Q. Okay.
16 A. Number four, if you'd like me to move on.
17 Actually, I started on number four which was that
18 Michael intended to open a joint bank account with
19 Wells Fargo Bank up to and over three to
20 five million dollars is what we had discussed. And
21 now he's decided that he's not opening that joint
22 account until this is cleared.
23 And the president of Wells Fargo Bank
24 told Michael that he would not open an amount with a
25 substantial amount of money with three million or

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1 more if my name was on it. So that has harmed me,
2 that's number four.
3 I have two other items.
4 Q. I see you're -- are you reading from
5 notes there?
6 A. My personal notes that I've made, yes.
7 Q. Okay. And how -- how many sheets do you
8 have there?
9 A. One and then a few other documents, just
10 extra papers that I have.
11 Q. And what do the other documents pertain
12 to?
13 A. My bank account, checks that were in
14 question.
15 Q. Okay. Do they have to do -- do they
16 pertain to this lawsuit?
17 A. Yes.
18 Q. Okay. Have you disclosed those
19 documents?
20 A. I believe they were disclosed.
21 Q. Okay. I don't recall seeing them, but
22 you're saying the documents that you have in front
23 of you right now have been disclosed in this
24 lawsuit?
25 A. I think they were.

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1 Q. Okay. My memory doesn't serve me as well
2 as yours may, but if you believe they've been
3 disclosed, what I would like to do is mark those as
4 an exhibit.
5 A. Did you -- sorry, are you finished? Can
6 I respond?
7 Q. Yes.
8 A. Did you receive documentations from
9 Mr. Workman regarding my transactions of my Wells
10 Fargo Bank account?
11 Q. I received a supplemental report --
12 A. Yes, that would be the same document.
13 Q. -- regarding Mr. Workman yesterday late
14 afternoon.
15 A. Yes, those would be the documents.
16 Q. And then this afternoon, I received a
17 supplemental disclosure from your legal counsel
18 containing some statements from another bank.
19 A. Yes, those would be the documents.
20 Q. Okay. But those, what I see in front of
21 you that you're -- those are your handwritten notes?
22 A. Yes, the top document is.
23 Q. Okay. May we mark those as an Exhibit A?
24 A. I don't know.
25 MR. KISTLER: They can. If you're

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1 testifying from it, they have that marked.
2 THE WITNESS: Okay.
3 MR. FITTS: So why don't we mark that as
4 Exhibit A. The court reporter will do that.
5 (Whereupon, Exhibit A was
6 marked for identification.)
7 MR. FITTS: May I see that?
8 BY MR. FITTS:
9 Q. In this Exhibit A here, when did you make
10 this notation?
11 A. Probably last week.
12 Q. It states, it's entitled, it says "Harm."
13 A. That's correct.
14 Q. Okay. I'm going to give this back to you
15 and could you just read it for us?
16 A. Sure. I'm going to read it in sequential
17 order that I've numbered it.
18 Q. Can you start with --
19 A. Since you asked me to give you in order
20 of priority of how I've been harmed --
21 Q. Thank you.
22 A. -- I have readjusted the order in which I
23 wrote them down.
24 Q. Thank you.
25 A. So I have been harmed, number one, I have

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1 been slandered and defamed. Was said that I had --
2 possibly had a criminal record, criminal activity,
3 and to hire a private investigator. So number one,
4 that is how I've been harmed.
5 Number two, I have been harmed in that
6 there has been tremendous strain in my personal
7 relationship with Michael Kaplan. My 15-year
8 relationship has been strained because of the
9 situation.
10 Number three, I have been harmed because
11 I had to hire a lawyer to clear my name and I have
12 attorney's fees and costs.
13 Number three [sic], the president of
14 Wells Fargo Bank would not open a \$5 million account
15 with my name on it because they don't want to do
16 business with me. That Michael only banks with the
17 Wells Fargo Bank, Schwab, and Mellon, and our
18 household accounting is -- no longer exists because
19 of that.
20 Because we do not have a mutual account
21 within the Wells Fargo Bank and so our household
22 accounting has been highly inconvenienced. Now I
23 have to wait for funds to clear. If Michael gives
24 me funding for our household account, I have to take
25 his check, deposit it into my Chase account and wait

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1 for those funds to clear before I have access to
2 those funds.
3 Number five, it's important to me that I
4 have my name cleared to ensure that I have no issues
5 with lines of credit in the future for branding and
6 creating a line of products under my 108 Rock Star
7 Guitar brand.
8 And number six, I've had to disclose the
9 situation at great embarrassment to my publicist and
10 to my accountant and also -- yeah, just to my
11 accountant and to my publicist about the situation.
12 Particularly embarrassing to my publicist
13 because at the time, I had just recently engaged
14 with that publicist and it was very embarrassing to
15 have to say to him, "The check that I just sent to
16 you, please destroy that, I'm going to have to
17 reissue from another bank or send you a cashier's
18 check because Wells Fargo Bank for no reason has
19 closed my accounts."
20 Q. Okay. So is that the complete list,
21 then?
22 A. Yes, that is the complete list.
23 Q. All right. Regarding the item where
24 you're talking about, I guess, the financial impact
25 that you've had as a derivative effect from your

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1 relations with Michael. Do you know what I'm
2 talking about there?
3 A. No.
4 Q. Okay. You're talking about apparently
5 there was going to be some type of fund you said set
6 up jointly in your name and Michael's in the amount
7 of \$3 million?
8 A. Correct.
9 Q. Okay. And when did that decision come
10 about?
11 A. To open the account?
12 Q. Au-huh.
13 A. As I mentioned, we had been talking about
14 trying to do something like that for some time. For
15 a number of years I have been expressing to him,
16 "Hey, if something happens to you, I need to have
17 something set up because we are in a committed
18 relationship, just choosing to not get married."
19 And just because of the way the government has
20 things set up, if you're not married, you don't have
21 access to your partner's assets if they die.
22 So this has been a source of contention
23 within our relationship. And as he was about to
24 actually take action and open this account, Wells
25 Fargo says, No, we won't take an account of

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1 \$3 million -- three to five million dollars is what
2 he was talking about -- if Lisa Johnson's name is on
3 it.
4 So to this date, we still do not have
5 that account and I'm harmed by that because I don't
6 have access to those funds.
7 Q. Okay. So you and Michael have talked
8 about that for approximately 13 years before the --
9 A. Oh, no, not the duration of our
10 relationship. But I would say we started discussing
11 it probably a good five years into our relationship.
12 Q. All right. And those discussions
13 gradually developed to the point where Michael was
14 going to set up a fund. And what kind of fund was
15 this going to be for you?
16 A. Oh, I don't know exactly, but it was
17 going to be a personal joint account between Michael
18 and I so if anything ever happened to him, I would
19 have access to those funds.
20 Q. All right.
21 A. Like, was it going to be an IRA or mutual
22 account or --
23 Q. That's what I'm trying to find out.
24 A. It was going to be a personal account
25 that I would have access to in the event anything

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1 were to happen to him. So it wouldn't have been,
2 you know, an IRA situation where I wouldn't be able
3 to get the funds. It would just be a regular
4 account, an interest bearing account.
5 Q. It was going to be some type of fund
6 where you could inherit money from Michael if he
7 were to pass away?
8 A. That's correct.
9 Q. And this would replace any type of
10 inheritance that, you know, you might receive from a
11 trust or a will?
12 A. I don't think it would be a replacement
13 of an inheritance. It probably would have been in
14 addition to an inheritance. But it would be a
15 security for me that I would have immediate access
16 to funding to cover our household expenses in the
17 event that anything happened to him.
18 Q. Okay.
19 A. Because if something happened to him and
20 I didn't have access to those funds, I would not
21 have enough funds in my personal account to cover
22 even one month of our monthly expenses.
23 Q. Have you ever been named as a life
24 insurance beneficiary on any --
25 A. We do not have life insurance.

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1 Q. Let me finish.
2 Michael doesn't have any life insurance
3 policy?
4 A. No.
5 Q. Okay. Have you and Michael ever
6 discussed that?
7 A. We have.
8 Q. And before the account closure?
9 A. Yes.
10 Q. Okay. Was there a reason why you didn't
11 do that as a form of protection for you?
12 A. Michael doesn't believe in life
13 insurance.
14 Q. Okay. Was there any other discussions of
15 any other type of accounts that could be set up for
16 you?
17 A. No.
18 Q. Okay. Is there anything to prevent
19 Michael from setting up an account and making you as
20 a beneficiary in the event something were to happen
21 to him?
22 A. I don't understand the question.
23 Q. Well, with respect to any type of
24 financial account, have you had any discussions with
25 him where you would be the beneficiary of an account

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1 if something were to happen to him?
2 A. He has a trust set up, so I know that
3 there's some kind of trust set up where I'm a
4 beneficiary.
5 Q. Okay. And would you benefit -- be the
6 beneficiary of what if something were to happen to
7 him?
8 A. I believe I'm the beneficiary, one of his
9 beneficiaries should something happen to him.
10 Q. Okay. And do you know who the other
11 beneficiaries are?
12 A. I think so.
13 Q. How many are there?
14 A. I don't know. That's his personal
15 information.
16 Q. You've never seen the trust?
17 A. No.
18 Q. Okay. Do you know what percentage of
19 Michael's estate that you would inherit if something
20 were to happen to him?
21 A. He once told me 50 percent.
22 Q. Fifty percent of his estate?
23 A. That's what he told me, but I don't have
24 that in writing.
25 Q. Okay. Is there a reason why Michael's

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1 never shown you that trust document?
2 A. You would have to ask him.
3 Q. Have you ever asked him?
4 A. Yeah.
5 Q. And what does he say?
6 A. "I'll get it to you."
7 Q. And what happens?
8 A. I have not received it.
9 Q. And did those discussions occur before
10 August of 2011?
11 A. Yes and have occurred after.
12 Q. Okay. So really nothing's changed?
13 A. With regard to the trust account, no.
14 Q. Right. Or his estate?
15 A. That's -- as far as I know, that's one in
16 the same thing.
17 Q. Do you -- do you know what Michael's
18 estate is worth?
19 A. I don't.
20 Q. He's never told you?
21 A. No.
22 Q. Have you ever asked?
23 A. No.
24 Q. Okay. Do you have any idea of what it
25 might be?

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1 A. It would be a guess.
2 Q. What I'm trying to find out is if you're
3 a part -- if you're a beneficiary of his trust and
4 something happened, wouldn't that \$3 million go to
5 you anyway? Do you have any idea?
6 A. Do you have any idea how long it takes to
7 get money from a trust when somebody dies?
8 Q. I'm asking you the question.
9 A. I don't.
10 Q. Because you're the witness. That's all
11 you have to tell me is you don't know.
12 A. I don't know.
13 Q. I'm trying to find out why you believe
14 that you're damaged from the nonexistence of a
15 \$3 million joint account if you are going to inherit
16 that money in any event if something were to happen
17 to Michael.
18 A. Because the \$3 million is a separate fund
19 from the trust account and is funds that would be
20 readily available to me anytime, any time, any day
21 from that point that the account is opened up until
22 anything should happen to him.
23 Q. So you --
24 A. It's basically --
25 Q. You're telling me the trust account

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1 doc -- the trust documents would -- would indicate
2 whether or not that \$3 million account is part of
3 the trust or not?
4 A. They're two separate things as far as I
5 know.
6 Q. But how do you know that? See, you're
7 telling me about your damages and I'm trying to find
8 out really how do you know that?
9 A. Well, I'm just telling you that Michael
10 was going to open a substantial bank account with
11 three to five million dollars in it, that's my
12 understanding. It would be separate from the trust,
13 so let's not mix things up here.
14 There's an account that he was going to
15 open up that Wells Fargo said they would not open if
16 my name was on it. This has nothing to do one bit
17 with the trust that I really don't know anything
18 about, that I have no documentation. I only have
19 Michael's word that he set that up.
20 Q. Well, that three million would be part of
21 the estate, Michael's estate if he passed away,
22 right?
23 A. It may not be in the trust, he may have a
24 separate account that's set up as a trust, but I
25 don't know where the \$3 million sits right now. It

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1 could be in his Mellon account, his Schwab account,
2 but certainly not -- in the trust account, I don't
3 know.
4 Q. And that's why the trust documents would
5 be important to find out those things, right?
6 A. That's Michael's business. If he chooses
7 to share that with me, that's Michael's business.
8 It's not for me to question him or ask him.
9 Q. It seems like you're saying that that is
10 part of your business, though.
11 A. No, the trust is none of my business.
12 What's my business is the \$3 million that he was
13 going to open up as a joint account and has not
14 because he wants to get the situation cleared,
15 number one.
16 Number two, he only banks with Wells
17 Fargo Bank and until this gets cleared, he can't
18 open up a mutual account.
19 Q. Again, Lisa, I want to ask you, do you
20 know whether or not the \$3 million that would be --
21 you believe would be yours, do you know whether or
22 not that's part of, number one, the estate and
23 number two, the trust?
24 A. I don't know.
25 Q. And so one would have to look at

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1 Michael's estate documents and trust documents to
2 determine really whether or not you've been damaged
3 as a result of these statements.
4 MR. KISTLER: I'm going to object to this
5 questioning. You've asked and answered -- you've
6 asked --
7 MR. FITTS: You can make a short and
8 concise statement. You're making a speaking
9 objection.
10 MR. KISTLER: Now you're asking -- Now
11 you're asking for a legal conclusion.
12 MR. FITTS: Please don't make a speaking
13 objection.
14 MR. KISTLER: Now you're asking for a
15 legal conclusion. I object on those grounds.
16 BY MR. FITTS:
17 Q. Okay. Would you please answer that?
18 A. What's the question?
19 MR. FITTS: Could you read back the
20 question.
21 (Record read.)
22 THE WITNESS: No, I do not know.
23 BY MR. FITTS:
24 Q. And so one would need to look at those
25 trust and estate documents to determine whether or

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1 not the three million --
2 MR. KISTLER: Objection. Asked and
3 answered already. Asked and answered.
4 BY MR. FITTS:
5 Q. You can answer the question.
6 A. I'm not understanding your question.
7 Q. All right. You don't know whether the
8 three million is a part of Michael's trust; is that
9 right?
10 A. That's correct, I don't know.
11 Q. So you would have to look at the trust
12 documents?
13 A. I don't know what you would have to do.
14 Q. Okay. You also talked about you had to
15 disclose certain things to your accountant and to
16 your publicist.
17 A. To my bookkeeper and my publicist.
18 Q. And the bookkeeper is Stacie --
19 A. Correct.
20 Q. -- Hummel. And is your publicist, is
21 that Albright?
22 A. Correct.
23 Q. Is it Jeff?
24 A. Yes.
25 Q. Can you tell me why you've been required

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1 to disclose this information to your bookkeeper
2 Stacie Hummel?
3 A. I told her because I needed her to help
4 me reconcile some transactions in my bank account to
5 show you or the court or my attorneys that any
6 questionable transactions, large transactions in my
7 Wells Fargo account were business transactions into
8 my Nevada State Bank account. And so she was able
9 to pull those transactions for me for my records.
10 Q. And why was it required to look at any
11 bank account from Nevada State Bank?
12 A. Because -- oh, to show that a large sum
13 of money that was withdrawn from my Nevada State --
14 I mean, from my Wells Fargo account was directly
15 deposited into my business banking account with
16 Nevada State Bank.
17 Q. And when did that transaction occur?
18 A. In 2006.
19 Q. And why do you believe that that is
20 related to the letter notices in August 2011?
21 A. I don't believe that it is related.
22 Q. So why did you have to -- feel like you
23 had to disclose it?
24 A. Because we hired an accounting -- a
25 banking expert to analyze my bank account to find

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1 out if there was any risk assessment, and there was
2 zero evidence of there being any risk assessment.
3 The only questionable item that came up was from a
4 transaction in 2006 where I had withdrawn \$85,000
5 from my State Farm -- state -- Wells Fargo account,
6 and there was no evidence that that money, that that
7 \$85,000 was deposited anywhere and so I have proof
8 that it was deposited directly into my business
9 banking account.
10 I don't feel that a transaction in 2006
11 had anything to do with the account closures in
12 2011. But basically this banking expert is grasping
13 at straws trying to find out some reasonable
14 explanation as to why Wells Fargo would close my
15 account. And he thought, well, maybe because there
16 was this huge transaction and they didn't know where
17 the funding went and that raised a red flag.
18 Q. Okay. And so that was a voluntary
19 disclosure that you made to Stacie?
20 A. It was not voluntary, it was that I
21 needed to prove -- show evidence of where that
22 funding went.
23 Q. But you referred to that as grasping at
24 straws?
25 A. I'm saying that the banking expert is

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1 looking for any small anything that could possibly
2 have raised a red flag, and that was the only thing
3 that he found. And I am showing proof that that
4 funding was deposited directly into my business
5 banking account.
6 Q. Okay. That's your complete answer?
7 A. Yes.
8 Q. Why did you have to disclose the alleged
9 statements Jeff Albright?
10 A. Jeff Albright had just become my
11 publicist, and I believe that was one of the very
12 first checks that I had sent to him. I had just
13 established my business working relationship with
14 him. He deals with a lot of high-end celebrities
15 and powerful executives.
16 And I was very embarrassed that he may
17 have already received a check that I sent him and
18 had deposited it or cashed it and that it would be
19 returned as insufficient funds. I did not want to
20 be embarrassed by that and jeopardize my working
21 relationship with him by something like that
22 happening. And so I notified him before anything
23 like that could happen as a heads up that, hey,
24 something ridiculous is happening with my bank
25 account, please disregard that check and I will

<p>Page 129</p> <p>1 issue a new one to you. So that I could maintain my 2 credibility and integrity with him. 3 Q. Wells Fargo gave you a 30-day advance 4 notice of the closing of your accounts, correct? 5 A. Yes. 6 Q. So why did you write a check to Jeff 7 Albright if you did not believe that it would clear 8 before the 30 days was up? 9 A. I wrote the check to Jeff Albright, I got 10 the letter about the account closure after I wrote 11 the check to Jeff. I had no idea when that check 12 was going to clear, 30 days or not. I was not going 13 to take any risk that that check was going to be 14 returned as insufficient funds. 15 Q. Was there anything to prevent you from 16 just telling Jeff Albright that you had decided to 17 change accounts and that to just return the check 18 and you would write a new one on your new account? 19 MR. KISTLER: You mean asking her to lie, 20 is that what you're saying? Is there anything 21 preventing her from lying to him? 22 MR. FITTS: Oh, no, I didn't say that. 23 I'll rephrase that. 24 BY MR. FITTS: 25 Q. Did you understand my question?</p>	<p>Page 131</p> <p>1 to gain credibility in the world of a very high 2 powered and intimidating music industry. And for me 3 to have finally been able to garner and secure Jeff 4 Albright, my publicist, who is friends with all 5 these major artists -- Jimmy Page, Jeff Beck -- I 6 did not want that guy, my new publicist, to think 7 that I was a flake in any way, shape, or form. 8 So before anything could happen, whether 9 there was a 30-day notice or not, I was going to 10 make sure that he was paid correctly and there would 11 be no issues with any checks that I sent him. And 12 so I revealed to him to show my integrity because, 13 number two, as a yogi, I live for truth and die for 14 truth. 15 So the only thing I can ever say to you 16 or to him or to anyone is the truth. And that's 17 what I did, immediately, to handle the situation to 18 let him know what kind of person that I am and I 19 took care of him. 20 Q. And so what did you tell Jeff? 21 A. Well, I believe that you already have 22 that information in e-mail, a copy of the e-mail 23 that I wrote to Jeff. 24 Q. Do you recall what you said? 25 A. The gist of it is, "Hey, I don't know</p>
<p>Page 130</p> <p>1 A. Please repeat it. 2 Q. Okay. No, I did not say lie. 3 I said -- and let me make sure I 4 understand what you said. You wrote the check to 5 Jeff Albright before you received the closure 6 notices? 7 A. Correct. 8 Q. Okay. And the closure notice gave a 9 30-day advance notice, correct? 10 A. Yes. 11 Q. Okay. So there was at least 30 days, 12 then, for the check to be processed before the 13 closing of your account, correct? 14 A. Apparently, yes. 15 Q. Okay. And so why could you not have just 16 told Jeff that your -- you were changing checking 17 accounts and either check -- cash the check or 18 return it to you and you would provide him with a 19 replacement, and that's all you had to tell Jeff? 20 A. Number -- two things. Number one, I was 21 so freaked out when I got that letter. Why would 22 they close my account? What do they mean risk 23 assessment? I was very worried and I was worried 24 about my integrity with this publicist. 25 You have no idea how hard I have worked</p>	<p>Page 132</p> <p>1 what's going on with my bank, but they have closed 2 my accounts for something to do with a risk 3 assessment. It's ridiculous, I'm outraged and if 4 they don't fix it, there will be a lawsuit. And 5 please disregard the check that I have sent to you, 6 I will issue a new check," something to that effect. 7 Q. And my question to you is, you could have 8 just told Jeff, "Please give me the check back, I 9 want to reissue another check." Because you did 10 tell Jeff that, right? 11 A. Tell him what? 12 Q. Didn't you just tell me that you told 13 Jeff -- you asked Jeff for the check back, that you 14 would reissue a new check? 15 A. I didn't ask him for the check back, I 16 told him probably disregard that check and I'll 17 issue you a new check. 18 Q. Why couldn't you have just have said 19 that? 20 A. Because I live for truth, I die for 21 truth. I told him the truth so that no matter what, 22 I was covered and he knew what was going on. 23 Q. So there was no requirement other than 24 your own self-imposed requirement to get into other 25 issues regarding the closure of your account to</p>

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1 Jeff?
2 A. I was required to tell him the truth of
3 the situation and that's what I did.
4 Q. Did he ask you?
5 A. How would he know to ask me?
6 Q. That's my point.
7 A. How would he know?
8 Q. That's my point.
9 A. I had to tell him because I did not want
10 him to receive a check that was not valid or
11 honored.
12 Q. All I'm asking is that you asked him to
13 disregard the check and you would do a replacement.
14 And my question to you is, why didn't you
15 just stop there?
16 A. Because I tell the truth.
17 Q. All right. Is that your complete answer?
18 A. Yes.
19 Q. There was no other requirement, was
20 there, to get into any other information with Jeff
21 Albright, was there?
22 A. The requirement to tell the truth what
23 was happening in the situation --
24 Q. Other than your own self-imposed
25 requirement of yogi?

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1 A. I think it's a legal requirement to
2 disclose to people you're conducting business with
3 what's going on with your financial obligations.
4 Q. And why -- what is your source of that
5 legal requirement?
6 A. To show him that I -- I am a person of
7 integrity, that I pay my bills on time, that if
8 there's any, issue that I'm going to take care of it
9 immediately.
10 Q. Well, it --
11 A. Give him a sense of security.
12 Q. Seems like you're talking about your own
13 self-imposed requirement.
14 Are you aware of any law that required
15 you to disclose that to Jeff Albright?
16 A. I don't think there's a law, but I think
17 a person with integrity would reveal the truth of a
18 situation.
19 MR. FITTS: All right. Ms. Johnson, it's
20 ten after -- a little bit close to ten after five
21 and I've been instructed by our discovery
22 commissioner that I am to stop. And that was during
23 the discovery conference this morning.
24 And so I'm going to suspend the
25 deposition now pursuant to her directive. And she

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1 has indicated that I am to notice the continuation
2 of your deposition on another date. And I'm
3 certainly willing to work with you the best I can on
4 that. So at this point, we'll suspend the
5 deposition.
6 THE VIDEOGRAPHER: This marks the end of
7 today's volume of the deposition of Lisa Johnson.
8 The time is 5:07 p.m.
9 We're off the record. Digital Tape
10 No. 3.
11 (Thereupon, the taking of the deposition
12 concluded at 5:07 p.m.)
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Page 136

1 CERTIFICATE OF DEPONENT

2

3 PAGE LINE CHANGE REASON

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15 DECLARATION OF DEPONENT

16 I, LISA JOHNSON, deponent herein, do
17 hereby certify and declare under penalty of perjury
18 the within and foregoing transcription to be my
19 deposition in said action; that I have read,
20 corrected, and do hereby affix my signature to said
21 deposition.

22

23 LISA JOHNSON

24

25 Subscribed and sworn to before me this
day of , 2013.

NOTARY PUBLIC

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REPORTER'S DECLARATION

2 STATE OF NEVADA)
3 COUNTY OF CLARK) ss

4 I, Jualitta Stewart, a duly commissioned
5 Notary Public, Clark County, State of Nevada, do
6 hereby certify:

7 I reported the taking of the deposition
8 of the witness, LISA JOHNSON, commencing on
9 Thursday, August 29, 2013, at the hour of 2:16 p.m.

10 That prior to being examined, the witness
11 was by me duly sworn to testify to the truth, the
12 whole truth, and nothing but the truth.

13 That I thereafter transcribed my said
14 shorthand notes into typewriting and that the
15 transcript is a complete, true, and accurate
16 transcription of said shorthand notes.

17 I certify that I am not a relative or
18 employee of any party involved in said action, nor a
19 person financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand and affixed my official seal in my office in
22 the County of Clark, State of Nevada, this 16th day
23 of September, 2013.

24 *Jualitta Stewart*
25 JUALITTA STEWART, RPR, CCR No. 807



EXHIBIT 2

EXHIBIT 2

RSPN:
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

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

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

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. The amended
responses are underlined below:

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

1 unduly burdensome or expensive, taking into account the needs of the case, limitations on the
2 parties' resources, and the importance of the issues at stake in the litigation.

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

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

11 GENERAL OBJECTIONS

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

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

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

25 4. No incidental or implied admissions will be made by the answers. The fact that
26 Plaintiff may respond or object to any interrogatory, or part thereof, shall not be deemed an
27 admission that Plaintiff accepts or admit the existence of any fact set forth or assumed by such
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1 interrogatory, or that such answer constitutes admissible evidence. The fact that Plaintiff
2 responds to part of any interrogatory is not to be deemed a waiver by it of its objections,
3 including privilege, to other parts to such interrogatory.

4 5. Plaintiff objects to any request for production of documents to the extent that it
5 would impose upon Plaintiff greater duties than are set forth under the Nevada Rules of Civil
6 Procedure. Plaintiff will supplement its answers to certain interrogatories as required by Rule
7 26(e) of the Nevada Rules of Civil Procedure.

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

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

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

21 **SECOND AMENDED ANSWERS TO INTERROGATORIES**

22 **INTERROGATORY NO. 1:**

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

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1 ANSWER TO INTERROGATORY NO. 1:

2 In August 2011, Plaintiff received a letter from Wells Fargo stating that Defendant
3 was closing a joint account that Plaintiff had with Michael Kaplan. The letter had no
4 explanation for the sudden and abrupt closing. Also in August of 2011, Plaintiff received a
5 letter from Wells Fargo stating that it was closing her Visa Business Account with her
6 company, Guitarfile, LLC. The letter states: "M22 Bank policy excludes lending to certain
7 types of businesses." That same month, Plaintiff also received a letter from Wells Fargo
8 stating that it was closing the operating account of Guitarfile, LLC. Thereafter, Plaintiff
9 contacted Ramy Zaki (an employee of Wells Fargo from the Beverly Hills branch) and other
10 employees at Wells Fargo numerous times to ascertain why Wells Fargo closed these
11 accounts. However, Wells Fargo refused to tell her why it closed her accounts.

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

2 Thereafter, on or about October 11, 2011, upon information and belief, Mr. Kaplan
3 spoke with Cheryl Taylor (assistant to Kirk Clausen President of Wells Fargo) and Kate
4 Wright (District Manager and Vice President of Wells Fargo) concerning the closure of
5 Plaintiff's and Mr. Kaplan's accounts at Wells Fargo. Ms. Wright advised Mr. Kaplan that
6 she said she could not tell why Wells Fargo closed the accounts but that she was sure its risk
7 management department had a good reason. That same day, Mr. Kaplan spoke with Andrew
8 Noll (Vice President of Wells Fargo) concerning the closure of Plaintiff's and Mr. Kaplan's
9 accounts at Wells Fargo. Mr. Kaplan also spoke with his personal banker Robert Martin
10 (President of BNY Mellon). Mr. Martin's contact information is as follows: 2200 Paseo
11 Verde Parkway, Suite 200, Henderson, NV 89052 (Telephone: 702.944.7136) Mr Martin
12 spoke with Kirk Clausen, who is the President of Wells Fargo Bank. Mr. Clausen told Mr.
13 Martin he did not know why the accounts had been closed, but that it must be a serious
14 national security issue for the accounts to have been closed in that manner.

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

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

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1 **INTERROGATORY NO.5:**

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

- 4 (a) state the amount or range of damages claimed;
5 (b) describe in specific detail how the amount or range of damages is calculated or
6 determined;
7 (c) describe what information and documents were used, referred to, or relied upon in
8 calculating or determining the amount or range of damages;
9 (d) describe in specific detail what assumptions were made, including the basis thereof,
10 in calculating the amount or range of damages; and
11 (e) identify each person who participated in the calculation or determination of the
12 damages.

13 **ANSWER TO INTERROGATORY NO. 5:**

14 Plaintiff has suffered injury to her reputation and character in an amount to be
15 determined by the fact-finder at trial. Further, Plaintiff had a banking relationship with
16 Wells Fargo for several years and as a result of Wells Fargo's arbitrary and wrongful
17 actions against Plaintiff, Plaintiff is trying to establish new banking relations. Plaintiff
18 will need financing in the future with her book and merchandise projects and upon
19 seeking financing could be put in a difficult position with future lenders because of Wells
20 Fargo's actions. As discovery is continuing, Plaintiff reserves the right to supplement her
21 answer to this interrogatory.

22 **INTERROGATORY NO. 12:**

23 State all facts that support the allegation in paragraph 25 of your complaint that "This
24 disclosure has harmed Johnson's status and reputation in the business community."
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1 ANSWER TO INTERROGATORY NO. 12 :

2 Plaintiff was required to disclose to her publicist that her accounts with Wells
3 Fargo were involuntarily closed due to allegedly suspicious activity. This disclosure
4 harmed Plaintiff's status and reputation in the business community, especially as Plaintiff
5 was required to disclose Wells Fargo's closures of her accounts to a business associate.
6 For additional information, please see Lisa J. 0087 to Lisa J. 0088 containing information
7 pertaining to Plaintiff's disclosure of information to publicist Jeff Albright. Mr.
8 Albright's contact information is as follows: 3070 Windward Plaza, Suite F-770,
9 Alpharetta, Georgia 30005. As discovery is continuing, Plaintiff reserves the right to
10 supplement her answer to this interrogatory.

11 INTERROGATORY NO. 13:

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

15 INTERROGATORY NO. 15:

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

20 ANSWER TO INTERROGATORY NO. 15:

21 Plaintiff has an obligation to disclose that Wells Fargo closed her bank accounts
22 when she seeks credit lines for her new business venture. This will harm Plaintiff as she
23 seeks credit and financing concerning her new book publication and the sales of ancillary
24 merchandise. Plaintiff's book is titled, "108 Rock Star Guitars." Plaintiff plans to
25 market and sell various items of merchandise in conjunction with this book, including
26 iPhone/iPad case covers, scarves, guitar picks, mini books, clothing, furniture, and t-
27 shirts. Wells Fargo's actions have negatively affected Plaintiff's ability to obtain
28 financing for her book and related merchandise. Plaintiff's joint bank account with

1 Michael Kaplan at Wells Fargo was utilized to help fund the book. Wells Fargo closed
2 that account, creating numerous difficulties given that Mr. Kaplan continues to bank at
3 Wells Fargo and not with Plaintiff's new bank. Plaintiff has been required to establish
4 new bank accounts and is waiting to seek financing until the release of her book in the
5 Fall of 2013. As discovery is continuing, Plaintiff reserves the right to supplement her
6 answer to this interrogatory.

7 INTERROGATORY NO. 17:

8 Identify all businesses of which you have had an ownership interest, making sure to
9 state the name of each business, the addresses of each business; your percentage of ownership;
10 the names of other owners; the nature of the businesses operations; and the period in which you
11 held the ownership interest.

12 ANSWER TO INTERROGATORY NO. 17:

13 Plaintiff possesses a 100% ownership interest in Guitarfile, LLC, which is located
14 at 9517 Canyon Mesa Drive Las Vegas, Nevada 89144. Guitarfile, LLC is in the business
15 of guitar photography. Plaintiff has had an ownership interest in Guitarfile, LLC for
16 three years. Plaintiff also possesses a 100% ownership interest in Bikram Yoga, Las
17 Vegas, which is located at 6787 West Tropicana Avenue, Las Vegas, NV 89103. Bikram
18 Yoga, Las Vegas is a yoga studio. Plaintiff has had an ownership interest in Bikram
19 Yoga, Las Vegas for two years. Plaintiff also possesses a 100% interest in Bikram Yoga
20 The Strip, which is located at 1037 S. Highland Drive #1037, Las Vegas, NV 89109.
21 Bikram Yoga The Strip is a yoga studio. Plaintiff has had an ownership interest in
22 Bikram Yoga The Strip for 1½ years. Plaintiff also possessed a 25% ownership interest
23 in Quad Digital, LLC, which was located at 9517 Canyon Mesa Drive, Las Vegas, NV
24 89144. This entity never began operating business and thus never engaged in any
25 business ventures. The other owners of Quad Digital, LLC were Geri Ellman (515
26 Avocado Avenue, Corona del Mar, CA 92625; 3220 S. Fair Lane, Suite 12, Tempe, AZ
27 85282; telephone: 949.633.3282), Suzanna Melendez (25531 Prado De Las Flores,
28 Calabasas, CA 91302; telephone: 818.451.8117), and Debi Baer (4672 Arriba Drive,

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Tarzana, CA 91356; telephone: 818.298.0204 & 818.345.8180). As discovery is continuing,
Plaintiff reserves the right to supplement her answer to this interrogatory.

DATED this 8th day of August, 2013.

HUTCHISON & STEFFEN, LLC

Richard F. Wall

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

Attorneys for Plaintiff Lisa Johnson

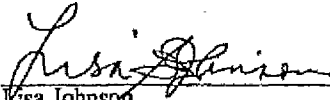
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VERIFICATION

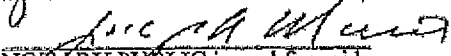
I, LISA JOHNSON, declare as follows:

I have read the foregoing **SECOND AMENDED 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 7th day of August, 2013.


Lisa Johnson

SUBSCRIBED and SWORN before me this 8 day of August, 2013.


NOTARY PUBLIC in and for said
County and State



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 8th day of August, 2013, I caused the above and foregoing document entitled **LISA JOHNSON'S SECOND AMENDED RESPONSES TO WELLS FARGO BANK, N.A. FIRST SET OF INTERROGATORIES** 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 Defendant


An employee of Hutchison & Steffen, LLC

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10050 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

EXHIBIT 3

EXHIBIT 3

MICHAEL KAPLAN
JOHNSON VS. WELLS FARGO

August 30, 2013
1-4

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2	CLARK COUNTY, NEVADA		2	WITNESS: MICHAEL KAPLAN	
3	*****		3		
4	LISA JOHNSON, a Nevada		4	EXAMINATION	PAGE
5	resident,		5	By Mr. Fitts	6
6	Plaintiff,		6		
7	vs.	CASE NO.: A-12-655353-C	7		
8	WELLS FARGO BANK, NATIONAL	DEPT. NO.: XXVI	8		
9	ASSOCIATION; DOES I through		9		
10	X, inclusive; and ROE		10		
11	CORPORATIONS, I through X,		11		
12	inclusive,		12		
13	Defendants,		13		
14	VIDEOTAPED DEPOSITION OF		14		
15	MICHAEL KAPLAN,		15		
16	August 30, 2013		16		
17	8:19 a.m.		17		
18	1935 Village Center Circle		18		
19	Las Vegas, Nevada		19		
20	Christine M. Jacobs, CCR No. 455		20		
21			21		
22			22		
23			23		
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4	JOSEPH S. KISTLER, ESQ.		4	A Subpoena for Deposition-Civil, Duces Tecum	58
5	10080 West Alta Drive, Suite 200		5	B Lisa Johnson's Responses to Wells Fargo Bank	
6	Las Vegas, Nevada 89145		6	N.A. First Set of Interrogatories	70
7	702 385-2500		7		
8	702 385-2086 Fax		8	INFORMATION TO BE SUPPLIED	
9	jkistler@hutchlegal.com		9	Page Line	
10	For the Defendant:		10	91 25	
11	SMITH LARSEN & WIXON		11		
12	STEWART C. FITTS, ESQ.		12		
13	1935 Village Center Circle		13		
14	Las Vegas, Nevada 89134		14		
15	702 252-5002		15		
16	702 252-5006 Fax		16		
17	scfesi@law.com		17		
18			18		
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<p>1 Deposition of Michael Kaplan 2 August 30, 2013 3 THE VIDEOGRAPHER: This is disk No. 1 to the 4 videotaped deposition of Michael Kaplan in the matter of 5 Lisa Johnson versus Wells Fargo Bank National Association 6 being heard before the District Court, Clark County, 7 Nevada, Case No. A12655393C. 8 This deposition is being held at 1935 Village 9 Center Circle, Las Vegas, Nevada on August 30, 2013, at 10 8:19 a.m. My name is Adrian Ramodonovich with Esquire 11 Solutions, Las Vegas, Nevada. The court reporter is 12 Chris Jacobs. 13 Counsel, will you please introduce yourselves 14 and affiliations after which the witness will be sworn. 15 MR. KISTLER: Joseph Kistler with the law firm 16 of Hutchison and Steffen appearing for and behalf, for 17 and on behalf of plaintiff, Lisa Johnson. 18 MR. FITTS: Stewart Fitts on behalf of Wells 19 Fargo Bank National Association. 20 MICHAEL KAPLAN, having been first duly 21 sworn, testified as follows: 22 EXAMINATION 23 BY MR. FITTS: 24 Q. Good morning, Mr. Kaplan. 25 A. Good morning.</p>	<p>1 all. 2 Q. Where did you go to law school? 3 A. Oklahoma City University School of Law. 4 Q. Are you -- have you actually practiced law? I 5 know you're in business and so forth. Do you have a law 6 practice? 7 A. Currently, no. 8 Q. How long have you practiced law over the years? 9 A. I'm not sure I understand. How long have I 10 practiced? 11 Q. Yes. When did you graduate from law school? 12 A. In 1975. 13 Q. Okay. So over the last 38 years -- I'm sorry. 14 A. Sounds like a lot of years. 15 Q. How many of those years have been devoted to the 16 practice of law, you know, full time? 17 A. Probably five years. 18 Q. Are you represented by legal counsel today with 19 respect to your deposition? 20 A. No, I am not. 21 Q. Have you had your deposition taken before? 22 A. Yes, I have. 23 Q. How many times? 24 A. A number of them. I'm not sure exactly. 25 Q. You've probably taken some depositions yourself,</p>
Page 6	Page 8
<p>1 Q. My name is Stewart Fitts. I'm an attorney for 2 Wells Fargo Bank, and this is the time set for the 3 deposition in the lawsuit that was filed by Lisa Johnson 4 with respect to some closure of some bank accounts for 5 which I believe you were a joint account holder on one of 6 them. Is that your understanding of why you're here 7 today? 8 A. Yes. 9 Q. Would you please state and spell your full name 10 for the record, please? 11 A. Michael Kaplan, M-i-c-h-a-e-l, K-a-p-l-a-n. 12 Q. Date of birth? 13 A. 7/7/52. 14 Q. Are you licensed to practice law in any states? 15 A. Yes. 16 Q. What states? 17 A. Missouri, Nevada, California, and Hawaii. 18 Q. And are you currently licensed in each of those 19 states? 20 A. Yes, I am. 21 Q. How long have you practiced? 22 A. I should qualify that. I believe in Missouri 23 I'm showing as a nonresident, and I don't know if it says 24 inactive. I know the card says nonresident. It may be 25 inactive in Missouri. I haven't practiced in Missouri at</p>	<p>1 I take it? 2 A. Yes. 3 Q. You're familiar with the general rules and 4 parameters of a deposition? 5 A. Yes. 6 Q. That you're under oath today just as if we were 7 in a court before a judge and jury? 8 A. Absolutely. 9 Q. We have a court reporter here that's 10 transcribing everything that's being said, and you'll 11 have an opportunity to review your transcript in a couple 12 of weeks to see if there's any changes that are 13 necessary. 14 A. Yes. 15 MR. KISTLER: I believe it's 30 days. 16 Q. (By Mr. Fitts) And if you do make any changes, 17 you understand that if you were to make any substantive 18 changes, for example, changing an answer from a yes to a 19 no, that could be commented upon at trial in this matter 20 and it may affect your credibility. Do you understand 21 that? 22 A. Yes. 23 Q. So it's very important today as we go through 24 your deposition that we speak clearly and audibly so that 25 our court reporter can transcribe everything in an</p>

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1 accurate and correct manner. Do you understand that?

2 A. Yes.

3 Q. So I would ask that when you speak, and you're

4 doing a great job now and I think you probably understand

5 the process, to articulate and try to avoid common ways

6 of communicating with a nod of the head or an uh-huh or

7 an huh-uh. Does that make sense?

8 A. Yes.

9 MR. KISTLER: As I said yesterday, the

10 traditional way of answering that advisement question is

11 "uh-huh."

12 MR. FITTS: Or a nod of the head.

13 Q. (By Mr. Fitts) The court reporter cannot

14 transcribe two people speaking at a time. So I'd just

15 propose a simple rule, and that is I would ask that you

16 wait until I'm completely done with the question before

17 you begin your answer, and I will try to do the same.

18 I'll wait until you're completely done with your answer

19 before I ask another question. Is that fair enough?

20 A. Yes.

21 Q. And you understand that periodically during the

22 deposition there may be an objection by counsel, and

23 that's common, but you'll still need to answer the

24 question unless there's an assertion of any type of

25 privilege and counsel admonishes you to that. Does that

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1 make sense?

2 A. Yes.

3 Q. If you do not understand any of my questions,

4 will you please let me know --

5 A. Yes.

6 Q. -- just as you did a few minutes ago, and I will

7 do my very best to rephrase my question and then that way

8 at least we can try our very best to communicate in a

9 clear manner today. Does that make sense to you?

10 A. Yes.

11 Q. Are you under the influence of any medications

12 today? Alcohol or drugs?

13 A. No.

14 Q. Is there any reason why you cannot provide full

15 and complete answers this morning?

16 A. No.

17 Q. Have you spoken with anyone in preparation of

18 your deposition today?

19 A. Yes.

20 Q. Who have you spoken with?

21 A. Lisa.

22 Q. And who is Lisa?

23 A. Lisa Johnson.

24 Q. All right.

25 A. My girlfriend.

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1 Q. And what have you discussed with Lisa?

2 A. Just in general the case, and I guess you

3 deposed her yesterday for several hours.

4 Q. And did you and Lisa discuss what transcribed

5 during her deposition?

6 A. Briefly.

7 Q. What did you talk about?

8 A. That you were fixated on the damages that she

9 would derive in this lawsuit, and you kept asking her how

10 much money I had and how much money she lost out because

11 of the actions of Wells Fargo.

12 Q. Anything else?

13 A. That you were -- you spent a lot of time asking

14 her how much money Mr. Kaplan has and how much money that

15 she would derive had Wells Fargo not prevented Mr. Kaplan

16 from opening an account. Excuse me. Me opening for an

17 account.

18 Q. Anything else?

19 A. I think that's pretty much it.

20 Q. Have you looked at any documents in preparation

21 for your deposition today?

22 A. I've probably looked at some emails that I have

23 on my computer.

24 Q. What, what emails were those? Can you describe

25 those for us?

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1 A. Let's see. Emails from Arash Dounel. Emails

2 from Jessica Scoffy, I believe, is her last name.

3 Q. Jennifer?

4 A. Counsel for Wells Fargo out of San Francisco,

5 and she and I had lengthy phone conversations and so I

6 reviewed that. I believe I also looked at a letter I

7 sent her back the end of 2011 where I had told her what

8 was going on and asked for her help.

9 Q. Is that Jennifer Scafe?

10 A. That's correct.

11 Q. So when you say emails, you're talking about

12 emails that have been disclosed in this case?

13 A. I'm not a party, so I really don't know what

14 you've got or don't have, so it's very difficult for me

15 to comment.

16 Q. Have you -- you haven't looked at any of the

17 documents that have been formerly disclosed in a 16.1

18 disclosure or in a form --

19 A. You'll have to help me with your 16.1 because

20 it's been a lot of years since I practiced.

21 Q. I'm referring to NRCP 16.1, which is a

22 disclosure rule here in Nevada.

23 A. I --

24 Q. I guess -- let me rephrase the question. Have

25 you assisted Lisa Johnson in accumulating documents for

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1 her legal counsel in this case?
2 A. I may have. I'm not sure specifically.
3 Q. Have you assisted her in answering interrogatory
4 answers?
5 A. I'm sure I probably have in some manner.
6 Q. Okay. So you're familiar generally with the
7 discovery that's taken place in this case with respect to
8 documents and so forth?
9 A. In general.
10 Q. Okay. And in general, then, are those the
11 documents that you reviewed in preparation for your
12 deposition today?
13 A. I couldn't say for certainty one way or the
14 other.
15 Q. Have you created any notes in connection with
16 this lawsuit?
17 MR. KISTLER: Object to the form of the
18 question.
19 THE WITNESS: I'm not sure.
20 Q. (By Mr. Fitts) Have you taken any notes or kept
21 any notes pertaining to the subject matter of the closure
22 of the bank accounts of Lisa Johnson at Wells Fargo Bank?
23 A. Probably in my emails that I've sent to various
24 people in Wells Fargo Bank.
25 Q. Any handwritten notes that you've kept?

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1 A. I would imagine most of them are converted into
2 computer as opposed to just scribbles.
3 Q. When you say converted, what do you mean?
4 A. Well, emails, you know, to where I've typed out
5 my conversations and things of that nature.
6 Q. Have you shared any of those with Lisa Johnson?
7 A. I'm trying to think. I would think some. I
8 can't say as I sit here today that all of them. I can't
9 say for certainty that I've shared all of them.
10 Q. Do you have any other types of materials or
11 recordings of any type with respect to the alleged
12 conversations that you had with Arash Dounel at the
13 Malibu branch of Wells Fargo Bank?
14 A. I'm trying to think if I do. Because in
15 addition to meeting with him at the bank, there were a
16 number of phone calls, and I'm trying to think if there's
17 anything from some of those calls, and I'm not sure as I
18 sit here today.
19 Q. That is something you could find out for us?
20 A. I can look into it. I have -- I know back then
21 in 2011 I had a different phone because they've updated
22 them, and there may be things on that other phone. I
23 would have to check.
24 Q. Have you provided any copies of any types of
25 materials or documents to Lisa Johnson's legal counsel in

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1 this matter?
2 A. I'm sorry. Can you say it again?
3 (Videographer sneezed.) Bless you.
4 Can you say that again?
5 Q. Have you provided to Lisa Johnson's legal
6 counsel in this matter any materials or documents or
7 recordings of any type?
8 A. I'm sure I provided some.
9 Q. And do you know what documents or materials or
10 recordings that you did provide?
11 A. As I sit here today, I can't tell you exactly
12 what I provided.
13 Q. Do you remember attending a hearing in this
14 matter at the Regional Justice Center in Las Vegas some
15 months ago?
16 A. Yes, I do.
17 Q. How many hearings have you attended?
18 A. I believe the one you just referred to. I'm not
19 sure if I attended any others in this case. I don't
20 believe I have, but I'm not positive.
21 Q. Do you remember conversing with me outside the
22 courtroom after that hearing?
23 A. Yes, I do.
24 Q. And do you have a recollection of telling me
25 outside of the courtroom that you didn't have to tell me

Page 16

1 whether or not you had any documents or materials
2 pertaining to this matter?
3 A. Yes, I do.
4 Q. Okay.
5 A. And I also recall I was rather offended, the
6 statement you made at the time. You basically stood
7 there in the hallway of the court and made derogatory
8 statements towards Lisa making statements that you knew
9 exactly why the bank closed Lisa's account and my joint
10 account with Lisa and you had all the backup to prove it
11 and that she had -- they were correct in what they did.
12 And I was really offended. I took offense. It's like
13 what does he know that Wells is refusing to say?
14 Q. When you indicated that you did not have to tell
15 me whether or not you had any documents or materials in
16 this matter, were you specifically referring to any
17 materials or documents that you had in mind?
18 A. I think just in general. I don't know
19 specifically at the time but obviously in general. And I
20 was surprised in this case that this lawsuit was filed
21 some time ago and that in all this time you've never
22 chosen to sit down with me to depose me.
23 And all these months and almost a year, I believe
24 Dounel's deposition was last fall, and I should remember
25 exactly because my dog had a heart appointment that day

<p>Page 17</p> <p>1 because of her heart problems, and I never understood why</p> <p>2 you waited almost a year to take my deposition and even</p> <p>3 ask me about the case. I was kind of surprised.</p> <p>4 Q. I'm sorry about your dog. Is your dog doing</p> <p>5 okay now?</p> <p>6 A. She's having a tough time. She's still ill.</p> <p>7 Thank you, though.</p> <p>8 Q. I'm sorry to hear that.</p> <p>9 A. Thank you.</p> <p>10 Q. Do you feel, still feel that way, that you don't</p> <p>11 have to disclose any documents or materials that you may</p> <p>12 have pertaining to the subject matter of this case?</p> <p>13 MR. KISTLER: Objection. Asks for a legal</p> <p>14 conclusion.</p> <p>15 THE WITNESS: I'm not sure what you're asking me</p> <p>16 now, Stewart.</p> <p>17 Q. (By Mr. Fitts) Okay. Well, you recall telling</p> <p>18 me outside the courtroom that you didn't feel that you</p> <p>19 had to disclose to me on behalf of Wells Fargo Bank any</p> <p>20 documents or materials you had pertaining to this</p> <p>21 lawsuit; is that correct?</p> <p>22 MR. KISTLER: Object to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: I possibly said something. We had</p> <p>25 a lot of exchanges in the court, in the hallway, and I</p>	<p>Page 19</p> <p>1 respect her for it. She basically said, hey, I probably</p> <p>2 got a little bit caught up. I don't remember her exact</p> <p>3 word but something like that. So everybody typically</p> <p>4 after an argument or a fight people say, okay, I'm sorry,</p> <p>5 and that's kind of what happened.</p> <p>6 Q. Do you have any more commentary you would like</p> <p>7 to share with us rather than answer the questions that</p> <p>8 I've asked you?</p> <p>9 MR. KISTLER: I'm going to object. That's</p> <p>10 argumentative.</p> <p>11 THE WITNESS: I'm trying to answer your</p> <p>12 questions.</p> <p>13 Q. (By Mr. Fitts) Did I ask you about any exchange</p> <p>14 between the judge and I at a hearing?</p> <p>15 A. I will tell you exactly what you asked me. You</p> <p>16 asked me about our discussion out in the hall and --</p> <p>17 Q. That's right.</p> <p>18 A. -- I was basically trying to tell you how we got</p> <p>19 to that vein of having a heated discussion in the hallway</p> <p>20 where you became even agitated towards me, and I believe</p> <p>21 at one point you accused myself and Sid of calling you a</p> <p>22 liar. So there were a lot of exchanges that happened in</p> <p>23 that hallway.</p> <p>24 MR. KISTLER: Sid, by that way, is Joseph</p> <p>25 Kistler. That's me. That's my middle name.</p>
<p>Page 18</p> <p>1 remember you were becoming agitated. We just walked out</p> <p>2 of the courtroom where the judge basically had to tell</p> <p>3 you to shut up at one point because you were getting the</p> <p>4 judge upset. And I remember the bailiff, I thought he</p> <p>5 was going to come over and grab you.</p> <p>6 So there were a lot of things said, but I know</p> <p>7 you were very emotional when you walked out of the</p> <p>8 courtroom because you had just gotten a tongue lashing</p> <p>9 from the judge and the bailiff almost wanted to take you</p> <p>10 into custody.</p> <p>11 Q. I appreciate your concern.</p> <p>12 A. I think it was more of a description of your</p> <p>13 state of mind as we walked out of the courtroom because</p> <p>14 you were agitated. And I understand because having a</p> <p>15 judge just admonish you the way she did was -- you know,</p> <p>16 I was sitting in the back the courtroom and I had not</p> <p>17 been in court in some time.</p> <p>18 Q. Did you, did you happen to hear the judge</p> <p>19 apologize for her comments that she made to me?</p> <p>20 A. I don't know if she specifically apologized. I</p> <p>21 think after the bailiff was ready to come over and grab</p> <p>22 you, I think she basically -- you said -- you apologized</p> <p>23 to the judge, that you were sorry for your, what you</p> <p>24 said, because you kept interrupting.</p> <p>25 And at that point the judge said what -- you know, I</p>	<p>Page 20</p> <p>1 THE WITNESS: I'm sorry, Sid. Would you prefer</p> <p>2 I use Joseph?</p> <p>3 MR. KISTLER: Lisa did the same thing.</p> <p>4 Q. (By Mr. Fitts) Any other commentary?</p> <p>5 A. I'll let you continue asking me what you like,</p> <p>6 sir.</p> <p>7 Q. Well, we can, we can go this route. That's</p> <p>8 fine. But I didn't ask you about any of that, did I?</p> <p>9 A. Yes, you did.</p> <p>10 Q. No, I didn't.</p> <p>11 A. Okay. I don't want to debate.</p> <p>12 Q. I asked you about your comment to me outside the</p> <p>13 courtroom that you did not have to tell me whether or not</p> <p>14 you had any documents or recordings pertaining to the</p> <p>15 subject matter of this lawsuit.</p> <p>16 A. Probably in response to yours that you basically</p> <p>17 said we don't have to say anything as to why we closed</p> <p>18 the joint account of you and Lisa Johnson, so I probably</p> <p>19 responded. So what's your question?</p> <p>20 MR. FITTS: Just -- would you read the question</p> <p>21 back, please, for the witness.</p> <p>22 THE REPORTER: "I asked you about your comment</p> <p>23 to me outside the courtroom that you did not have to tell</p> <p>24 me whether or not you had any documents or recordings</p> <p>25 pertaining to the subject matter of this lawsuit."</p>

<p>1 Q. (By Mr. Fitts) And you remember that?</p> <p>2 A. Pretty much, yes.</p> <p>3 Q. And do you still feel that way?</p> <p>4 A. I'm willing to answer questions or provide if</p> <p>5 you ask me something.</p> <p>6 Q. Okay. Well, I'm asking you if you'll provide</p> <p>7 any, all the documents, notes, recordings, and other</p> <p>8 materials that you've accumulated with respect to this</p> <p>9 lawsuit. Are you willing to do that?</p> <p>10 MR. KISTLER: Object to the form of the</p> <p>11 question. Has a subpoena been issued?</p> <p>12 Q. (By Mr. Fitts) You can answer the question.</p> <p>13 A. I think he asked you if there's a subpoena.</p> <p>14 I've always been willing to supply things. Nobody has --</p> <p>15 Sid just made the objection. I've been more than</p> <p>16 willing. Nobody has ever wanted to. Just to let you</p> <p>17 know.</p> <p>18 I don't know if you've seen the letter that I sent</p> <p>19 to Jennifer, your general counsel for Wells Fargo in San</p> <p>20 Francisco, where I basically, after explaining everything</p> <p>21 to her probably in a two-page letter, I basically said</p> <p>22 that myself and Lisa Johnson would be more than happy to</p> <p>23 come up to San Francisco at our expense, bring</p> <p>24 everything, and sit down with them on a face-to-face</p> <p>25 meeting -- this was the end of 2011 -- in order to try</p>	<p>Page 21</p>	<p>1 Q. How long would it take you to do that?</p> <p>2 A. I'm not sure when I'm going to be there.</p> <p>3 Probably three weeks.</p> <p>4 Q. And you can provide that to my office within</p> <p>5 three weeks?</p> <p>6 A. That's fair.</p> <p>7 Q. Okay. You read the transcript of the hearing</p> <p>8 that you were just describing a few minutes ago?</p> <p>9 A. No, I have not.</p> <p>10 Q. So you didn't read about the judge's apology,</p> <p>11 did you?</p> <p>12 A. No.</p> <p>13 Q. Do you remember telling me outside the hallway</p> <p>14 that you had some friends at 20/20, ABC show 20/20 in New</p> <p>15 York?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And that you were going to talk to them about</p> <p>18 this case?</p> <p>19 A. Yes. And as a matter of fact, they did get</p> <p>20 back -- I'm glad you're videotaping this, and don't know</p> <p>21 what the procedure is of getting a copy of it, but they</p> <p>22 were interested in doing a story on this.</p> <p>23 As you know, since you represented me and my old</p> <p>24 company, Consol Resorts, we used to deal a lot with</p> <p>25 celebrities over the years and a lot of radio and</p>	<p>Page 23</p>
<p>1 and avoid having legal costs and legal expenses, that I</p> <p>2 felt it would be best interest of everyone.</p> <p>3 She basically wrote back that, nope, no reason to</p> <p>4 meet to discuss, and so that was the end of it. I was</p> <p>5 prepared to come up and bring everything I had.</p> <p>6 So to answer your question, absolutely. I've been</p> <p>7 wanting to do this for some time, and I'm kind of shocked</p> <p>8 that nobody at Wells Fargo has wanted to sit down and</p> <p>9 discuss everything. I'll be happy to.</p> <p>10 Q. Did I ask you about Jennifer Scafe?</p> <p>11 A. You asked me about providing information to --</p> <p>12 Q. Right.</p> <p>13 A. -- you, who represent Wells Fargo, and you said</p> <p>14 are you willing to provide it? And my point of</p> <p>15 explaining that --</p> <p>16 Q. My question is simply yes or no.</p> <p>17 A. I was going to provide it to the general counsel</p> <p>18 at Wells Fargo. I'm willing to provide it to you, her</p> <p>19 employee.</p> <p>20 Q. Okay. Will you do that for us?</p> <p>21 A. Yes.</p> <p>22 Q. Within the next two weeks?</p> <p>23 A. It may take me time because some things I have</p> <p>24 at my place in California, some I have here, so it'll</p> <p>25 just take -- as quick as possible, yes.</p>	<p>Page 22</p>	<p>1 television, and I still stayed close to a lot of people,</p> <p>2 and I explained what was happening and they said, Mike,</p> <p>3 we'd be happy to try and do something because we've had</p> <p>4 other issues of banks and credit agencies doing this to</p> <p>5 consumers.</p> <p>6 Q. And this is a defamation claim; right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Are you married?</p> <p>9 A. No, I'm not.</p> <p>10 Q. Have you ever been married?</p> <p>11 A. No, I have not.</p> <p>12 Q. Do you have any children?</p> <p>13 A. No, I do not.</p> <p>14 Q. Who are your parents?</p> <p>15 A. My parents are both deceased.</p> <p>16 Q. Who are they?</p> <p>17 A. What do you mean who are they? Their names? I</p> <p>18 mean I'm not sure what you're asking.</p> <p>19 Q. Yes.</p> <p>20 A. My dad was named Joseph Kaplan; my mom was</p> <p>21 Martha Kaplan.</p> <p>22 Q. And where were you born?</p> <p>23 A. New Jersey. Patterson, New Jersey.</p> <p>24 Q. Is that where you spent your years growing up</p> <p>25 through grade school and so forth?</p>	<p>Page 24</p>

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1 A. No.
2 Q. Where did you spend your years growing up, your
3 grade school, junior high, high school?
4 A. I was born in New Jersey; lived in Oklahoma City
5 and Las Vegas and St. Louis.
6 Q. When did you meet Lisa Johnson?
7 A. 1998.
8 Q. Where did you meet her?
9 A. New York City.
10 Q. How would you describe your relationship with
11 Lisa?
12 A. Could you be more specific?
13 Q. I don't know what your relationship is. I'm
14 just asking you how you would describe it.
15 A. We live together. We've been together for --
16 met 15 years ago. Probably 13, 14 years now that we've
17 been together.
18 Q. And my understanding you have a residence here
19 in Las Vegas?
20 A. My residence is here in Las Vegas. My main
21 house is here in Las Vegas. Yes, sir.
22 Q. And Lisa lives with you at that residence?
23 A. Yes, sir.
24 Q. And what is the address of that residence?
25 A. 9517 Canyon Mesa Drive, Las Vegas.

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1 Q. And do you have any other residences?
2 A. I own a house in California.
3 Q. And where is that located in California?
4 A. 301 Loma Metisse, Malibu, California.
5 Q. Any other residences?
6 A. No.
7 Q. And what percentage of the time do you spend in
8 your, at your Las Vegas residence? Just an estimate.
9 A. The majority of it. I do a lot of traveling,
10 but I'm here probably the majority of the time in Las
11 Vegas, my home.
12 Q. Is there a percentage that you can estimate?
13 A. Not as I sit here today. I haven't really
14 thought about it.
15 Q. Does Lisa also share the residence in Malibu
16 with you?
17 A. It's a vacation place. When you say does she
18 share it with me, yes, we both use it. Yes.
19 Q. Do any other people live at those residences?
20 A. Two dogs.
21 Q. I knew you had one. Anyone or anything else?
22 A. That's it.
23 Q. All right. I believe yesterday Lisa referenced
24 her relationship with you as, I'm paraphrasing, as a
25 common law partner. Would you generally agree with that?

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1 A. It sounds like you're asking me for a legal
2 definition and --
3 Q. I'm not.
4 A. Okay.
5 Q. I'm just citing what Lisa said yesterday.
6 A. Okay. I don't know that I'm going to give you a
7 legal classification. We are close and, as I said, been
8 together a lot of years.
9 Q. Would you consider her your girlfriend?
10 A. Yes.
11 Q. Has she been your exclusive girlfriend the last
12 15 years?
13 A. Yes.
14 Q. Do you have -- I know you have a -- you went to
15 law school.
16 A. Yes.
17 Q. Do you have any other post high school
18 educational training?
19 A. Yes.
20 Q. Can you tell us what that is?
21 A. I have my bachelor's degree and my master's.
22 Actually, I think I was a couple credits short, so I
23 never bothered to finish my master's.
24 Q. What was your bachelor's degree in?
25 A. Political science.

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1 Q. And where did you obtain that degree?
2 A. University of Missouri.
3 Q. Then you did some master's work?
4 A. Yes.
5 Q. And what was that in?
6 A. Urban planning.
7 Q. And where did you do that work?
8 A. St. Louis University.
9 Q. Any other post high school education or
10 training?
11 A. Just law.
12 Q. My understanding is that you're self-employed.
13 You have your own businesses. Is that correct?
14 A. Yes.
15 Q. Okay. Can you tell us, identify what your
16 business or businesses are?
17 A. My main concentration now is my company in Maui
18 that is a timeshare marketing development company.
19 Q. What's the name of that company?
20 A. Kainoa, K-a-i-n-o-a, Properties.
21 Q. That's in?
22 A. Maui, Hawaii.
23 Q. So is it a corporation?
24 A. It's a LLC.
25 Q. Are there any owners of the LLC in Maui other

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1 than yourself?

2 A. I should qualify. The LLC is owned by another

3 entity.

4 Q. Oh. Who is that?

5 A. Nevada 2010, LLC.

6 Q. And do you have an ownership interest in Nevada

7 2010?

8 A. Yes.

9 Q. Are you the sole owner?

10 A. No. I have a partner.

11 Q. Who's your partner?

12 A. Arthur Spector.

13 Q. Are you and Arthur the only owners of Nevada

14 2010?

15 A. Yes.

16 Q. What percentage do you own?

17 A. 50.

18 Q. And what percentage of -- Kainaul?

19 A. Kainoa.

20 Q. Kainoa. Thank you.

21 A. Deep blue waters.

22 Q. That sounds like a nice place. Who are the

23 owners of that LLC? I know Nevada 2010 is one of them;

24 is that right?

25 A. You've lost me. I thought I explained --

Page 30

1 answered it.

2 Q. Is -- does -- is Nevada 2010 the sole owner of

3 your LLC in Maui?

4 A. Yes.

5 Q. Okay. And that's a timeshare company?

6 A. Yes, it is.

7 Q. Any other businesses that you're involved in?

8 A. Not currently.

9 Q. Any other companies that you have ownership in?

10 A. Yes.

11 Q. And what are those?

12 A. Kaplan Enterprises, LLC,

13 Q. Where is that headquartered?

14 A. Las Vegas.

15 Q. Are you the sole owner of that LLC?

16 A. Yes, I am.

17 Q. What type of business is Kaplan Enterprises?

18 A. Basically manages funds, investments.

19 Q. Any other companies you have an ownership in?

20 A. Let's see. Miklan, LLC.

21 Q. Can you spell that for us?

22 A. M-i-k-l-a-n, LLC.

23 Q. And where is Miklan, LLC headquartered?

24 A. Las Vegas.

25 Q. Who are the owners of that LLC?

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1 A. Myself.

2 Q. Sole owner?

3 A. Yes.

4 Q. And what type of business is Miklan?

5 A. I believe the accountant's attorneys have it to

6 where it owns part of the Hawaii operation, my interest

7 in the Hawaii operation.

8 Q. Okay. In Maui?

9 A. Yes.

10 Q. Anything else?

11 A. I think that's it.

12 Q. Does Lisa work for any of these businesses?

13 A. No.

14 Q. Do you employ Lisa in any capacity at all?

15 A. No.

16 Q. Have you ever filed bankruptcy?

17 A. No.

18 Q. Have any of your companies ever filed

19 bankruptcy?

20 A. No.

21 Q. Please don't take offense to this question. You

22 may have asked it yourself during depositions. I don't

23 know. But have you ever been charged with a crime

24 involving dishonesty or any felony?

25 A. Never.

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1 Q. I didn't think so. Have you been a party to any

2 other lawsuit? Strike that, because you're not a party

3 to this lawsuit so I apologize.

4 Have you been a party to any type of lawsuit or

5 legal proceeding?

6 A. Personally?

7 Q. You individually, yes.

8 A. Probably, yes.

9 Q. Okay. You can't recall?

10 A. I'm just trying to think back over the years. I

11 think myself and Arthur Spector, my partner, when we were

12 in the business I think we're involved with some legal

13 actions over the years, but I can't tell you the

14 specifics as I sat here today.

15 Q. Your involvement in this case is as a witness of

16 certain events that pertain to the subject matter of

17 Lisa's lawsuit?

18 A. Yes.

19 Q. And you're aware that you've been listed as a

20 person with knowledge of certain facts and circumstances

21 in this lawsuit?

22 A. Yes.

23 Q. Were you aware that you were originally

24 disclosed as a person with knowledge in this case with an

25 address of care of Hutchison & Steffen?

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1 A. I may have just because Lisa -- that's Lisa
2 attorney, so it doesn't surprise me. I don't know if I
3 can tell you for sure, but I know my address is listed
4 with the state bar of Nevada.
5 Q. I'm sorry?
6 A. My address that I gave you today is listed with
7 the state bar of Nevada where I'm licensed and it shows
8 my address at the state bar of Nevada.
9 Q. Okay, but that wasn't my question.
10 A. Them I'm not sure I understand your question.
11 Q. I asked you if you were aware that in
12 disclosures in this matter of persons with knowledge that
13 you were listed as care of Hutchison & Steffen. Were you
14 aware of that?
15 A. I may have been. I'm not sure. I can't say
16 with certainty I was or wasn't, but probably.
17 Q. Do you know why you would have been listed as
18 care of Hutchison & Steffen?
19 A. I would imagine because I'm a witness for
20 plaintiff.
21 Q. Are you aware of any attempts by my law firm to
22 serve you with a subpoena in this lawsuit?
23 A. Yeah, I found it fascinating. I think I heard
24 through Lisa or through Sid's law firm, I don't remember
25 which, that you guys said you were trying to serve me,

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1 but -- this I found fascinating that somebody was lying
2 to you, or not that you were lying but somebody, and they
3 said they couldn't serve me because I lived in a guard-
4 gated community, which is a total lie.
5 Whoever told you that or however that came about, if
6 in fact somebody said that, because I don't have a guard
7 in my community. It's got a gate that everybody in town
8 has the code to and everybody follows people in, so I'm
9 kind of easy to get to.
10 Q. Everybody in town has the code?
11 A. Every pizza delivery, every UPS driver, every
12 Fed-Ex truck. That encompasses a lot of people.
13 Q. Not everybody, though, does it?
14 A. A lot people.
15 Q. Not everybody, though, does it?
16 A. If not, what people do, and I've seen it --
17 Q. That's not my question. It's not everybody,
18 though; right?
19 A. Anybody that wants to get into that community --
20 Q. That wasn't --
21 A. I've seen -- no. Let me just say if you ask me
22 a question, Stewart --
23 Q. No. That wasn't my question.
24 A. Okay. Stewart, let me answer, try to answer
25 your questions --

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1 Q. I said, I said not everybody.
2 A. Stewart, you said that -- don't, not to speak at
3 the same time and yet you're doing that.
4 Q. Not everybody knows the code, do they?
5 A. Stewart --
6 Q. Yes or no?
7 A. -- if you'll let me answer your other
8 question --
9 Q. It's a yes or no answer.
10 A. As soon as I answer the other question that you
11 interrupted me on -- and you promised you wouldn't
12 interrupt me, Stewart, and you are interrupting.
13 Q. My question is yes or no. Does everybody in
14 town have the code?
15 A. If they want to get into the community,
16 absolutely.
17 Q. Right.
18 A. If you want to get in there today, park in front
19 and wait for other cars.
20 Q. What is your code then?
21 A. I don't even know it.
22 Q. So you don't have the code then?
23 A. I've got it written down. I don't use it. I've
24 got a clicker. Why get out and punch a button when
25 you've got a clicker?

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1 Q. Who told you that, that someone had attempted
2 you, to serve you with a subpoena in this case?
3 A. I don't know whether it came from Lisa or from
4 Sid. I don't recall whether Lisa told me or Sid -- I
5 heard it from one of them, and I don't recall as I sit
6 here today who told me, but I had heard that you were
7 complaining that you couldn't serve me because I lived in
8 a guard-gated community, which I laughed at because I've
9 lived in that house since 2000 -- beginning of 2001.
10 The developer built a guard shack but was smart
11 enough to let the owners vote, and the rest of the owners
12 would never agree to pay the extra fee for a guard. So
13 there's never been a guard in the guard shack for all 11
14 years, 12 years, whatever it is now.
15 Q. And that was funny to you?
16 A. Yeah.
17 Q. And you laughed out loud?
18 A. I'm sorry?
19 MR. KISTLER: Objection.
20 Q. (By Mr. Fitts) You laughed out loud?
21 A. I'm not sure, I'm not what you're saying.
22 I don't understand.
23 Q. You said you laughed.
24 MR. KISTLER: Objection. That's argumentative
25 and irrelevant.

<p>Page 37</p> <p>1 Q. (By Mr. Fitts) Do you remember saying you 2 laughed? 3 A. I think my comment was that whoever made the 4 statement that they could not get into the community 5 lied, f-i-e-d, lied because they made the statement that 6 there was a guard-gated community and they could not gain 7 access because it was a guard-gated community, and my 8 comment was that was a total lie. So whoever said that 9 was not an honorable person. 10 Q. Do you know who said that? 11 A. I don't. You may be able to shed some light. 12 But whoever said it, and I would call them a liar — 13 Q. You're a witness today. 14 A. I'm sorry? 15 Q. You're a witness today. I'm asking you the 16 questions. 17 A. Then go right ahead and ask me. 18 Q. I am. 19 A. Okay. 20 Q. So you don't know in fact whether or not someone 21 said that there was a guard gate and they couldn't get 22 into your community. You don't know that for a fact, do 23 you? 24 A. I heard it secondhand. That's all. 25 Q. Right.</p>	<p>Page 39</p> <p>1 '98, somewhere around there, '99. 2 Q. Well, you're incorrect again, but that wasn't a 3 question of you, was it? 4 A. I think I was answering. 5 Q. Do you want to answer questions today or are you 6 here just to give commentary? 7 MR. KISTLER: Objection. Argumentative. 8 THE WITNESS: If you'll ask a question, Stewart, 9 that one can answer. 10 MR. FITTS: I've asked several questions. 11 THE WITNESS: You've asked about the guard gate, 12 which I've answered. 13 MR. FITTS: Right. 14 Q. (By Mr. Fitts) So you do have a guard gate — 15 A. It's not — 16 Q. — out at your community; is that correct? 17 A. It's an empty building. 18 Q. You do have a guard gate outside your community; 19 correct? 20 A. Yes. 21 Q. Okay. No one is in the guard gate, though; 22 right? 23 A. Never. 24 Q. But there is a gate to your community? 25 A. That half the time is broken, yes.</p>
<p>Page 38</p> <p>1 A. So move on. 2 Q. You heard that. Do you — it seems to me that 3 you have a tendency to speculate and make comments and 4 judgments based on secondhand information. Is that 5 something you do? 6 A. No. 7 MR. KISTLER: Objection. Move to strike. 8 Argumentative. 9 THE WITNESS: No. 10 Q. (By Mr. Fitts) You just did in this case, 11 though; right? 12 MR. KISTLER: Objection. Move to strike. 13 THE WITNESS: Are you going to ask questions? 14 MR. FITTS: I am. And I just ask that you 15 answer them. 16 THE WITNESS: As soon as I can understand what 17 you're asking, Stewart. 18 Q. (By Mr. Fitts) What don't you understand? 19 You're a smart man, aren't you? 20 A. Oh, I'm a smart man. As a matter of fact, you 21 were — I never understood one thing. I'll respond to a 22 lot of things. I never understand how you can represent 23 Wells Fargo when you were my attorney at Consol Resorts 24 and I was the CEO of the company and you represented me. 25 I think I was one of your first cases. This was '98,</p>	<p>Page 40</p> <p>1 Q. Do you know why there was a time after the 2 subpoena was attempted to be served on you that Hutchison 3 & Steffen removed the designation by your name from care 4 of Hutchison & Steffen to your local Las Vegas residence? 5 A. I don't know. 6 Q. Have you had communications with Lisa Johnson's 7 counsel in this case? 8 A. Yes. 9 Q. What discussions have you had? 10 A. I mean I'm not sure what you're asking me. I 11 think I said, so I don't know specifically. I mean as I 12 said, I've had discussions but I don't know specifically 13 what you're asking. 14 Q. Discussions about this case? 15 A. Yes. 16 Q. How many discussions have you had with legal 17 counsel for Lisa in this matter? 18 A. A number. I don't know the exact number. 19 Q. Have you ever been in meetings with legal 20 counsel for Lisa in this case? 21 A. I'm sure I have, yes. 22 Q. Have those meetings been at the offices of 23 Hutchison & Steffen? 24 A. I'm sure they have, yes. 25 Q. And has Lisa been present?</p>

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1 A. I'm sure she has.
2 Q. Has Mr. Kistler been present?
3 A. Yes.
4 Q. Have any other attorneys at Hutchison & Steffen
5 been present?
6 A. Yes.
7 Q. And what have you discussed?
8 A. The wrongful acts by Wells Fargo and the
9 comments that Arash Dounel had made to me and other
10 members of the bank. We discussed those.
11 Q. Did you discuss any strategy in this case?
12 A. I'M not sure what you mean by strategy.
13 Q. You don't know what strategy means?
14 A. I'm not sure what you're asking me. I know
15 what -- strategy can mean all kinds of things.
16 Q. What do you think it means?
17 A. What the basis of the case is.
18 Q. Have you discussed any procedural strategy with
19 counsel for Lisa in this case?
20 A. When you say procedural, I'm not sure what you
21 mean. I mean --
22 Q. Well, you know there's different procedures in a
23 lawsuit, don't you? You're an attorney.
24 A. You're really going to have to be a little more
25 specific, Stewart. I'm not sure -- I'm not trying to be

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1 difficult, but I'm not sure what you're asking me. And
2 if you can help me, just tell me what you need and I'll
3 try to answer.
4 Q. Well, aside from the allegations that either you
5 or Lisa are making in this lawsuit that you discussed
6 with Lisa's legal counsel in this matter.
7 MR. KISTLER: Object to the form of the
8 question. The allegations in this case were made by the
9 plaintiff.
10 THE WITNESS: I think the frustrations of you
11 and Wells Fargo not wanting to sit down and at least try
12 and find out what's going on instead of just running up
13 legal meters. I think the frustration that it was almost
14 like the firms, your firm, didn't care how much hours
15 they ran up. Nobody wanted to sit down and say what's
16 going on. Discussions at the courthouse that you always
17 say that, gee, I want to sit down and try to resolve but
18 nothing ever happens. So yeah, a lot of frustrations.
19 Q. (By Mr. Fitts) Are you aware that my office has
20 given Hutchison & Steffen numerous potential settlement
21 conference judges or mediator names?
22 A. I don't know if several. I know that there was
23 some discussions.
24 Q. Well, I asked you the word several. Are you
25 aware of that?

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1 A. Several means three. I think I can only think
2 there were two. But if you're saying several, I'll take
3 your word for it.
4 Q. I am saying several. Are you aware of that?
5 A. No. I think I told you I thought there were a
6 couple, but if you're saying --
7 Q. But you'll accept that. You don't dispute it.
8 A. If you're telling me, I don't have any reason --
9 Q. All right.
10 A. -- to say you're not being honest today.
11 Q. And I, and my law offices have actually proposed
12 several different dates for mediation conferences. Were
13 you aware of that? Yes or no. I'm not asking for a
14 commentary. Just yes or no.
15 A. I'm not sure. I think there was a date, but I
16 don't recall specifics, so I'm not going to tell you
17 exact dates or not dates.
18 Q. And are you aware that we were, the parties in
19 this case were told in a district court order to
20 participate in a settlement conference in this case?
21 A. I'm not sure if there was an order. So if
22 you're --
23 Q. I'm just asking if you're aware. Yes or no.
24 A. I'm not sure.
25 Q. Are you aware that my office and Wells Fargo's

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1 representatives specifically provided numerous dates that
2 we would make ourselves available on dates that your
3 counsel said they were available?
4 A. I don't have a counsel. So just so you can
5 clarify the record for both video and the court reporter,
6 I do not have a counsel today.
7 Q. Fair enough. You're right. My mistake. Are
8 you aware that Wells Fargo and my firm had specifically
9 provided Lisa Johnson's counsel with numerous dates that
10 we would be available for a settlement conference?
11 A. I'm not sure.
12 Q. And were you aware that Hutchison & Steffen
13 informed me that they would convey those dates to the
14 district court?
15 A. I'm not sure.
16 Q. And are you aware that the district court has
17 indicated that they never received those dates from
18 Hutchison & Steffen?
19 A. Not to my knowledge.
20 Q. And are you aware that Mr. Kistler personally
21 informed me that that neither Lisa Johnson nor his law
22 firm intended to participate in a settlement conference?
23 A. I think you'd have to ask Mr. Kistler.
24 Q. I asked if you were aware.
25 A. No.

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1 Q. You can't dispute that, can you?
2 A. Well, I'm presuming you're being honorable
3 today.
4 Q. Can you answer it yes or no?
5 A. No, I --
6 Q. I don't need your commentary.
7 A. You're --
8 Q. No. I'm asking you yes or no questions. We can
9 be here all day and all night if you want to give
10 commentary. If you want to answer the questions without
11 commentary, it's a yes or no.
12 A. If you can't --
13 Q. You can't dispute any of the information I just
14 gave you about the settlement conference, can you?
15 MR. KISTLER: Objection. Argumentative.
16 Q. (By Mr. Fitts) Can you?
17 A. If you want me to answer, I'll be happy to
18 answer. I don't know --
19 Q. Yes or no can you dispute that?
20 A. I don't know. Nothing has been directed to me.
21 I don't know.
22 Q. Are you aware that Mr. Kistler has indicated to
23 me that you're the one who didn't want to participate in
24 a settlement conference? Yes or no.
25 A. That I don't want to participate. I don't want

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1 to participate and waste --
2 Q. Yes or no?
3 A. I don't wish to --
4 Q. Yes or no?
5 A. Are you going to let me answer?
6 Q. Yes or no?
7 MR. KISTLER: The witness is permitted -- any
8 witness is permitted to give an answer. Sometimes an
9 answer might not be yes or no.
10 MR. FITTS: I'm asking --
11 THE WITNESS: Please don't be bullying,
12 Stewart.
13 MR. FITTS: I'm asking the question. I'm asking
14 you a yes or no question.
15 MR. KISTLER: It's not a yes or no question.
16 Q. (By Mr. Fitts) Are you aware that Mr. Kistler
17 has told me that you're the one who did not want to
18 participate in a settlement conference in this case?
19 A. If you'll allow me to answer the question, I
20 will. If you're going to keep interrupting and being
21 bullying, you know, please don't be bullying. I really
22 don't want to sit here and have you attacking me.
23 Q. Do you think you can be bullied?
24 A. Can I answer the question?
25 Q. Are you playing games with us?

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1 A. Can I answer the question?
2 MR. KISTLER: Objection. Argumentative.
3 Q. (By Mr. Fitts) Are you?
4 THE WITNESS: Can I answer --
5 MR. KISTLER: Objection. Argumentative.
6 THE WITNESS: Boy, Stewart, you know, you really
7 need to let somebody answer the question.
8 MR. FITTS: No. I just don't need your
9 commentary.
10 THE WITNESS: If you want to ask a question --
11 MR. FITTS: It's very clear today that you're
12 here to provide commentary regarding issues where there's
13 no question on the table with respect to your
14 commentary.
15 MR. KISTLER: Objection. Move to strike. It's
16 not a question.
17 Q. (By Mr. Fitts) I'm asking you personally --
18 MR. KISTLER: It's not a question.
19 Q. -- are you aware that Mr. Kistler told me that
20 you did not want to participate in a settlement
21 conference?
22 A. I can't speak for the discussions you and
23 Mr. Kistler had. I wasn't there so I can't say what you
24 guys discussed.
25 Q. And you can't dispute that.

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1 A. I wasn't there, so I can't -- you're asking me
2 to comment on something that I wasn't there. I'll be
3 happy to speak to things that I have firsthand knowledge
4 of today if you'd like me to answer questions firsthand.
5 Q. I did ask you if you had any firsthand knowledge
6 that --
7 A. And I said --
8 Q. -- Mr. Kistler had told me that.
9 A. And I said I was not there. I do not have
10 firsthand knowledge of your discussions with him.
11 Q. And you can't dispute that Mr. --
12 MR. KISTLER: Ask a relevant question, Counsel.
13 Please move on.
14 MR. FITTS: Don't interrupt.
15 MR. KISTLER: You're wasting our time.
16 MR. FITTS: No.
17 MR. KISTLER: You're wasting our time,
18 Counselor.
19 MR. FITTS: You're wasting our time. You can --
20 object with a --
21 MR. KISTLER: Please ask a relevant question.
22 MR. FITTS: -- precise question. I'm following
23 up with the question.
24 MR. KISTLER: Please ask a relevant question.
25 MR. FITTS: Don't interrupt me again.

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1 MR. KISTLER: I will make my objections, and
2 I'll make my statements on the record, Counsel.
3 MR. FITTS: You can make your objections, but
4 don't make coaching --
5 MR. KISTLER: I asked you to move into a
6 relevant area.
7 MR. FITTS: Don't make coaching objections.
8 Don't make speaking objections. You know that's
9 improper.
10 MR. KISTLER: I'm not making any kind of
11 encouragement objections --
12 MR. FITTS: Are you, are you --
13 MR. KISTLER: I'm simply saying move into a
14 relevant area regarding this case.
15 MR. FITTS: -- are you paying Miss Johnson's
16 legal bills in this case?
17 MR. KISTLER: I'm simply saying move into a
18 relevant area regarding this case.
19 Q. (By Mr. Fitts) Are you paying Miss Johnson's
20 legal bills in this case?
21 A. I pay all her bills.
22 Q. Did you retain legal counsel for Miss Johnson in
23 this case?
24 A. Did I assist or pay? What are you asking? I'm
25 not sure.

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1 Q. I said did you retain legal counsel for Miss
2 Johnson?
3 A. I assisted her with it, yes.
4 Q. Okay. How did you assist?
5 A. By trying to find legal counsel and offering to
6 pay.
7 Q. And then you also attended meetings with Miss
8 Johnson with her legal counsel?
9 A. Yes.
10 Q. Did you take notes during those meetings?
11 A. I don't believe so, no.
12 Q. Can you check your files and provide us copies
13 of your notes if in fact any notes exist of your meetings
14 with legal counsel for Lisa Johnson in this matter?
15 A. If there are notes. As I said, I don't know
16 that there are.
17 Q. Have you had any other involvement in this case
18 other than as a witness and as assisting Lisa Johnson in
19 retaining legal counsel and her legal bills in this case?
20 A. Paying tens of thousands of dollars in legal
21 fees, yes.
22 Q. How much in legal fees have you paid to date?
23 A. This is a rough, wild best guesstimate. I'm
24 going to say 70, \$80,000, \$70,000.
25 MR. KISTLER: Whatever it was, for the amount of

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1 work that was done it was a bargain.
2 THE WITNESS: That's just your firm. There was
3 another firm.
4 Q. (By Mr. Fitts) Is that Dirk Ravenholt?
5 A. I'm sorry?
6 Q. Is that Dirk Ravenholt?
7 A. Yes, Dirk Ravenholt.
8 Q. Lisa referred to him as Dirk the jerk. Does
9 that sound familiar to you that term?
10 A. A friend of mine used to, jokingly about him. I
11 don't think that's a very nice way to call him. His name
12 is Dirk Ravenholt. His dad was the coroner for Clark
13 County for a lot of years, I think, most of the time I
14 was growing up. His dad was kind of a legend in this
15 town.
16 Q. Have you ever referred to Dirk as Dirk the jerk?
17 A. I may have because a friend of mine that's a
18 client of his used to joke around. I think it's kind of
19 a rude comment. And so if I did, I feel bad that I did.
20 But he's a very, very nice, very bright man.
21 Q. Aside from the bank account closures that are at
22 issue in this case, have you had any other type of bank
23 account closed by a financial institution without your
24 request?
25 A. Have I?

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1 Q. Yes.
2 A. Besides what Wells Fargo did?
3 Q. I didn't mention Wells Fargo, did I?
4 A. I'm not sure you did. You did at the
5 beginning. She can read it back.
6 Q. Would you like me to repeat the question?
7 A. Yes, sir.
8 Q. Aside from the account closures that are at
9 issue in this case, have you personally had any other
10 type of account closed by a financial institution without
11 your request?
12 A. Never.
13 Q. Do you know if Lisa had?
14 A. To my, the best of my knowledge she never had
15 till Wells Fargo did what they did.
16 Q. Aside from the joint bank account that you had
17 with Lisa that was closed, have you had any other type of
18 accounts at Wells Fargo?
19 A. Have I had or do I? Are you asking have I?
20 Have I had an account at Wells Fargo? Yes.
21 Q. Yes. Okay. And what accounts are those?
22 A. Right now I currently just have a checking
23 account with Wells Fargo.
24 Q. Do you bank at any other financial institution
25 other than Wells Fargo?

<p style="text-align: right;">Page 53</p> <p>1 A. Yes.</p> <p>2 Q. What banks?</p> <p>3 A. BNY Mellon Private Wealth.</p> <p>4 Q. Any other financial institutions?</p> <p>5 A. General Electric Capital.</p> <p>6 Q. Anything else?</p> <p>7 A. Charles Schwab.</p> <p>8 Q. Anything else?</p> <p>9 A. I think that's it.</p> <p>10 Q. Why have you chosen to continue having a</p> <p>11 checking account at Wells Fargo?</p> <p>12 A. I've been a client at Wells Fargo and their</p> <p>13 predecessor banks since I started practicing law here in</p> <p>14 Nevada in the '70s going back to First National Bank of</p> <p>15 Nevada. My first job was in the building where First</p> <p>16 National of Nevada was downtown.</p> <p>17 Q. So even after Lisa's accounts were closed at</p> <p>18 Wells Fargo you continued to maintain a banking</p> <p>19 relationship with Wells Fargo?</p> <p>20 A. Yes.</p> <p>21 Q. And what was the reason for that?</p> <p>22 A. I've been a client there for, as I said, 1976,</p> <p>23 I'm guessing, '75. I don't know the exact date now, but</p> <p>24 I've been a customer, and I didn't feel I should have to</p> <p>25 close accounts because -- and nobody was telling me a</p>	<p style="text-align: right;">Page 55</p> <p>1 because their service is beyond pathetic. It's probably</p> <p>2 one of the worst I've seen as far as providing service in</p> <p>3 all fairness.</p> <p>4 Q. Yet all these years you've continued to maintain</p> <p>5 your checking account with Wells Fargo?</p> <p>6 A. Yes.</p> <p>7 Q. You seem to be a highly judgmental person. Is</p> <p>8 that just part of your characteristic?</p> <p>9 MR. KISTLER: Objection, Irrelevant. Objection,</p> <p>10 argumentative.</p> <p>11 THE WITNESS: Objection, speculative, but --</p> <p>12 MR. FITTS: I'm just going by personal knowledge</p> <p>13 of dealing with you today --</p> <p>14 MR. KISTLER: Objection.</p> <p>15 MR. FITTS: -- and seeing your different</p> <p>16 allegations in this case regarding what other people are</p> <p>17 always doing wrong but you're not.</p> <p>18 MR. KISTLER: Objection. Irrelevant.</p> <p>19 Argumentative.</p> <p>20 THE WITNESS: I don't know what the heck you're</p> <p>21 asking. I mean if you want to ask me a question, I'll</p> <p>22 try --</p> <p>23 Q. (By Mr. Fitts) You seem to be a very judgmental</p> <p>24 and critical person. Would you agree?</p> <p>25 A. I think I like people to do things right. The</p>
<p style="text-align: right;">Page 54</p> <p>1 reason to close accounts.</p> <p>2 If anything, after this happened I used to go</p> <p>3 through the drive-through to cash a check and inevitably</p> <p>4 I'd have some teller tell me, Mr. Kaplan, you're leaving</p> <p>5 too much money in your checking account. Can we open</p> <p>6 another account for you here to move some money into,</p> <p>7 Mr. Kaplan? They were soliciting me to open other</p> <p>8 accounts with them on an ongoing basis.</p> <p>9 Q. Have you been pleased with your service at Wells</p> <p>10 Fargo with respect to your current checking account?</p> <p>11 A. No. I think their service sucks. Pardon my</p> <p>12 truthful language, but it sucks.</p> <p>13 Q. Nevertheless, you've maintained your checking</p> <p>14 account there.</p> <p>15 A. Convenience. I'm -- I don't like to change</p> <p>16 things. I am pretty consistent, and I've been banking</p> <p>17 there, as I said, going back that many years.</p> <p>18 Q. Is that your complete answer?</p> <p>19 A. I'm forgetting exactly how you asked it, but</p> <p>20 I've been banking so many years. It is convenience.</p> <p>21 There's ATMS all over Vegas, all over California, and it</p> <p>22 just makes things easier for me.</p> <p>23 Q. So that's a service that Wells Fargo provides</p> <p>24 that you enjoy?</p> <p>25 A. Without the interactions of their people inside</p>	<p style="text-align: right;">Page 56</p> <p>1 same way when we retained you to represent my company, we</p> <p>2 went into the Judge's chambers and --</p> <p>3 Q. Did anyone ask you about any other case? Did I</p> <p>4 ask you about that?</p> <p>5 A. You're asking --</p> <p>6 Q. Did I ask you about that?</p> <p>7 A. You're asking me judgment --</p> <p>8 Q. Did I or do you wish to give commentary?</p> <p>9 A. I'm trying to answer your question.</p> <p>10 Q. No, you're not.</p> <p>11 A. Okay.</p> <p>12 Q. You're trying to provide commentary.</p> <p>13 A. Stewart, I think that's what you're doing and</p> <p>14 you're trying to interpret that in other people.</p> <p>15 Q. No, I'm not. No. You're not going to provide</p> <p>16 commentary --</p> <p>17 A. Then ask a question, Stewart.</p> <p>18 Q. -- and make this into a road show.</p> <p>19 A. Ask a question, Stewart.</p> <p>20 Q. I did.</p> <p>21 A. I don't know how to answer it.</p> <p>22 MR. FITTS: Can you read back the last question</p> <p>23 for the benefit of Mr. Kaplan?</p> <p>24 (Record was read back.)</p> <p>25 MR. FITTS: Why don't you go back further.</p>

<p>Page 57</p> <p>1 THE REPORTER: "You seem to be a very judgmental 2 and critical person. Would you agree?"</p> <p>3 THE WITNESS: No.</p> <p>4 Q. (By Mr. Fitts) There were three accounts of 5 Lisa, that Lisa Johnson was on that were closed by Wells 6 Fargo. Is that your understanding?</p> <p>7 A. That sounds correct.</p> <p>8 Q. There was the joint checking account that you 9 and she had at Wells Fargo; right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. That's one. Then there was a business 12 checking account that Lisa had in the name of Guitarfile, 13 LLC; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. So that's two. Then there was a Visa business 16 card that Lisa had at Wells Fargo in the name of the 17 Guitarfile, LLC; is that correct?</p> <p>18 A. That sounds correct.</p> <p>19 Q. So there's three accounts that were closed; is 20 that correct?</p> <p>21 A. I believe so.</p> <p>22 Q. I am going to refer to those three accounts as 23 the subject accounts. Will that make sense to you?</p> <p>24 A. If that's how you want to refer to them.</p> <p>25 Q. No. I'm asking if that will make sense to you</p>	<p>Page 58</p> <p>1 if I use that term. Will you understand?</p> <p>2 A. That's fine.</p> <p>3 Q. Will you understand?</p> <p>4 A. I believe so.</p> <p>5 Q. Did you have any dispute with Wells Fargo of any 6 type regarding the joint account that you and Lisa had 7 with Wells Fargo prior to August of 2011?</p> <p>8 A. I'm not sure I understand your question.</p> <p>9 Q. Did you have -- did either you or Lisa have any 10 dispute with Wells Fargo regarding the joint account that 11 you and Lisa had at Wells Fargo prior to August of 2011?</p> <p>12 A. I take it that's the date that they closed the 13 account?</p> <p>14 Q. That's the month in which they provided the 15 letter notifying you and Lisa of the account, joint 16 account closure.</p> <p>17 A. No, I have no dispute with that prior to that.</p> <p>18 Q. Okay.</p> <p>19 A. As far as that account.</p> <p>20 Q. Okay.</p> <p>21 MR. FITTS: I'd like to mark this as Exhibit A. 22 (Exhibit A was marked for identification.)</p> <p>23 Q. (By Mr. Fitts) Mr. Kaplan, you have before you a 24 document that's marked as Exhibit A. Do you see that?</p> <p>25 A. Yes.</p>	<p>Page 59</p> <p>1 Q. And it's entitled subpoena duces -- subpoena for 2 deposition, civil. Then it's marked duces tecum. Do you 3 see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And then it has your name and your address at 6 9517 Canyon Mesa Drive.</p> <p>7 A. I see that.</p> <p>8 Q. Okay. Do you see on page 2 under the 9 description "items to be produced"? Do you see that?</p> <p>10 A. I'm just reading it. If you'd like me to read 11 it or just look at, or what would you like me to do?</p> <p>12 Q. Will you read that for us?</p> <p>13 A. You want me to read the whole thing in the 14 record or just read it to me? I'm not sure what you're 15 asking.</p> <p>16 Q. No. You can just read it quietly.</p> <p>17 A. Okay.</p> <p>18 Q. If you want to read out loud, I don't care.</p> <p>19 A. I don't like to read out loud.</p> <p>20 Q. Okay.</p> <p>21 A. (Witness reads exhibit). Okay.</p> <p>22 Q. Okay.</p> <p>23 A. First time I've ever seen this.</p> <p>24 Q. I was going to ask you if you had ever seen it 25 before.</p>	<p>Page 60</p> <p>1 A. No.</p> <p>2 Q. Okay. This is the subpoena that I, my office, 3 had attempted to serve on you, so I wanted to give you a 4 chance to see it and --</p> <p>5 A. I don't see a date on here.</p> <p>6 Q. You see -- you're talking about -- what are you 7 talking about a date? What do you mean?</p> <p>8 A. Normally wouldn't something be filed where you'd 9 have the date this was issued or something? Oh, here it 10 is. I'm sorry. Forgive me. August 12th, 2013. I got 11 you. Okay.</p> <p>12 Q. Yeah. And of course it was never served on you, 13 was it?</p> <p>14 A. I was in California probably from the beginning, 15 early part of August until two days ago back here.</p> <p>16 Q. Okay.</p> <p>17 A. So I guess I wouldn't have been here if you're 18 saying it was done on August 12th.</p> <p>19 Q. Have you ever told anyone at Hutchison & Steffen 20 that you had a residence in Malibu in addition to the Las 21 Vegas?</p> <p>22 A. I own a house there, yeah. I own a place in 23 California as well as my main house here. So I spend 24 part of the time there. As I said earlier, I've got an 25 office in Maui, so I'm doing a fair amount of traveling.</p>
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<p style="text-align: right;">Page 61</p> <p>1 Q. Okay. Did you understand my question?</p> <p>2 A. No, I didn't.</p> <p>3 MR. FITTS: Could you read the question back to</p> <p>4 Mr. Kaplan?</p> <p>5 THE REPORTER: Have you ever told anyone at</p> <p>6 Hutchison & Steffen that you had a residence in Maui in</p> <p>7 addition to the Las Vegas?</p> <p>8 THE WITNESS: I'm not sure --</p> <p>9 THE REPORTER: I'm sorry. Malibu.</p> <p>10 THE WITNESS: The funny thing is I understood</p> <p>11 what you said. You spoke very clearly, so I could</p> <p>12 understand you.</p> <p>13 I may have. I don't know for sure as I sit here</p> <p>14 today. I can't tell you whether I did or didn't. It was</p> <p>15 never a major thing to me.</p> <p>16 Q. (By Mr. Fitts) So if my -- because you had</p> <p>17 indicated that it'd be pretty easy to serve you but that</p> <p>18 hasn't been my experience.</p> <p>19 A. Well, if I can answer the question, Stewart,</p> <p>20 this is dated August 12th. I mean, my god, if you go</p> <p>21 back several weeks before, I've been here, god, from</p> <p>22 January this year I don't even think I got to go to</p> <p>23 Hawaii for like four months because my dog had knee</p> <p>24 surgery at the clinic here, orthopedic surgery, and she</p> <p>25 was not going anywhere. She needed constant attention.</p>	<p style="text-align: right;">Page 63</p> <p>1 to you yesterday we were supposed to -- if I can clarify</p> <p>2 something, I asked specifically of what times the depo,</p> <p>3 because I know there was some back and forth trying to</p> <p>4 coordinate a depo time and I received --</p> <p>5 Q. Have I asked you anything about any of this?</p> <p>6 A. I think you are, yes. You asked me would I be</p> <p>7 available for next week or so, and I'm trying to explain</p> <p>8 to you how we got here today and --</p> <p>9 Q. But that's different, isn't it?</p> <p>10 A. No.</p> <p>11 Q. See, what I'm trying to do is if you'll listen</p> <p>12 to my question and then just answer my question, I think</p> <p>13 we can be a lot more efficient and not take so much</p> <p>14 time.</p> <p>15 A. I think I answered your question. You asked if</p> <p>16 I was going to be here for the next week and I think I</p> <p>17 said no.</p> <p>18 Q. Okay. That's all I needed.</p> <p>19 A. Okay, fine.</p> <p>20 Q. Is there an acceptable arrangement that we can</p> <p>21 make to serve you with a subpoena in this matter?</p> <p>22 A. In all fairness, Stewart, you just asked me if I</p> <p>23 would produce documents I had.</p> <p>24 Q. Right.</p> <p>25 A. And under oath, you know, I'm sitting here</p>
<p style="text-align: right;">Page 62</p> <p>1 And for January, February, March, April I don't think I</p> <p>2 even left Las Vegas to go anywhere. I may have two days</p> <p>3 disappeared to Maui to try and get to my business, but</p> <p>4 other than that, I was here for four solid months and</p> <p>5 nobody sought to serve me.</p> <p>6 Q. At least none that you're aware of; is that</p> <p>7 correct?</p> <p>8 A. Yeah, none that I'm aware of, Stewart.</p> <p>9 Q. Okay. So if I wanted to serve you, it would --</p> <p>10 you would be pretty easy to serve you at your residence</p> <p>11 during the next week?</p> <p>12 A. Yeah. I mean the bottom line is, as I said, I</p> <p>13 think I said to you that I've got appointments out of</p> <p>14 town. As a matter of fact, I came in specifically</p> <p>15 because you guys were trying to work with Sid to try and</p> <p>16 do a deposition.</p> <p>17 Especially with the heat of the summer, it's like</p> <p>18 everybody I know that has places in California kind of</p> <p>19 disappears during the summer months because it's so</p> <p>20 brutally hot in Vegas and very few people I know are here</p> <p>21 that, you know, if they're fortunate. Like you guys</p> <p>22 having to work in an office every day, they're stuck</p> <p>23 here. But people I know, hotel execs, everything else,</p> <p>24 they basically try and disappear in the summer.</p> <p>25 So I guess to answer your question, I think I said</p>	<p style="text-align: right;">Page 64</p> <p>1 telling that you yes. So normally when you subpoena</p> <p>2 somebody to have them come here, I'm sitting here today.</p> <p>3 There was on subpoena. As a matter of fact, I agreed to</p> <p>4 come in two hours early today at 8:00 o'clock because the</p> <p>5 times that you --</p> <p>6 Q. Did I ask you about --</p> <p>7 A. Yes.</p> <p>8 Q. -- coming in at 8:00 o'clock?</p> <p>9 A. Want to know something? You're asking me</p> <p>10 questions --</p> <p>11 Q. Did I ask you about 8:00 o'clock today?</p> <p>12 A. Stewart, you're trying to be argumentative.</p> <p>13 Q. No. I just don't need your commentary. I just</p> <p>14 need you to listen.</p> <p>15 A. Then ask a simple question, Stewart --</p> <p>16 Q. I did.</p> <p>17 A. And I will try to answer.</p> <p>18 Q. I did. And my question to you was: Is there an</p> <p>19 acceptable way for you, to you, from my law firm to</p> <p>20 arrange for you to be served with a subpoena in this</p> <p>21 case?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Because earlier you had said that you were</p> <p>24 surprised that no one had tried to serve you with a</p> <p>25 subpoena.</p>

<p>Page 65</p> <p>1 A. Yeah. I'm shocked. January, February, March, 2 April -- I can pull out my calendar -- didn't even leave 3 my house other than to take the dog or go to the gym. I 4 worked out of my house. There were luncheon meetings. I 5 was like the easiest guy, and it's like I couldn't 6 believe a law firm didn't want to -- January, February, 7 March, April. What was the law firm thinking? 8 So it's not commentary. It's basically answering 9 your question when you're basically -- 10 Q. No. That's commentary. 11 A. You're acting like it's so difficult to serve 12 and -- you're right. It's commentary, Stewart. 13 Q. Do you have any idea how many times a process 14 server has attempted to serve you at your residence here 15 in Las Vegas with a subpoena -- 16 A. No. 17 Q. -- In this case? 18 A. No, Stewart. How many? 19 Q. So you can't comment accurately, can you -- 20 A. This was -- 21 Q. -- with respect to -- 22 A. Here. I'll even show this to the video. August 23 12th of this year. 24 Q. Are you aware of any other subpoenas? 25 A. No. If you'd like show them to me I'd be happy</p>	<p>Page 67</p> <p>1 Q. Do you have any personal -- do you have any 2 personal knowledge regarding prior attempts to serve you 3 with a subpoena in this matter dating back several months 4 ago? 5 A. No. 6 Q. Then why are you making judgments regarding 7 things you don't know? 8 A. Are you testifying? Are you -- 9 Q. No. That's a question. 10 A. I don't know what kind of question that is. 11 MR. FITTS: Can you read the question back for 12 me? 13 THE WITNESS: I think, because, Stewart, you 14 handed me what's marked as Exhibit A -- 15 MR. FITTS: No. And please don't yell at me. 16 THE WITNESS: Stewart, don't get defensive. 17 MR. FITTS: No. No. You're the only one. I'm 18 asking you a question. Let's read the question back. 19 THE WITNESS: Stewart, I think you handed me 20 something marked August 12th, 2013. You're making 21 statements am I aware of attempts to serve from October, 22 November, December, January, and my only question is I'll 23 be happy to look at -- this is marked as Exhibit A. I 24 presume this is the only one. Otherwise, if there's B, 25 C, and D and if you'll show me those, then I can answer</p>
<p>Page 66</p> <p>1 to look at them. 2 Q. So you don't know what attempts have been made 3 to serve you a subpoena? 4 A. No, Stewart, I don't. 5 Q. You don't know whether there were attempts last 6 November, do you? 7 A. I do not, Stewart. 8 Q. You don't know whether there were attempts last 9 October, do you? 10 A. I do not, Stewart. 11 Q. Why where you giving a judgment regarding things 12 you don't know about? 13 A. I don't know. This is Exhibit A. Is there a B, 14 C? 15 Q. I'm not asking you about Exhibit A. 16 A. I would think if there were, Stewart -- 17 Q. Well, that's not what my question was. 18 A. If you're asking me, I would think if you gave 19 me this one you would give me others. 20 Q. Tell me when you're done commentary. 21 A. Go right ahead, sir. 22 Q. Well, I'm trying. So you're commenting -- 23 you're making judgments about things you have no personal 24 knowledge of, do you? 25 A. My knowledge is based on --</p>	<p>Page 68</p> <p>1 to you factually, Stewart. 2 Right now this is all I can look at is this 3 is -- I presume the fact you gave me this, this is the 4 attempt. If there's others, then I'll be happy to look 5 at those other exhibits, Stewart, and answer. 6 Q. (By Mr. Fitts) Do you have a habit of making 7 false presumptions? 8 MR. KISTLER: Objection. Argumentative and 9 demeaning. 10 THE WITNESS: It really is, Stewart. I don't. 11 MR. FITTS: That's a question. 12 THE WITNESS: I think Wells Fargo does. Wells 13 Fargo has a terrible habit of doing that. 14 MR. FITTS: You were just telling me about 15 presumptions you were making regarding things you've told 16 me you don't have any personal knowledge of. 17 THE WITNESS: I do, Stewart. 18 MR. FITTS: So can we read the question back for 19 Mr. Kaplan so he can answer the question. 20 (The record was read back.) 21 THE WITNESS: I'm basing it on what you handed 22 me, Stewart. You handed me a document marked Exhibit A 23 that I said is dated August 12th. If there's other 24 documents, then I can look at those. But right now all I 25 can base my testimony on is what you've handed me. So</p>

<p style="text-align: right;">Page 69</p> <p>1 far I presume that's the reason you marked this Exhibit A</p> <p>2 and handed it to me. Is there another document, I'll</p> <p>3 happy be to look at.</p> <p>4 Q. (By Mr. Fitts) You're not aware of prior</p> <p>5 attempts to serve you before August of this year with a</p> <p>6 subpoena?</p> <p>7 A. I'm not aware of any attempts, Stewart, other</p> <p>8 than this document you handed me today marked Exhibit A.</p> <p>9 Q. Okay. All right. So it would be somewhat</p> <p>10 reckless for you to make presumptions regarding things</p> <p>11 you're not --</p> <p>12 MR. KISTLER: Objection. Argumentative.</p> <p>13 Q. -- aware of; is that correct?</p> <p>14 A. I'm basing my statement on what you handed me,</p> <p>15 Stewart.</p> <p>16 Q. That wasn't my question was it based on Exhibit</p> <p>17 A.</p> <p>18 A. I think that's all I can look at right now and</p> <p>19 that's what I base things on.</p> <p>20 Q. That wasn't my question. Is that your complete</p> <p>21 answer?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. But you're not willing to agree to any</p> <p>24 type of an arrangement whereby you would officially</p> <p>25 respond to the document request in the subpoena marked as</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And will you turn to page 3 where it</p> <p>3 states answer to interrogatory No. 1?</p> <p>4 A. Okay.</p> <p>5 Q. Will you read the first sentence of that</p> <p>6 answer.</p> <p>7 A. In August 2011, plaintiff received a letter from</p> <p>8 Wells Fargo stating that the defendant was closing a</p> <p>9 joint account that plaintiff had with Michael Kaplan.</p> <p>10 Q. Do you believe that that is a true and accurate</p> <p>11 statement?</p> <p>12 A. Yeah.</p> <p>13 Q. Will you turn to the next page.</p> <p>14 A. Okay.</p> <p>15 Q. Line 1, the first full sentence where it says</p> <p>16 "also," can you read that sentence to us?</p> <p>17 A. Also in August of 2011 plaintiff received a</p> <p>18 letter from Wells Fargo stating it was closing her Visa</p> <p>19 business account with her company Guitarfile, LLC.</p> <p>20 Q. Do you believe that that is a true and accurate</p> <p>21 statement?</p> <p>22 A. I believe so.</p> <p>23 Q. With respect to the very first sentence you read</p> <p>24 regarding the letter that was received in August of 2011</p> <p>25 regarding the closure of the joint account that Lisa had</p>
<p style="text-align: right;">Page 70</p> <p>1 Exhibit A; is that correct?</p> <p>2 A. I think if you go back into the testimony that I</p> <p>3 said 20 minutes ago, you asked me could I get it within</p> <p>4 two weeks, and I said can I have three. And I said I</p> <p>5 would get you whatever I had over the next three weeks.</p> <p>6 Q. We weren't talking about the subpoena, were we?</p> <p>7 We were talking about the documents that are not</p> <p>8 specifically referenced in that subpoena. I'm talking</p> <p>9 about the subpoena we've marked as Exhibit A.</p> <p>10 A. What's your question, sir?</p> <p>11 MR. FITTS: Could you read back the question for</p> <p>12 the benefit again of Mr. Kaplan?</p> <p>13 THE REPORTER: "But you're not willing to agree</p> <p>14 to any type of an arrangement whereby you would</p> <p>15 officially respond to the document request in the</p> <p>16 subpoena marked as Exhibit A; is that correct?"</p> <p>17 THE WITNESS: No.</p> <p>18 MR. FITTS: I'd like to mark this as Exhibit B.</p> <p>19 (Exhibit B was marked for identification.)</p> <p>20 Q. (By Mr. Fitts) Mr. Kaplan, do you have the</p> <p>21 document in front of you that has been marked as Exhibit</p> <p>22 B in this deposition?</p> <p>23 A. Yes.</p> <p>24 Q. It says Lisa Johnson's responses to Wells Fargo</p> <p>25 Bank N.A. first set of interrogatories.</p>	<p style="text-align: right;">Page 72</p> <p>1 with you, did you also receive notice, that notice in</p> <p>2 August of 2011?</p> <p>3 A. I don't recall specifically how it came whether</p> <p>4 it was -- I don't recall.</p> <p>5 Q. Okay. On page 4, line 4, the first full</p> <p>6 sentence that read "that same month," could you read that</p> <p>7 sentence for us?</p> <p>8 A. That same month, plaintiff also received a</p> <p>9 letter from Wells Fargo stating it was closing the</p> <p>10 operating account of Guitarfile, LLC, period.</p> <p>11 Q. Do you believe that that's a true and accurate</p> <p>12 statement?</p> <p>13 A. I believe so.</p> <p>14 Q. Did you and Lisa have any discussions regarding</p> <p>15 the letters from Wells Fargo pertaining to the account</p> <p>16 closures?</p> <p>17 A. I'm sure we did.</p> <p>18 Q. Do you recall any specific conversations?</p> <p>19 A. Yeah.</p> <p>20 Q. What did you discuss?</p> <p>21 A. That what the heck was Wells Fargo trying to do</p> <p>22 particularly as to me? I've been an account holder with</p> <p>23 Wells Fargo for years. What the heck are they doing?</p> <p>24 Q. Anything else you discussed with Lisa?</p> <p>25 A. I think that was the initial reaction and that</p>

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1 we need to find out what the heck is going on with Wells.
2 Q. And did you and Lisa discuss what to do in order
3 to find out what was going on?
4 A. If memory serves me correct, there was an 800
5 number on the letters to contact, yes.
6 Q. And what did you do with respect to that 800
7 number?
8 A. I believe I called the 800 number.
9 Q. Do you remember when you called the 800 number?
10 A. It would have been shortly after the letters
11 first appeared.
12 Q. In August of 2011?
13 A. Correct.
14 Q. Do you recall the conversation you had with -- I
15 assume somebody answered on the other end --
16 A. Yes.
17 Q. -- of the 1-800 number. Do you recall the
18 conversation you had with that person?
19 A. Yes.
20 Q. Can you tell us what that conversation was?
21 A. Very frustrating. The person basically -- I
22 asked as to why they're closing the account. I was
23 directing it primarily towards the joint account. Since
24 the joint account was also under my Social Security, I
25 was particularly troubled by it. And the person I spoke

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1 to said, I'm sorry, we can't tell you anything further.
2 It's confidential. We cannot tell you any information,
3 and I got very frustrated.
4 I called back the 800 number a second time and I got
5 the same answer that we can't tell you why and, you know,
6 sorry. And I said but the letter has an 800 number
7 telling me to call with questions. I'm calling with
8 questions. You're not answering my questions.
9 Q. Well, they did answer your question.
10 A. They basically said we're not going to tell you
11 anything.
12 Q. Which was an answer to your question.
13 MR. KISTLER: Objection. Argumentative.
14 THE WITNESS: It didn't answer my question as to
15 why the account was closed.
16 Q. (By Mr. Fitts) Okay. But you received an answer
17 that the individual could not tell you the reason why; is
18 that correct?
19 A. The individual said I can't tell you why, but
20 that's not an answer.
21 Q. Is that your complete answer?
22 A. Yes.
23 Q. What, what did you and Lisa do between receiving
24 the closure letters in August of 2011 and October 6th,
25 2011, when you went to the Malibu branch and spoke to

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1 Mr. Dounel?
2 A. What do you mean what did we do?
3 Q. What did you do about the accounts? Did you do
4 anything with respect to the subject accounts with
5 respect to trying to find out and make additional
6 attempts as to find out why the accounts were closed
7 before anything else?
8 A. I made several calls to Wells Fargo.
9 Q. Do you recall who those several calls were to?
10 A. As I sit here today, I can't tell you
11 particulars as far as Wells Fargo. I did make other
12 calls. I called -- to try and get some help when I got
13 totally frustrated, I called my old boss from the
14 attorney general's office. You may know him, Richard
15 Bryan, who was our governor and U.S. senator here at
16 Lionel Sawyer, and I've considered him a friend for
17 30-odd years. I said he was my boss in the attorney
18 general's office in the late '70s. I called him up and
19 asked him if there's any way he could help me from a
20 legal standpoint.
21 Q. When did you call Mr. Bryan?
22 A. I believe it would have been the latter part of
23 September of 2011.
24 Q. And tell us what was said during that telephone
25 conversation.

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1 A. I told Richard that -- or Senator as Lisa refers
2 to him as -- I received this letter. They closed my bank
3 account, joint account with Lisa for no reason. What
4 does he suggest? We talked for a fair amount of time.
5 He basically said, god, Mike, have you guys checked your
6 credit reports? Perhaps somebody has gotten into your
7 credit, put some kind of something in your credit.
8 I said no. We've both checked our credits. There's
9 nothing on there. I said, god, Richard, my credit score
10 is at least 800. Lisa's is high 700. There's nothing on
11 there that's weird, and I believe he ended up calling me
12 back.
13 We talked for a bit and then he had to call me back
14 because he had another appointment or something. We
15 talked for a little while longer and I said is there
16 anything you can do, Richard, because I'm really
17 frustrated. And he said, Mike, I'd love to help you, but
18 unfortunately my firm represents Wells Fargo, so I really
19 can't help you.
20 He said the only thing I can think, Mike, is they've
21 got to have you guys mixed up with someone else, but, you
22 know, there's nothing I can -- you know, he said I'd love
23 to help you. You know, he's a really sweet man, who is
24 just the kindest person, and he said I wish I could do
25 something, Mike, but unfortunately the firm represents