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CERTIFICATE OF SERVICE

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

Kent F. Larsen (3463)
Paul Haire, Esq. (5656)
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
kfl@slwlaw.com
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Attorneys for Defendants

DATED this 26th day May, 2014.


An employee of Hutchison & Steffen, LLC

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EXHIBIT PAGE ONLY

EXHIBIT 9

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

AA000965

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada)
resident,)

)
Plaintiff,)

)
vs.) Case No.

) A-12-655393-C

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

)
Defendants.)

DEPOSITION OF ARASH DOUNEL
Taken on Thursday, October 25, 2012
At 9:19 o'clock a.m.
At 10080 West Alta Drive, Suite 200
Las Vegas, Nevada

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

EXHIBITS

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| PIFs 2 | Correspondence, Wells Fargo to Michael Kaplan-Lisa Johnson, 8-18-11; Correspondence, Wells Fargo to Guitarfile LLC, 8-15-11; Correspondence, Wells Fargo to Guitarfile LLC, 8-18-11; E-Mail | 25 |
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(Original exhibits attached to original transcript.)

APPEARANCES:

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

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

Also Present: LISA JOHNSON

RAELYNN STOCKMAN, Vice President,
Regional Services Manager of
Nevada, Wells Fargo Bank, N.A.

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Witness Direct Cross Red. Rec.

ARASH DOUNEL

(By Mr. Kistler) 4

(By Mr. Fitts) 107

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

Thereupon--

ARASH DOUNEL

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

DIRECT EXAMINATION

BY MR. KISTLER:

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

A. Arash Dounel.

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

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

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

A. Los Angeles, California.

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

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

1 deposition.

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

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

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

9 MS. STOCKMAN: Yes, I am.

10 MR. KISTLER: -- in this case?

11 MS. STOCKMAN: Yes.

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

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

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

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

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

23 A. That's correct.

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

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

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

7 A. Correct.

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

14 Do you agree to do that?

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

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

21 Will you agree to do that?

22 A. Yes.

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

1 your deposition.

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

5 A. Correct.

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

11 Did you understand that?

12 A. Yes.

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

17 Do you understand that?

18 A. Correct.

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

25 The fact is that this is not a conversation.

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

5 Will you agree to do that?

6 A. Absolutely.

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

10 A. No.

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

15 A. No.

16 Q. Do you feel well rested?

17 A. Yes.

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

22 A. No.

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

25 A. Yes.

1 Q. And by whom?
 2 A. Wells Fargo Bank.
 3 Q. Where -- what's the place of your employment?
 4 A. Beverly Hills, California.
 5 Q. How long have you been employed by Wells Fargo
 6 Bank?
 7 A. Roughly five and a half years.
 8 Q. What was your first job with Wells Fargo Bank?
 9 A. Banker.
 10 Q. Okay, banker.
 11 And as a banker what did you do?
 12 A. I assisted customers with their day-to-day
 13 banking needs.
 14 Q. All right. Most of us think of banks and
 15 bankers, particularly branches, we think of the person
 16 that is there at the window that assists people in
 17 transactions, a teller.
 18 Is that what you did?
 19 A. No.
 20 Q. Okay. What was the difference between what
 21 you did and what we all know tellers do?
 22 A. I didn't handle cash. I simply handled
 23 service and new accounts and account maintenance and
 24 things of that sort --
 25 Q. Okay.

1 where the general public is met?
 2 The private bank, for example?
 3 A. I don't understand your question.
 4 Q. Okay. As I understand your answer, you as
 5 a personal banker were -- as you were licensed with
 6 securities, that it was your job to -- to market to and
 7 service high-net-worth individuals for their personal
 8 banking needs, is that a fair statement?
 9 A. It doesn't stop at just high-net-worth
 10 individuals. We do a lot of different need -- we work
 11 with a lot of different needs of clients. So we might
 12 have a client who, for example, would be an heir to an
 13 estate or a trust, successor trustee to some sort of
 14 business or an estate, so that person necessarily
 15 doesn't have to be an affluent client, however, there's
 16 a future possibility of that. So we look at all
 17 clients, top down, from their relationship with Wells
 18 Fargo to where they could be, and see how we can add to
 19 their financial needs.
 20 Q. How long were you a personal banker?
 21 A. I've been ever since I've been promoted.
 22 I'm still.
 23 Q. So the times -- the time that you worked for
 24 Wells Fargo you've held these two positions as a banker
 25 for two years and then subsequent to that you've been

1 A. -- other than cash.
 2 Q. Now, you said that you've worked for Wells
 3 Fargo about five years or so, so is that in 2007 or so
 4 that you started working for them?
 5 A. Yeah, right around there.
 6 Q. Okay. How long did you work as a banker?
 7 A. About a couple years. I'm not sure exactly
 8 how long.
 9 Q. Okay. When you stopped working as a banker,
 10 what was your job at Wells Fargo?
 11 A. It's a -- it's still a banker. It's a
 12 different kind of banker. It's a specialty banker that
 13 I -- it's a brokerage associate pretty much.
 14 Q. Okay. And what's a brokerage associate?
 15 A. As I'm licensed with -- with the two security
 16 licenses that I achieved by going to training at Wells
 17 Fargo, I got a promotion to a -- the title is
 18 specifically personal banker 2, and my role in the bank
 19 became to find clients that are affluent and bring them
 20 to the attention of Wells Fargo advisors, as well as
 21 increased goals for lending and other aspects that are,
 22 you know, segmented for that part of the branch.
 23 Q. Okay. When you say "personal banker 2," is
 24 there such a thing as a personal banking operation
 25 within Wells Fargo versus general banking activities

1 personal banker -- you've been a personal banker 2 for
 2 the remainder of the five-year period of time that you
 3 worked for Wells Fargo?
 4 A. Right.
 5 Q. And you still work for Wells Fargo?
 6 A. Correct.
 7 Q. And you're still a personal banker 2?
 8 A. Correct.
 9 Q. Okay. What's your educational background?
 10 A. Earlier this year I got -- I graduated from
 11 Pepperdine University with an MBA.
 12 Q. Okay. So you received a master of business
 13 administration --
 14 A. Yes, sir.
 15 Q. -- from Pepperdine?
 16 A. Yes, sir.
 17 Q. This past year, you said?
 18 A. Earlier this year.
 19 Q. Earlier this year?
 20 A. Right.
 21 Q. All right. Your undergraduate degree was in
 22 what?
 23 A. I got an undergraduate degree from Cal State
 24 University in Northridge in management information
 25 systems with an emphasis in information technology.

1 Q. When were you awarded that decree?
 2 A. That was --
 3 Q. Or degree, I'm sorry.
 4 A. The degree, 2006 I want to say.
 5 Q. Okay.
 6 A. Yeah.
 7 Q. In what part of the country were you born and
 8 attended high school?
 9 A. Well, I was born in Orange County, attended
 10 high school in Los Angeles.
 11 Q. Okay. Mr. Dounel, I'm going to show you
 12 what's going to be marked as Exhibit 1 to your
 13 deposition.
 14 (Plaintiff's Exhibit 1 marked for
 15 identification.)
 16 Q. BY MR. KISTLER: Exhibit 1 is the notice of
 17 the taking of your deposition. The notice is actually
 18 dated for a deposition dated October the 24th, and
 19 you're appearing here this morning by the agreement of
 20 counsel on October 25th.
 21 Have you seen this document previously?
 22 A. You know, all of these look the same. I've
 23 seen some documents. I guess, yeah, I believe I have
 24 seen this one.
 25 Q. Okay. And when you say you've "seen some

1 Q. And did those discussions and those documents
 2 help refresh your recollection concerning the events
 3 giving rise to this lawsuit?
 4 MR. FITTS: Same -- same objection.
 5 You can answer to the extent that you don't
 6 disclose attorney/client communications.
 7 THE WITNESS: I would not answer that.
 8 Q. BY MR. KISTLER: Okay. What, you don't know
 9 the answer?
 10 A. I wouldn't know how to answer that. I can't
 11 gauge my recollection any more or less than what it was
 12 or is now.
 13 Q. Okay. So is your testimony, then, that by
 14 reviewing documents with Mr. Fitts yesterday that did
 15 not refresh your recollection concerning the events
 16 giving rise -- rise to this lawsuit?
 17 A. I'm not sure. That's --
 18 Q. Okay. How long did you spend with Mr. Fitts
 19 yesterday?
 20 A. About a few hours. I didn't know exactly.
 21 It could be like about three hours or so.
 22 Q. Okay. Three hours?
 23 A. Three or four hours.
 24 Q. Okay. And was anyone else present when you
 25 spent those three hours with Mr. Fitts?

1 documents," were those documents provided to you by
 2 Mr. Fitts, the bank's counsel?
 3 A. Yes.
 4 Q. Okay. When was the last time Mr. Fitts
 5 provided documents to you for your review?
 6 A. Yesterday.
 7 Q. Okay. Did you meet with Mr. Fitts face to
 8 face yesterday?
 9 A. Yes.
 10 Q. And for about what period of time?
 11 How long did you guys meet?
 12 A. About a few hours.
 13 Q. Okay. During that meeting I take it Mr. Fitts
 14 discussed certain things with you and also showed you
 15 documents?
 16 MR. FITTS: I'm going to object to the extent
 17 that it calls for attorney/client communications between
 18 Mr. Dounel and myself.
 19 But aside from communications between the two
 20 of us, you may answer.
 21 THE WITNESS: Can you repeat the question?
 22 Q. BY MR. KISTLER: At the meeting yesterday that
 23 you had with Mr. Fitts, did you discuss certain things
 24 and did he show you certain documents?
 25 A. We did discuss certain things at the meeting.

1 A. We were in his office so there were many
 2 people that I didn't know just coming in and out, going.
 3 Q. Okay. How many documents did Mr. Fitts show
 4 you?
 5 A. I'm not sure.
 6 Q. Well, was it one or two?
 7 Was it more than ten?
 8 Was it more than 50?
 9 A. It was definitely more than one or two.
 10 Q. Okay. Can you give me your best well-reasoned
 11 estimate of how many documents Mr. Fitts showed you
 12 during this three-hour period of time?
 13 A. I can't.
 14 Q. Okay. Was it more than ten, do you think?
 15 A. I'm not sure.
 16 Q. Okay.
 17 A. It could be right around there. It could have
 18 been more or less. More or less ten. That's a good
 19 guess actually.
 20 Q. Okay. Were these documents primarily e-mails?
 21 A. There were e-mails.
 22 Q. Okay. And so you saw e-mails as well as some
 23 other documents?
 24 A. Yes.
 25 Q. Okay. And those e-mails and the other

1 documents, did it help refresh your recollection
2 concerning the matters in dispute in this lawsuit?

3 A. You know, I don't really understand what that
4 means. My recollection is something I don't know if
5 I can gauge from before yesterday or now. I feel like
6 the same person.

7 Q. Okay. Did you provide any documents to
8 Mr. Fitts yesterday?

9 A. No.

10 Q. Okay.

11 A. No.

12 Q. Okay. Prior to yesterday's three-hour meeting
13 with Mr. Fitts, when was the -- had you spoken with
14 Mr. Fitts prior?

15 A. Had I -- excuse me?

16 Q. Spoken with Mr. Fitts prior to the three-hour
17 meeting yesterday.

18 A. Oh, yeah, yes.

19 Q. Okay. And when was the -- the next most
20 recent time that you spoke with Mr. Fitts?

21 A. You mean before yesterday?

22 Q. Yes.

23 A. Sometime within the week. I'm not exactly
24 sure of the exact time of day.

25 Q. Okay. When you say "within the week," are you

1 I picked up the phone on him, so I really don't
2 understand the nature of the question either.

3 What is that?

4 Q. The nature of the question is very, very
5 simple. I'm trying to determine how many times you
6 spoke with Mr. Fitts over the last seven days above and
7 in addition to this three-hour meeting that you had
8 yesterday.

9 A. It was a question where I was when I picked up
10 the phone?

11 Q. Was it a cell phone?

12 Was it an office phone?

13 What do you recall about that?

14 A. It could have been one of either because
15 I have spoken to him in the past with -- on both
16 mediums.

17 Q. Okay. And that's within the last seven days?

18 A. Yes, sir.

19 Q. Okay. Prior to those instances, that instance
20 or those instances where you spoke with Mr. Fitts over
21 the last seven days in addition to this three-hour
22 meeting that you had, have you had any other meetings or
23 conversations with Mr. Fitts?

24 A. Most likely. I'm going to say yes.

25 Q. Okay. And when did that occur?

1 talking about this week or within the preceding seven
2 days?

3 A. Within the preceding seven days.

4 Q. Okay.

5 A. Yeah.

6 Q. Within the preceding seven days, was that a --
7 tell me about that conversation. For example, was it
8 over the phone?

9 A. We did have a phone conversation.

10 Q. Okay. But when you say that you -- that you
11 had a meeting with or conversed with Mr. Fitts sometime
12 over the last seven days, was that by phone or by a
13 face-to-face?

14 A. No, they were by phone.

15 Q. Okay. Over the last seven days how many phone
16 calls do you think that you've had with Mr. Fitts?

17 A. I'm not sure.

18 Q. Okay. Was it more than one?

19 A. I'm not sure.

20 Q. Was it more than five?

21 A. Like I said, I'm not sure.

22 Q. Okay. Did those phone calls take place from
23 your office?

24 A. I, you know, can't say for sure if I was in
25 the office or whether I was out of the office when

1 A. I'm not sure of the exact date.

2 Q. Okay. Can you give me your best well-reasoned
3 estimate of when that occurred?

4 A. I believe in and around October is when, you
5 know, my conversation with Mr. Fitts have been, in that
6 time period.

7 Q. Okay. When you say "October," are you
8 referring to October 2012?

9 A. Yes, sir.

10 Q. Okay. Do you recall having any conversations
11 or communications with Mr. Fitts prior to October 2012?

12 A. Like I said, in or around October. I'm not
13 exactly sure if it was maybe before October just by
14 a little bit or more.

15 Q. Okay, fair enough.

16 So but you believe that -- that the first time
17 you spoke with Mr. Fitts either in person or by phone
18 occurred on or about the 1st of October 2012?

19 MR. FITTS: Objection, misconstrues the answer
20 of the witness.

21 Q. BY MR. KISTLER: Around the 1st of October
22 time frame, plus or minus say a week?

23 A. The first time I spoke with him. I'm --
24 that's a good question. I would have to go and look
25 back at my --

1 Q. What's your best well-reasoned recollection of
2 the first time you spoke to Mr. Fitts about this case?
3 A. I'm not sure. I'd say -- I'm going to stick
4 with in or around October as my interactions with
5 Mr. Fitts so far, so.
6 Q. Okay. And when you say "in or around
7 October," you're referring to October 2012 --
8 A. Yes, sir.
9 Q. -- is that right?
10 And when you say "in or around October," can
11 you give me a range that we can say, okay, well, that
12 first communication probably occurred, you know, within
13 a week, two weeks, a month of October?
14 A. Yeah, it could --
15 Q. Can you give me your best -- your best
16 estimate of narrowing down that time frame?
17 A. Yeah, I can't recall that specific -- that
18 type of specific detail right now.
19 Q. And did you speak with Mr. Fitts before Labor
20 Day?
21 A. I can't recall.
22 Q. Did you speak with Mr. Fitts before the
23 4th of July of this year?
24 A. I can't recall.
25 Q. You can't recall if you spoke with him --

1 A. The 4th of July?
2 Q. The 4th of July of this year.
3 A. No.
4 Q. I'm just trying to determine when the first
5 time approximately it was that you spoke with Mr. Fitts.
6 MR. FITTS: I'm going to object, asked and
7 answered.
8 If you have --
9 Q. BY MR. KISTLER: When was the first time that
10 you best recall that you spoke to Mr. Fitts --
11 A. I don't know.
12 Q. -- concerning this case?
13 A. I don't know.
14 Q. Okay. But you believe it was not before
15 July the 4th, do you?
16 A. I -- I don't know at all.
17 Q. Could it have been before New Year's of 2012?
18 A. No.
19 Q. Okay. What's the -- what's the -- other than
20 it wasn't before New Year's 2012 and it could have been
21 on or before July the 4th, 2012, you can't be any more
22 specific about when you first spoke with Mr. Fitts
23 concerning this case?
24 MR. FITTS: I'm going to object, misconstrues
25 the testimony.

1 I believe he said the first time was on or
2 about October 2012.
3 Q. BY MR. KISTLER: Okay. Is that your
4 testimony, that the first time you spoke with Mr. Fitts
5 was on or about October 2012?
6 A. Right.
7 Q. Okay. And on or about October 2012, can you
8 be more specific insofar as what that time period would
9 be?
10 A. No.
11 Q. Within a few weeks, within a couple of months,
12 within what?
13 Can you tell me?
14 A. I can't.
15 Q. Okay. Over the last six months have you
16 worked on a daily basis for Wells Fargo, i.e., have
17 you taken any leave, have you been away, did you take
18 a vacation, been on any kind of leave whatsoever?
19 A. I have.
20 Q. Okay. And during what period of time were you
21 on leave?
22 A. What kind of answer are you looking for?
23 Like exact dates or something?
24 Q. Yeah, approximate dates.
25 A. You know, it was a number of months. I'm not

1 sure exactly, but it was many months.
2 Q. Okay. And can you generally tell me what the
3 nature of that -- the purpose of that leave was?
4 A. No, I'd rather not.
5 Q. Okay. Was it family related?
6 A. I'd rather not.
7 Q. Was it job related?
8 A. I'd rather not.
9 Q. Okay. Have you been disciplined for any
10 activity regarding the actions that gave rise to this
11 lawsuit, disciplined by Wells Fargo?
12 A. Not that I know of.
13 Q. Have you been counseled?
14 A. Not that I know of.
15 Q. Okay. Do you receive a performance report on
16 a periodic basis by Wells Fargo?
17 A. I'm supposed to but I haven't been
18 consistently within a -- I haven't had a manager, so
19 I'm going to say no, because there was some manager
20 turnaround going on that I didn't receive it.
21 Q. And when did those management turnarounds
22 occur?
23 A. You know, the branch I was -- in Malibu, the
24 branch that I was in, it was -- they constantly had
25 occurred. It was just -- within a year there would be

1 another one or a couple years there would be another
 2 one, so.
 3 Q. Who is your present supervisor at the branch
 4 that you work at?
 5 A. Currently?
 6 Q. Yes.
 7 A. I'm trying to remember. I think her name is
 8 Mehren. She's new.
 9 Q. Do you know what her last name is?
 10 A. No.
 11 Q. In October of 2011 who was your manager --
 12 who was supervisor, I'm sorry?
 13 A. In October of 2011?
 14 Q. Yes.
 15 A. I can't say for sure. I -- wait, hold on.
 16 I believe it was Jerry Galloway.
 17 Q. Can you spell the last name, please?
 18 A. G-a-l-l-o-w-a-y.
 19 MR. KISTLER: If you can mark this as
 20 Exhibit 2, please.
 21 (Plaintiff's Exhibit 2 marked for
 22 identification.)
 23 Q. BY MR. KISTLER: Mr. Dounel, before you we
 24 have Exhibit 2, which consists of three letters and an
 25 e-mail. The three letters are -- actually the e-mail

1 and I didn't -- I didn't -- maybe I didn't look through
 2 it but I did remember seeing something like this.
 3 Q. And your testimony is that yesterday was the
 4 first day that you've seen -- that you saw that letter?
 5 A. Yes, sir.
 6 Q. And do you know a gentleman by the name of
 7 Michael Kaplan?
 8 A. Yes.
 9 Q. Okay. And how do you know Michael Kaplan?
 10 A. Michael Kaplan worked with me on, you know,
 11 some of his accounts in the bank. He was just in this
 12 room a moment ago.
 13 Q. Okay. Do you recall when you first met
 14 Mr. Kaplan?
 15 A. Do I recall when I first met Mike Kaplan?
 16 Q. Yes.
 17 A. I can't say for sure exactly.
 18 Q. Okay. Can you give me your best approximation
 19 of when you first met Mr. Kaplan?
 20 A. I wouldn't be able to tell you exactly.
 21 Q. Was it this year?
 22 A. No.
 23 Q. Was it last year?
 24 A. Yeah, it would probably be. It would sound
 25 right, probably around a year ago, last.

1 should not be part of this exhibit so I won't be asking
 2 you any questions about the e-mail, the last page,
 3 Lisa J. 009. I'm referring to Lisa J. 006, 007, 008 in
 4 the lower right-hand corner.
 5 A. Right.
 6 Q. Do you see these numbers?
 7 A. Yes, sir.
 8 Q. Have you seen these letters before?
 9 A. Yes.
 10 Q. Okay. And when did you see these letters?
 11 A. Yesterday.
 12 Q. Okay. Were these letters, these three --
 13 these three letters documents that Mr. Pitts showed to
 14 you yesterday?
 15 A. I'm -- that -- excuse me?
 16 Q. Were these documents, were these three letters
 17 documents Mr. Pitts showed you yesterday?
 18 A. No. Just one. I think -- I remember this
 19 one. I don't remember seeing the others.
 20 Q. Okay. The witness was referring to
 21 Lisa J. 006 of Exhibit 2 when he said "I remember this
 22 one."
 23 But you believe the first page of Exhibit 2
 24 was something that Mr. Pitts showed you yesterday?
 25 A. Yeah, I believe he handed me the exhibit

1 Q. Was it probably last year or was it last year?
 2 A. Last year would probably be more closer.
 3 Yeah, of course, it was in last year.
 4 Q. Okay. Was it in October of last year?
 5 A. Most likely, yes.
 6 Q. You have no recollection of whether it was
 7 in October of last year or not when you first met
 8 Mr. Kaplan?
 9 A. I can't specify exact dates. I would say,
 10 you know, any time last year would probably be good.
 11 But October seems just as well.
 12 I mean these -- right now looking at this
 13 letter, I'd say, you know, it would be -- you know,
 14 I know what this letter is in looking at it. It would
 15 be probably around October, yeah.
 16 Q. Okay. Tell me the circumstances by which you
 17 first met Mr. Kaplan as you recall them.
 18 A. It was in the bank in Malibu.
 19 Q. Okay. You were at the bank in Malibu?
 20 A. I was working at my desk.
 21 Q. And how did it come to be that you met
 22 Mr. Kaplan on that date, whenever it was, in 2011?
 23 Do you know?
 24 A. How did it come to be?
 25 Q. Right.

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

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

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

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

1 Q. When did your computer change?
 2 A. I'm not sure.
 3 Q. Can you give me your best well-reasoned
 4 estimate of when your computer changed?
 5 A. The best answer is I don't work in that branch
 6 so I'm at a whole other desk.
 7 Q. When did you leave that branch?
 8 A. I would say in or around this month.
 9 Q. I beg your pardon?
 10 A. In or around this month or last month. Let me
 11 see, the exact switchover -- I don't remember the exact
 12 switchover but it was recently, it was a few weeks ago
 13 or something like that.
 14 Q. Okay. So you stopped working at the Malibu
 15 office of Wells Fargo and started working where?
 16 A. Beverly Hills.
 17 Q. So you start working -- you stopped working at
 18 the Malibu -- one of the Malibu branches of Wells Fargo
 19 and you started working at -- I'm sorry, what did you
 20 say?
 21 A. It's Beverly Hills.
 22 Q. Beverly Hills.
 23 A. It's a branch in, yeah.
 24 Q. Within the last -- within the last few
 25 weeks --

1 Q. Yes.
 2 A. I can't answer what --
 3 Q. Did you have the same computer from
 4 October 2011 at the Malibu offices until you recently
 5 left the Malibu office a few weeks ago?
 6 A. Did I have the same computer -- can you
 7 rephrase the question?
 8 Q. Okay. I'm just asking you if -- if you got a
 9 new computer after October 2011 at the Malibu office.
 10 Do you recall that?
 11 A. After October 2011?
 12 No, I -- you mean after the interaction with
 13 Mr. Kaplan?
 14 Q. Yes.
 15 A. I had the same computer.
 16 Q. So you had the same computer from October 2011
 17 up until the time that you left Malibu -- the Malibu
 18 office a few weeks ago?
 19 A. Yes.
 20 Q. Okay.
 21 All right. Back to this first meeting that
 22 you had with Mr. Kaplan that I think you said you
 23 believe occurred in October of 2011 --
 24 A. Yes.
 25 Q. -- is that right?

1 A. Yeah.
 2 Q. -- is that right?
 3 A. Within the month.
 4 Q. Had you left your old computer at Malibu, with
 5 the Malibu office?
 6 A. You know, we don't take our computers with us,
 7 so.
 8 Q. The question is: Did you leave your Malibu
 9 computer that you used in October 2011, did you leave
 10 that at the Malibu office --
 11 A. Yes.
 12 Q. -- that you vacated?
 13 A. Yes.
 14 Q. Okay.
 15 All right. Did you ever do a search on
 16 that computer for any documents pertaining to any
 17 conversations you had with Mr. Kaplan?
 18 A. No.
 19 Q. Were you ever asked to do that?
 20 A. No.
 21 Q. Okay. Was it your routine to delete e-mails
 22 from your computer subsequent to October 2011?
 23 A. I don't understand the meaning of that
 24 question at all.
 25 Was it routine to delete e-mails?

1 A. Yes.
 2 Q. Okay. You don't recall where that meeting
 3 occurred other than being in the office at Wells Fargo
 4 at the Malibu office?
 5 A. Right.
 6 Q. You don't recall going into a private area
 7 with Mr. Kaplan?
 8 A. No.
 9 Q. You don't recall whether or not you went back
 10 to your desk with Mr. Kaplan?
 11 A. I don't -- what did you say? I didn't
 12 understand.
 13 Q. Do you recall going back to your desk with
 14 Mr. Kaplan?
 15 A. I recall being at my desk, so.
 16 Q. Okay. So you recall this first meeting with
 17 Mr. Kaplan occurring at your desk?
 18 A. Yes.
 19 Q. Okay. Is there a chair there that -- that
 20 guests can sit down and face you across from your desk?
 21 A. Yeah. I would be here. You would be -- like
 22 he would be just about the same distance me and you are
 23 right now.
 24 Q. Okay. And that's about three and a half to
 25 four feet, is that right?

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

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

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

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

1 Q. Okay. Do you have a recollection at all as
2 to what Mr. Kaplan and you were talking about?
3 A. I remember that Mr. Kaplan's account was
4 closed. I had -- his complaint was that he had a closed
5 account, and I had checked it up on the computer,
6 I looked his account up, and there it said it was
7 closed, so.
8 Q. Okay.
9 A. It was a joint account.
10 Q. Okay. Do you have a specific recollection of
11 doing those things or is -- is that a recollection that
12 you are figuring out as we talk about it here today?
13 A. I have a specific recollection of looking up
14 the account on the computer and --
15 Q. Okay. So you looked up the account that --
16 did Mr. Kaplan give you the account information?
17 A. Well, I -- I identified Mr. Kaplan and I had
18 his account profile screen up for me to see all the
19 accounts he's on, and he told me generally his closed
20 account, it's a joint account with Lisa Johnson.
21 And I looked for a joint account with
22 Lisa Johnson and noticed that it was closed.
23 Q. And you did that on your computer?
24 A. Yes, sir.
25 Q. At your desk?

1 with Ms. Johnson and you saw the status of the account.
2 the names on the account, who opened it, et cetera.
3 et cetera.
4 Okay. What other information do you recall
5 seeing on that computer screen regarding that account?
6 A. I believe that's about it. The things I told
7 you that you can see are what you can -- what I would be
8 able to see.
9 Q. Okay. Following your review of that screen,
10 what did you tell Mr. Kaplan?
11 A. I told him I'm not sure why the accounts are
12 closed or -- so afterwards I needed to find out more,
13 so I called our support team, it's called the Banker
14 Connection.
15 Q. Banking Connection?
16 A. Banker Connection.
17 Q. Okay. And who did you talk -- did you talk
18 with a person at Banker Connection?
19 A. Yes, sir.
20 Q. Okay. Who was that?
21 A. I'm not sure.
22 Q. Was it a man or a woman?
23 A. I'm not sure.
24 Q. What did you tell the person at Banker
25 Connection?

1 A. Yes.
2 Q. Okay. The screen that you accessed for this
3 joint account with Lisa Johnson and Mr. Kaplan that told
4 you the account was closed, what -- what information is
5 given on that screen generally?
6 A. The status of the account. There's a lot of
7 information. The names on the account, where it was
8 opened, who opened it, the balance, ledger and
9 available. I mean things -- and a lot more, et cetera,
10 so.
11 Q. Is that a specific report that you would ask
12 for in calling up -- is there a specific report name
13 that you would ask for in calling up that information?
14 A. No.
15 Q. Better question. Let's say I work at the
16 bank alongside you and you want me to access that
17 information.
18 What instructions would you give me in order
19 for me to access that information on my computer?
20 A. If you work at the bank?
21 Q. Yes.
22 A. Look up this account.
23 Q. Okay. What do you recall about -- strike
24 that.
25 So you looked up Mr. Kaplan's joint account

1 A. I'm not sure exactly what we spoke of
2 specifically, but I remember the general nature of what
3 we spoke of was this account and why it was closed.
4 Q. And did the Banker Connection, did they tell
5 you why the -- why the account was closed?
6 A. No.
7 Q. What do you recall them saying?
8 A. I recall that the account was closed due to an
9 investigation.
10 Q. That's what you recall the Banker
11 Connection --
12 A. Yes.
13 Q. -- telling you over the telephone?
14 A. Yes.
15 Q. Okay. And Mr. Kaplan was present while that
16 occurred?
17 A. Yes.
18 Q. Okay. And did you -- do you recall telling
19 Mr. Kaplan anything as a result of your call with Banker
20 Connection?
21 A. I relayed that information to him.
22 Q. What did you tell him?
23 A. That account was closed due to investigation.
24 Q. Did Mr. Kaplan respond to that?
25 A. I'm sure he did but I can't recall it --

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

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

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

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

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

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

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

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

1 conversation?
 2 Q. The first conversation that you had, the first
 3 time you met Mr. Kaplan.
 4 A. Can I recall anything?
 5 Q. You went back to your desk with your computer,
 6 Mr. Kaplan sitting across from you, you checked the
 7 account information, you had a discussion with
 8 Mr. Kaplan, that discussion, do you recall anything else
 9 about that discussion other than what you've told us
 10 here today?
 11 A. No.
 12 Q. And what I'm trying to guard against is
 13 six months from now you say, oh, yeah, I remember that
 14 discussion, we said this, this, this, this, this, this,
 15 and this.
 16 A. Yeah. And thank for you for doing that.
 17 I mean I can't --
 18 Q. I'm trying to -- I'm trying to -- to explore
 19 and to gain everything that you recall about that
 20 discussion, the first discussion with Mr. Kaplan in
 21 October 2011, I'm trying to determine everything that
 22 you recall concerning that discussion.
 23 A. I understand.
 24 Q. Is there anything else about that discussion,
 25 that first discussion, that you recall now that you

1 Q. Okay. And in the lower half of that page
 2 where it says "Begin forwarded message:", do you see
 3 that?
 4 A. In the middle of the page?
 5 Q. In the bottom middle -- the bottom half of the
 6 page.
 7 A. Yes, sir.
 8 Q. Okay. And it appears that there's an e-mail
 9 from Mr. Kaplan to arash.dounel@wellsfargo.com.
 10 A. That's correct.
 11 Q. Okay. And it looks like that's dated
 12 October the 31st, 2011.
 13 A. That's correct.
 14 Q. Is that a-r-a-s-h, dot,
 15 d-o-u-n-e-l@wellsfargo.com, is that your e-mail address
 16 at Wells Fargo?
 17 A. Yes, sir.
 18 Q. Do you recall receiving this e-mail from
 19 Mr. Kaplan on or about October 31, 2011?
 20 A. I do.
 21 Q. Now, the body of that e-mail from Mr. Kaplan
 22 says, quote -- Mr. Kaplan to you says: "A week ago, you
 23 had called me to offer your apology for your comments
 24 regarding Lisa. I had asked you to send me a written
 25 apology--I have not heard back from you."

1 haven't told us about here in your deposition here
 2 today?
 3 A. No.
 4 Q. How did the discussion end?
 5 A. I don't recall.
 6 MR. KISTLER: Ma'am, if you can mark this as
 7 exhibit next in line, it's Exhibit 3.
 8 (Plaintiff's Exhibit 3 marked for
 9 identification.)
 10 Q. BY MR. KISTLER: Mr. Dounel, Exhibit 3 is
 11 a six-page e-mail chain. The first page is marked
 12 Lisa J. 0011, the second page is 0014, the third page
 13 is 0015, followed by 0016, 0017, and 0018.
 14 Do you see that?
 15 A. Yes.
 16 Q. Okay. And this is -- this document is --
 17 basically is in reverse chronological order. In other
 18 words, the earliest e-mail is at the later pages and it
 19 continues on up through the present.
 20 A. Right.
 21 Q. All right. If you could refer your attention,
 22 sir, to not the last page but the next-to-the-last page,
 23 which is 0017. Right above that it says page 5 of 6.
 24 Do you see that?
 25 A. Yes, sir.

1 "In our phone call, you had told me that we
 2 could re-open the accounts that Wells Fargo had closed,
 3 under you at your branch. I am at my home in Nevada,
 4 and wanted to make sure that as you represented, we
 5 could have Wells Fargo re-open the accounts that they
 6 had closed--please advise."
 7 Did I read that correctly?
 8 A. Yes, sir.
 9 Q. Mr. Dounel, the first phraseology, the first
 10 phrase in this, "A week ago, you had called me to offer
 11 your apology for your comments regarding Lisa. I had
 12 asked you to send me a written apology--I have not heard
 13 back from you", had you called -- or did you call
 14 Mr. Kaplan approximately a week before October 31 to
 15 apologize to him for your comments regarding Lisa?
 16 A. We had many -- we had many interactions in
 17 person and in the phone -- well, on the phone. I do
 18 believe that I had apologized to him for --
 19 Q. Okay.
 20 A. You know, for things, but --
 21 Q. What exactly did you -- did you apologize to
 22 him for?
 23 A. You know, like I did in person, I told him
 24 I'm sorry, you know, I apologized for not being able to
 25 gather more information for him regarding the closure of

1 the accounts.

2 I was, you know, re -- I was really just like
3 trying to make him understand I didn't have that
4 possibility.

5 I told him I was sorry about the inconvenience
6 he was getting, you know, and also about the
7 misunderstanding of investigation, you know, what --

8 Q. Did you apologize to Mr. Kaplan regarding
9 comments you had made regarding Lisa?

10 A. No.

11 Q. And so Mr. Kaplan in his e-mail where he
12 references "your apology for your comments regarding
13 Lisa," Mr. Kaplan is incorrect in that reference?

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

15 Q. No. I'm not asking what you believe he may
16 have meant.

17 My question is: When he says you called to
18 offer your apology for your comments regarding Lisa, was
19 Mr. Kaplan wrong in interpreting your conversation as
20 being an apology about your comments about Lisa?

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

22 Q. You don't recall apologizing to Mr. Kaplan
23 regarding anything about Lisa Johnson, is that right?

24 A. About, well, her accounts and, you know,
25 the accounts are hers, so if that means the comments

1 Q. When you say you were apologizing for the
2 misunderstanding, what was the misunderstanding?

3 A. You know, just -- you know, it's an
4 investigation that closed his account. I don't know
5 where he was going with that. It's pretty simple.
6 The account was closed and Wells Fargo decided to end
7 the relationship with that -- with that account being
8 closed and other accounts, I guess.

9 So, you know, I told him what they told me
10 from Banker Connection. And I don't know where he was
11 going with getting all the other emotions involved, and
12 so I wanted him to feel calm and just apologized for
13 misunderstanding about what the investigation meant.
14 Because simply the accounts were to be closed due to the
15 relationship wanting to be closed.

16 Q. Did you tell him anything else about the
17 investigation other than what you've told us here today?

18 A. No, I don't recall.

19 Q. Did you promise Mr. Kaplan you would send him
20 a written apology?

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

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

23 A. I'm not sure.

24 Q. Do you recall whether or not you told him
25 that prior to the date of this e-mail, October the 31st.

1 regarding Lisa, her accounts are regarding Lisa.

2 Q. What specifically do you recall apologizing
3 for?

4 A. Like I said --

5 MR. FITTS: Asked and answered.

6 Q. BY MR. KISTLER: What specifically do you
7 recall apologizing for?

8 A. I specifically recall apologizing for the
9 inconvenience that Mr. Kaplan and Ms. Johnson have had
10 to endure with regards to the account closure.

11 Also, apologizing for not having the ability
12 to get more information.

13 I like Mr. Kaplan. He was -- I wanted to help
14 him and I couldn't get that information for him, so I
15 was apologizing I can't -- I wasn't able to get that.

16 Also apologizing for his misunderstanding of
17 what investigation -- of what an investigation -- of the
18 investigation, of what it meant.

19 Q. What was the misunderstanding?

20 A. That he was getting like very emotional and
21 upset about it, so -- and I couldn't help him. He was
22 thinking like it was -- there was something wrong or
23 something drastically wrong. So I was trying to get him
24 to calm down, you know, but apologizing for, you know,
25 the investigation.

1 2011?

2 A. He asked me -- I remember he asked me for a
3 written apology, and I told him I'll do it.

4 So he said, I want it in writing.

5 I'm like, okay.

6 Q. And you think that occurred prior to
7 October the 31st, 2011?

8 A. I'm not sure. But this would be him
9 mentioning it here, so most likely, I'm not sure.

10 Q. All right. The next document up from that is
11 Lisa J. 0016, same exhibit.

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

13 Q. Yes.

14 A. Okay.

15 Q. Again, the bottom half of the page, it looks
16 like to be an e-mail from you addressed to Mr. Kaplan.

17 Do you see that?

18 A. Yes.

19 Q. And it says: "Mr. Kaplan, I would like to
20 mail out your letter priority mail, I can send it to
21 your Las Vegas address if you would like. Also, as
22 per your request, I can also reopen Lisa's accounts."

23 Did I read that correctly?

24 A. Yes.

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

1 A. Yes.
 2 Q. All right. In this e-mail the date is, it
 3 says November the 2nd, 2011.
 4 Do you believe that's about when you sent
 5 this e-mail?
 6 A. Yeah, I do believe.
 7 Q. Okay. And in this e-mail you were trying to
 8 inform Mr. Kaplan that, yes, in fact, you were going to
 9 send out a letter to him?
 10 A. Yes.
 11 Q. You also state that you were able to reopen
 12 Lisa's accounts. Is that correct?
 13 A. Yes.
 14 Q. Okay. Upon what did you base that statement
 15 to Mr. Kaplan upon?
 16 A. Mr. Kaplan wanted the accounts reopened that
 17 were closed, the ones that were closed. He wanted --
 18 Q. Okay. And you responded and said I can reopen
 19 Lisa's accounts?
 20 A. I responded with I can reopen accounts for
 21 him.
 22 Q. Well, it says "I can also reopen Lisa's
 23 accounts." That's what this e-mail says.
 24 A. I meant the joint accounts, the ones that were
 25 closed, the same -- the relationship he had.

1 Q. Now, did you have -- had you discussed these
 2 accounts with anyone at Wells Fargo prior to sending
 3 this e-mail to Mr. Kaplan?
 4 A. I can't recall.
 5 Q. Okay. Well, when you say you believe that
 6 you could reopen Lisa's accounts under different
 7 numbers, upon what did you base that statement?
 8 A. Upon reopening new accounts, mean -- meaning
 9 getting new numbers.
 10 Q. Okay. But you thought that -- did you consult
 11 with anyone concerning -- the difficulty I'm having is
 12 these accounts were closed for some reason --
 13 A. Correct.
 14 Q. -- in your view.
 15 A. Yes.
 16 Q. In the bank's view?
 17 A. Correct.
 18 Q. Okay. And yet here on October -- or on
 19 November the 2nd, 2011, you're telling Mr. Kaplan you
 20 can reopen those accounts.
 21 A. Correct.
 22 Q. Okay. My question to you is: Had you
 23 discussed reopening these accounts with anyone at
 24 Wells Fargo prior to informing Mr. Kaplan that you
 25 could do so --

1 A. Yes.
 2 Q. -- on November the 2nd, 2011?
 3 A. Not with anyone. What happened is that
 4 Mr. Kaplan wanted me to reopen the accounts. We went
 5 through a process of trying to reopen accounts. And the
 6 initial risk screening of reopening new accounts stated
 7 that he was -- him and Lisa Johnson were approved to
 8 open new accounts.
 9 So based on that information, I was able to
 10 tell Mr. Kaplan in this e-mail that I was able to reopen
 11 these accounts under my branch so Lisa can be -- the
 12 only problem that is keeping the same account numbers,
 13 you know.
 14 So I remember that that was the reason why
 15 this e-mail was written.
 16 Q. Explain to me this risk screening process that
 17 you referred to.
 18 A. Customers' profiles with us with their
 19 information that we gather. A lot of them are existing.
 20 Or new customers, we would have to input that
 21 information. We use that information in our system to
 22 go through a process that allows us to open accounts.
 23 Within the process, after the profiling
 24 process, there's a screen -- there is a part that allows
 25 us to know initially if the client is approved to

1 continue with opening accounts or declined for opening
 2 a new account. That will let the branch -- the banker
 3 or manager or whoever is handling it to continue with
 4 opening the account, where at that point you go to
 5 picking the accounts and services and products that the
 6 client would desire.
 7 Q. And your testimony here is today -- here today
 8 is that prior to November the 2nd you went through that
 9 process for and on behalf of Mr. Kaplan and Ms. Johnson?
 10 A. Yes.
 11 Q. And you were told by the bank that, yes, new
 12 accounts can be opened?
 13 MR. FITTS: I object. Misconstrues the prior
 14 testimony.
 15 MR. KISTLER: Yeah. That's a speaking
 16 objection. You can make an objection based on form.
 17 Q. BY MR. KISTLER: My question to you,
 18 Mr. Dounel, is: Prior to November the 2nd, 2011,
 19 you talked about this risk screening process that you
 20 went -- that you can go through. Is that right?
 21 A. Initial risk screening process.
 22 Q. Initial risk screening process.
 23 And it's your testimony that you went through
 24 that initial risk screening process for and on behalf of
 25 Mr. Kaplan and Ms. Johnson --

1 A. Correct.
 2 Q. -- prior to November the 2nd, 2011 --
 3 A. Correct.
 4 Q. -- is that right?
 5 A. Correct.
 6 Q. And that you had obviously gotten an approved
 7 for new accounts based on that initial risk screening --
 8 A. Yeah.
 9 Q. -- is that correct?
 10 A. Correct. The disposition was that they were
 11 approved for new accounts.
 12 Q. Okay. Is there any documentation that's
 13 generated as a result of that internally with the bank?
 14 A. No. That's confidential. We're not even
 15 allowed to really disclose that screen. You know, if
 16 there was a decline, for example, we're not allowed to
 17 disclose or print out that screen.
 18 Q. Are credit reporting agencies consulted as
 19 part of this initial screening process?
 20 A. I'm not sure.
 21 Q. Are these client profiles or initial screening
 22 client profiles, are those maintained by Bank of
 23 America -- or, excuse me, by Wells Fargo or are they
 24 destroyed?
 25 A. Are the client -- I don't understand, are the

1 for account opening for Mr. Kaplan and Ms. Johnson with
 2 positive results?
 3 A. Yes, sir.
 4 Q. Okay. Sir, if you could refer your
 5 attention to the second page in this exhibit, and
 6 that's Lisa J. 0014.
 7 A. I'm sorry, I didn't hear you.
 8 0014?
 9 Q. Yes.
 10 A. Okay.
 11 Q. About mid page on 0014, Exhibit 3, we have
 12 another apparently later e-mail of yours on the same
 13 date of November the 2nd, 2011 --
 14 A. Correct.
 15 Q. -- where again you wrote -- and you wrote this
 16 to Mr. Kaplan, didn't you?
 17 A. Correct.
 18 Q. Okay. Did you ever communicate with
 19 Ms. Johnson by e-mail?
 20 A. No.
 21 Q. All of your communications regarding these
 22 accounts, the accounts that are at issue in this
 23 lawsuit, were with Mr. Kaplan, is that right?
 24 A. On e-mail, you mean?
 25 Q. Yes.

1 client profiles what?
 2 Q. The results of these initial account
 3 screenings.
 4 A. I wouldn't know. I'm just a banker.
 5 Q. And you understand that the initial account
 6 screening that you referred to that is occurring in this
 7 case prior to November the 2nd, 2011, that that's done
 8 by Wells Fargo, it's an internally -- it's an internal
 9 Wells Fargo determination, is that right?
 10 A. You know, I'm not sure. I just know that on
 11 our computer we have a process that allows us to open
 12 accounts, and before you choose the products and
 13 services there's an initial risk screening process that
 14 instructs the banker to either continue or not.
 15 Q. Okay.
 16 A. And that's really all that I know.
 17 Q. So as of November the 2nd, 2011, you had
 18 apologized to Mr. Kaplan concerning certain things
 19 orally, is that right?
 20 A. Yes.
 21 Q. And you promised Mr. Kaplan that you would
 22 send him a written apology, correct?
 23 A. He wanted one and I told him I would get one
 24 for him.
 25 Q. And you had conducted this initial screening

1 A. All e-mail communication I believe was with
 2 Michael Kaplan.
 3 Q. Okay. So, anyway, on November the 2nd, 2011,
 4 at 5:24 p.m., you wrote to Mr. Kaplan: The red flags
 5 were on those specific accounts. That is why they
 6 cannot be reopened. I can make sure that we compensate
 7 any fees for new checks and move forward with new
 8 account numbers. Can I call you now?
 9 Did I read that correctly?
 10 A. Except you forgot that part, "red flags" is in
 11 quotes.
 12 Q. Okay. So let me read it again. The, quote,
 13 red flags, end quote, were on those specific accounts.
 14 That's the first sentence of the e-mail --
 15 A. Correct.
 16 Q. -- that you sent to Mr. Kaplan on November
 17 the 2nd, on or about -- or at or about 5:24 p.m.,
 18 correct?
 19 A. Correct.
 20 Q. Okay. What red flags are we referring to?
 21 A. I was referring -- if you look lower, at the
 22 e-mail he sent me at 4:18 p.m., my e-mail was sent at
 23 5:24 p.m., in response to that e-mail Michael Kaplan
 24 mentions: "It's important to maintain the same account
 25 numbers to show that Lisa was not in any kind of error

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

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

6 A. I can't say for sure.

7 What do you mean?

8 What do you mean by that question?

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

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

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

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

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

18 A. I could open new accounts, yes.

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

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

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

3 A. Okay.

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

7 Do you see that?

8 A. Yeah.

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

16 A. Correct.

17 Q. Did I read that correctly?

18 A. Yes, sir.

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

20 A. No, sir.

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

24 A. Yes.

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

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

4 A. Correct.

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

7 (Recess taken.)

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

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

13 A. Yes.

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

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

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

21 A. Jerry Galloway.

22 Q. Jerry Galloway?

23 A. Yeah.

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

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

4 A. Yeah, briefly.

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

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

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

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

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

14 A. Yes.

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

17 A. I'm not sure.

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

23 A. Yes.

24 Q. Okay, all right.

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

1 an earlier question, you told us that you haven't been
2 on medical leave from Wells Fargo during, say, the
3 six-month period of time prior to today's date, is that
4 right?

5 MR. FITTS: I'm going to object and I'll just
6 object as to form.

7 You can answer.

8 THE WITNESS: Prior to today's date is what
9 I said "no" to. I returned from leave earlier this
10 month, so.

11 Q. BY MR. KISTLER: Okay. But that wasn't
12 medical leave, correct?

13 A. That was medical leave.

14 Q. It was medical leave?

15 A. Yes, sir.

16 Q. All right. When were you on -- what was the
17 period of time that you were on medical leave?

18 A. It was about six months.

19 Q. Okay. It started when and ended when?

20 A. It ended around the beginning of October,
21 right around that time, and then six months prior, so.

22 Q. Okay. And during the period of time that you
23 were on medical leave, were you inside the
24 United States?

25 A. Yes, sir.

1 Q. BY MR. KISTLER: Well, I mean were you in that
2 area?

3 Did you basically stay at home during that
4 period of time?

5 A. I didn't stay at home for six months. I went
6 out of the house and did things.

7 Q. Okay. But you didn't travel, say, to New York
8 or Philadelphia or London or anything like that, did
9 you?

10 A. Unfortunately not.

11 Q. Okay.

12 A. I had -- you know, I had to be involved with
13 physicians and this and that, so.

14 Q. I understand. But that was based out of your
15 home, is that right?

16 A. It was --

17 MR. FITTS: Objection, form.

18 You can answer.

19 THE WITNESS: I'd say home, if you want to
20 call "home" County of Los Angeles, correct.

21 Q. BY MR. KISTLER: Fair enough.

22 MR. KISTLER: If you could mark this as the
23 next in line, which is 4.

24 (Plaintiff's Exhibit 4 marked for
25 identification.)

1 Q. Okay. Were you available by telephone?

2 A. Yes, sir.

3 Q. Was the medical leave that you were on, was
4 that based on a life-threatening problem?

5 MR. FITTS: I'm going to object. That's
6 privileged information.

7 Q. BY MR. KISTLER: You can still answer unless
8 your counsel instructs you not to.

9 A. Privilege.

10 MR. FITTS: You have a privilege -- privilege
11 to your medical information, and so unless you want to
12 waive that you -- I'm telling you as your attorney that
13 you don't have to disclose the medical reasons for your
14 leave.

15 THE WITNESS: Yeah, I understand and
16 I completely agree, it's privileged and I don't want to
17 talk about it.

18 Q. BY MR. KISTLER: Okay. But you were available
19 by telephone in that period of time?

20 A. I was.

21 Q. And you were in the country?

22 A. Yes, sir.

23 Q. Were you at home?

24 A. What do you mean, for six months?

25 MR. FITTS: Objection, form.

1 MR. KISTLER: We're done with those and
2 Ms. Court Reporter here keeps everything that has a
3 sticker on it.

4 THE WITNESS: There you go.

5 THE REPORTER: Thank you.

6 THE WITNESS: Did you say your name is Joseph
7 or Sam?

8 Q. BY MR. KISTLER: My first name is Joseph.
9 My middle name is Sidney. I go by Sid.

10 A. Oh, you go by Sid. Okay, cool.

11 Q. Exhibit 4 is a two-page exhibit, consisting of
12 Lisa J. 0045 and 0044.

13 Looking at the second page of the document
14 of this exhibit, 0044, at the bottom of the page.
15 the bottom half, bottom third, we see an e-mail from
16 Mr. Kaplan to you dated November the 10th, 2011 at about
17 9:52 a.m.

18 A. You're looking at 44?

19 Q. Yeah, the second page of the exhibit, the
20 bottom half of the second page.

21 A. Yes, sir.

22 Q. It's Bates number 0044.

23 A. Correct.

24 Q. Do you see that?

25 A. Yes, sir.

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

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

5 A. Yes, sir.

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

11 Did I read that more or less correctly?

12 A. Correct.

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

14 A. Yes.

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

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

21 A. Correct.

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

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

25 A. I can't recall.

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

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

5 Q. Mr. Galloway?

6 A. Yes, sir.

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

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

13 A. Yes, sir.

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

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

20 A. Yes, sir.

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

22 A. No, sir.

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

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

6 Did I read that correctly?

7 A. Correct.

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

9 A. Correct.

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

20 A. Correct.

21 Q. Did I read that correctly?

22 A. Yes, sir.

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

25 A. Yes, sir.

1 contacting you, is that right?

2 A. No, sir.

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

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

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

9 A. I do not.

10 Q. -- to Mr. Kaplan?

11 A. I'm not sure about that.

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

16 A. I don't recall.

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

19 A. No.

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

23 A. I can't say for sure.

24 Q. -- Lisa J. 0045?

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

1 a year ago, thousands of interactions like this have
 2 happened, so I can't say for sure that -- what happened
 3 with me -- me and Galloway with this response.
 4 Q. Is this Exhibit 4 one of the documents that
 5 Mr. Pitts showed you in your three-hour meeting with him
 6 yesterday?
 7 A. Yes, sir.
 8 Q. Okay. And by showing you this document,
 9 that didn't help refresh your recollection as to these
 10 events?
 11 A. No.
 12 Q. Let me ask you this. After meeting with
 13 Mr. Pitts yesterday for three hours, was your
 14 recollection refreshed in any way concerning your
 15 testimony here today?
 16 A. You know, I can't gauge that. I can't say
 17 my recollection was one out of ten here and then now
 18 it's one out of ten here. I can't say for sure.
 19 Q. When was the last time that you looked at any
 20 documents concerning this matter prior to yesterday?
 21 A. Excuse me. I was drinking again.
 22 Q. When was the last time that you looked,
 23 reviewed any documents concerning this matter prior to
 24 yesterday?
 25 A. Prior to yesterday.

1 This specific exhibit?
 2 Q. The documents that Mr. Pitts showed you.
 3 A. I had -- I had been given documents to review
 4 before I met with Mr. Pitts. I'm not sure what
 5 specifics. However, those were faxed to my attention.
 6 Q. Okay. And when did that event occur?
 7 A. Within this month, within October.
 8 Q. Okay. So your testimony is that someone faxed
 9 some documents to you for your review within the last
 10 month?
 11 A. Yes, sir.
 12 Q. Okay. Do you know the source of that fax?
 13 A. The offices of Mr. Pitts, the attorney.
 14 Q. The letter that you prepared for Mr. Kaplan
 15 that you never sent because Mr. Galloway told you that
 16 management and the -- and the bank's legal department
 17 cannot allow you to send such a letter, did you prepare
 18 that letter on your computer?
 19 A. I'm not sure. I've been actually thinking
 20 about whether it was in the computer or whether I wrote
 21 it by hand. I'm not really sure.
 22 Q. Do you still have a copy of the letter?
 23 A. No.
 24 Q. What happened to it?
 25 A. I'm not sure but we weren't going to send it

1 so I have no idea.
 2 Q. Okay. Well, what -- what did you do with the
 3 letter?
 4 A. I don't even -- like I say, I don't know --
 5 I don't know.
 6 Q. Do you recall whether or not you showed
 7 Mr. Galloway the actual letter or you just spoke with
 8 him concerning the contents of the letter?
 9 A. You know, I can't say for sure about that
 10 either.
 11 Q. Do you recall destroying the letter?
 12 A. No.
 13 Q. Have you searched for the letter since
 14 November 2011?
 15 A. No.
 16 Q. Have you been asked to do so?
 17 A. No.
 18 (Plaintiff's Exhibit 5 marked for
 19 identification.)
 20 Q. BY MR. KISTLER: Now, Exhibit 5 is a six-page
 21 exhibit, consisting of Bates numbers Lisa J. 0048
 22 through Lisa J. 0053.
 23 A. Correct.
 24 Q. And this appears to be an e-mail chain by and
 25 between Mr. Kaplan and certain Wells Fargo individuals.

1 A. Correct.
 2 Q. Now, I notice that you're not shown on any
 3 of the e-mails as either being the sender, the receiver,
 4 or as being copied on these e-mails.
 5 A. Correct.
 6 Q. Do you recall seeing these e-mails at any
 7 point in time?
 8 A. No.
 9 Q. Was this -- were these e-mails shown to you
 10 yesterday?
 11 A. No.
 12 Q. The e-mails appear to be from a Mr. Andrew M.
 13 Noll to Mr. Kaplan, to and from each other, copied to
 14 Mr. Chad Maze, M-a-z-e.
 15 A. What page are you looking at?
 16 Q. I'm looking at the last page of the exhibit,
 17 for example.
 18 A. On that page, let's see, yes, they do.
 19 Q. Okay. And the rest of the e-mails are either
 20 sent by Mr. Kaplan to Mr. Maze and Mr. Noll or from
 21 Mr. Maze or Mr. Noll to Mr. Kaplan, is that correct?
 22 A. Correct.
 23 Q. Do you know who Mr. Maze is?
 24 A. No, sir.
 25 Q. Do you know who Mr. Noll is?

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

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

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

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

1 continue, or throw away the notebook if it's full, you
2 know, and get a new one.

3 Q. Okay. Do you recall doing that in this case,
4 i.e., recording the conversations that you had with
5 Mr. Kaplan in your notebook?

6 A. No. I would just take notes as I'm talking or
7 afterwards put down, jot down some notes to remind me.
8 It's not recorded.

9 Q. Okay. You don't recall doing that
10 specifically regarding Mr. Kaplan?

11 A. No.

12 Q. But it was your custom and practice to do so
13 at that time, i.e., October, November of 2011?

14 A. Yes. Kind of like you guys. Attorneys take
15 notes.

16 Q. Have you looked for any notes regarding this
17 case?

18 A. No.

19 Q. Have you been asked to do so?

20 A. No, sir.

21 Q. Have you ever had any conversations with
22 Mr. Maze or Mr. Noll regarding these matters?

23 A. No.

24 Q. And I'm referring to the same Mr. Maze and
25 Mr. Noll as reflected on Exhibit 5.

1 A. No.

2 Q. That's the way you understood my question,
3 right?

4 I was referring to these guys --

5 A. Correct.

6 Q. -- in this exhibit.

7 A. I don't know them. Never spoken to them.

8 Q. Who at the bank have you had discussions with
9 concerning the matters in this case?

10 A. I would --

11 Q. You had Mr. Galloway?

12 A. Yeah.

13 Q. Okay.

14 A. That's it.

15 Q. You talked to Mr. Fitts. We've established
16 that.

17 A. You said with the bank, though.

18 Q. That's right.

19 Anyone else with the bank that you've talked
20 to about this?

21 A. Her over there. She's with the bank.

22 Q. Okay. And you were referring to Ms. --

23 MS. STOCKMAN: Stockman.

24 Q. BY MR. KISTLER: -- Stockman that's present
25 here in the deposition room.

1 When did you speak with Ms. Stockman?

2 A. This morning.

3 Q. Okay. Was that the first time you've spoken
4 with her?

5 A. I just met her.

6 Q. Okay. Any other -- any other employee of the
7 bank that you've discussed this with?

8 A. I haven't discussed this with any other
9 employees. I'd had -- at my own branch it was Galloway
10 but I can't say for sure if other employees were present
11 or not and -- and who they were.

12 Q. Okay.

13 MR. KISTLER: Okay. Could you mark this next
14 in line. This'll be Exhibit 6.

15 (Plaintiff's Exhibit 6 marked for
16 identification.)

17 Q. BY MR. KISTLER: Mr. Dounel, I'm showing you
18 what's been marked as Exhibit 6, which is Defendant
19 Wells Fargo Bank N.A.'s Supplemental Answer to
20 Plaintiff's Interrogatory No. 12. That's the title on
21 the first page. And this document -- this exhibit is a
22 five-page document.

23 A. Right.

24 Q. Now, Mr. Dounel, the third page of this
25 document shows it dated October 19, 2012.

1 A. Yes.

2 Q. Do you see that? The third page of --

3 A. Third page, dated October 19, 2012, correct.

4 Q. The third page of this document is dated
5 October 19, 2012.

6 Did anyone consult with you concerning this
7 interrogatory on or prior to October 19, 2012?

8 A. Mr. Fitts.

9 Q. Mr. Fitts did.

10 Now, the interrogatory states about halfway
11 down on the second page: Please explain in full detail
12 the contents of "the apology that [Arash Dounel has]
13 given [Michael Kaplan]" -- those two names with the
14 halves are in brackets, Mr. Kaplan's name is in
15 brackets -- "thus far verbally" regarding Wells Fargo's
16 closure of the accounts referenced in Interrogatory
17 No. 1. For reference purposes, please see Lisa J. 005.

18 Did I read that more or less correctly?

19 A. 0045.

20 Q. 0045, yes.

21 Did I read that more or less correctly?

22 A. Yes, sir.

23 Q. Now, you would be the individual that would
24 have knowledge concerning the contents of the apology
25 that you gave Mr. Kaplan verbally --

1 A. Correct.
 2 Q. -- wouldn't you?
 3 Would there be anyone else at the bank, to
 4 your knowledge, that would have that information?
 5 A. No.
 6 Q. So you would have all of that information, is
 7 that right?
 8 A. The one with the apology.
 9 Q. Okay. Referring your attention to the
 10 next-to-the-last page of this exhibit, Verification of
 11 Defendant Wells Fargo Bank's Supplemental Answer to
 12 Plaintiff's Interrogatory No. 12, it appears to be a
 13 statement signed by Ms. Stockman on or about October
 14 the 19th, 2012.
 15 A. Correct.
 16 Q. And the statement says: "Raelynn Stockman,
 17 being first duly sworn, deposes and states that I am a
 18 Vice President and Regional Services Manager with Wells
 19 Fargo Bank, N.A. The foregoing Answer contains the
 20 phraseology of counsel, and since the interrogatories
 21 are directed to a corporation, this Answer does not
 22 constitute, nor are the same derived from, the personal
 23 knowledge of any single individual, and they include
 24 record information, knowledge obtained that cannot be
 25 attributed to specific individuals, recollections of

1 Q. In fact, there is a specific individual that
 2 can tell us the answer to that and that was you?
 3 A. Correct.
 4 MR. KISTLER: If you can mark this next in
 5 order, please.
 6 (Plaintiff's Exhibit 7 marked for
 7 identification.)
 8 Q. BY MR. KISTLER: Mr. Dounel, if you could
 9 review this document.
 10 A. Okay. Wait. I'm done.
 11 Q. Exhibit 7 is Wells Fargo Bank, N.A.'s
 12 Supplemental Responses to Plaintiff's Requests for
 13 Admissions Nos. 2-9.
 14 A. Okay.
 15 Q. And the last page is dated October the 19th,
 16 2012.
 17 Do you see that?
 18 A. I do.
 19 Q. Okay. Have you ever seen this document
 20 before?
 21 A. Can't say that I have.
 22 Q. Okay. Was this a document that was shown to
 23 you yesterday in the three-hour meeting you had with
 24 Mr. Fitts?
 25 A. I'm not sure. There's a lot of them that look

1 employees and former employees, and my own personal
 2 general knowledge. I have read the foregoing Answer,
 3 and, to the best of my knowledge, I am informed and
 4 believe the same to be true."
 5 Did I read that correctly?
 6 A. Correct.
 7 Q. Okay. Well, I mean there really is one person
 8 that can tell us at Wells Fargo what -- the contents of
 9 the apology that Arash Dounel gave Michael Kaplan
 10 verbally.
 11 A. Correct.
 12 Q. There is a person, that's you?
 13 A. Yeah.
 14 Q. Did you have discussions with Ms. Stockman
 15 prior to October 19, 2012 regarding the contents of the
 16 apology that you gave Mr. Kaplan verbally?
 17 A. No.
 18 Q. When Ms. Stockman swears under oath that this
 19 concerns information and knowledge obtained that cannot
 20 be attributed to specific individuals, do you know what
 21 she's talking about there?
 22 MR. FITTS: Objection, form, foundation.
 23 Q. BY MR. KISTLER: Do you know what she's
 24 talking about?
 25 A. No.

1 like this.
 2 Q. Mr. Fitts showed you a lot of pleadings?
 3 A. Are these what these are called with the
 4 numbers on the right -- or left?
 5 Q. Yes.
 6 A. Yeah, I've seen some documents that look like
 7 this but I don't know if it's this.
 8 Q. Okay. Do you recall discussing the contents
 9 of this document with Mr. Fitts prior to October the
 10 12th, 2012?
 11 MR. FITTS: I'm going to object.
 12 Q. BY MR. KISTLER: October the 19th, 2012?
 13 MR. FITTS: I'm going to object to the extent
 14 it calls for attorney/client privileged communications.
 15 Q. BY MR. KISTLER: You can still answer the
 16 question.
 17 A. I don't recall.
 18 Q. You don't recall whether or not you ever
 19 discussed the -- the subject matter -- strike that.
 20 Do you recall discussing the subject matter
 21 addressed in this document with Mr. Fitts prior to
 22 October --
 23 A. The subject matter --
 24 Q. -- 19th, 2012?
 25 A. The subject matter I have, but the actual

1 document. I'm not specifically recalling talking.

2 Q. Okay. And when do you recall discussing the
3 subject matter of -- addressed in this document prior to
4 October 19th, 2012?

5 A. Just to make it clear, the subject matter
6 is -- to me this looks like, you know, responses, is
7 that what it says, is that Wells Fargo? I don't know
8 what this is.

9 But it looks like to me when I mean subject
10 matter, I mean just the events that have transpired
11 between me and him, with Kaplan and this -- this whole
12 thing.

13 Q. And October the 19th is last Friday?

14 A. It was last Friday.

15 Q. Last Friday.

16 And your testimony is you recall discussing
17 the subject matter that is addressed in this document,
18 the conversations you had and the promises about letters
19 and things that you made to Mr. Kaplan prior to the date
20 of this?

21 MR. FITTS: I'm going to object, form and
22 foundation.

23 Q. BY MR. KISTLER: Prior to the date of this
24 document, October 19th, 2012?

25 A. I was available by phone for Mr. Fitts and

1 we're going to -- we have some stuff to talk about.

2 Q. Okay. And when did that conversation occur?

3 A. You know, I can't say for sure but I mean
4 during my leave. I'd say during my leave.

5 Q. All right. And can you give us your best
6 well-reasoned estimate of when that occurred?

7 A. No.

8 Q. Was it a month before your leave was
9 completed?

10 A. Within the six months.

11 Q. Sometime within the six-month period of time?

12 A. Yeah.

13 Q. Was it towards the end of the six-month period
14 of time or towards the beginning?

15 Do you recall?

16 A. I don't have -- I don't have that -- I don't
17 have that in front of me. I don't have that -- I didn't
18 jot it down or take notes. I don't know.

19 Q. Okay. At the time that you had that
20 conversation with Mr. Fitts, was there any -- any
21 reason why you couldn't talk with Mr. Fitts about the
22 allegations made in this lawsuit?

23 MR. FITTS: I'm going to object. That calls
24 for privileged medical information.

25 And you're not required to disclose any

1 have discussed the subject matter of the case with him.

2 Q. Okay. And when did that occur?

3 A. A few times or a little bit more than a few
4 times in this month, in or around October.

5 Q. You told us that you got off of medical leave
6 about three weeks ago?

7 A. Yeah, beginning of October.

8 Q. Okay. Is it fair to say that you never talked
9 with Mr. Fitts about this case until after that event
10 occurred?

11 A. No, I did also speak with Mr. Fitts. We had
12 phone conversations about --

13 MR. FITTS: I'm going to object and instruct
14 you not to disclose the contents of any attorney/client
15 privileged information.

16 THE WITNESS: Right. We had had -- we had
17 spoken on the phone and -- to introduce himself about
18 who he was and his capacity and that I would be -- when
19 I get back from leave we'd be able to work on why he's
20 been I guess retained to this case.

21 Q. BY MR. KISTLER: Okay. And that's what you
22 recall of that conversation?

23 A. Yeah. No specifics, just --

24 Q. No specifics?

25 A. Yeah, just basically, hey, when you get back

1 medical information. You have a privilege with respect
2 to that. You can waive it if you want. But you have a
3 privilege and you don't have to answer that question.

4 THE WITNESS: Right.

5 For the reason he's actually saying.
6 I actually told Mr. Fitts --

7 MR. FITTS: Wait a minute. I'm going to
8 instruct the witness not to disclose attorney/client
9 privileged communications --

10 THE WITNESS: Okay.

11 MR. FITTS: -- between -- with legal counsel.

12 Q. BY MR. KISTLER: When you talked with
13 Mr. Fitts while you were on medical leave, why didn't
14 you discuss this lawsuit?

15 MR. FITTS: I'm going to object again to the
16 extent that it calls for privileged medical information.

17 THE WITNESS: I was on leave and I was
18 focusing on me.

19 Q. BY MR. KISTLER: Okay. So you didn't want to
20 talk to him about it at that time, is that fair to say?

21 A. I was focused on what my -- becoming healthy
22 and it couldn't serve me to address it.

23 Q. Now, Mr. Dounel, if you could refer your
24 attention to the third page of this document.

25 A. They're not numbered but I'm guessing just the

1 third piece of paper.

2 Q. The third piece of paper --

3 A. Right.

4 Q. -- would be the third page.

5 About a third of the way down on the third
6 piece of paper, which would be the third page of this
7 document, we have Request No. 3.

8 Do you see that?

9 A. Yes, sir.

10 Q. It says: "Please admit that, on October 6,
11 2011, Arash Dounel stated to Michael Kaplan that Lisa
12 Johnson must have some type of criminal background."

13 Did I read that correctly?

14 A. Correct.

15 Q. And then we have a response that follows for
16 the rest of that page.

17 Now, that response continues on to the top of
18 the fourth page.

19 A. I see that.

20 Q. And I guess let me start at the bottom of the
21 third page: "Upon information and belief, Wells Fargo
22 admits that, in or about October of 2011, Mr. Kaplan
23 pressed Mr. Dounel with questions regarding why the
24 subject accounts were closed and asked Mr. Dounel for
25 his opinion regarding what Mr. Dounel would do if he

1 A. It was many different forms of why.

2 Q. Like what? What do you recall now?

3 A. I mean I just don't know.

4 MR. FITTS: Objection, form, foundation.

5 Go ahead and answer.

6 THE WITNESS: I don't know exactly verbatim,
7 but, no, he didn't accept the way -- if I wasn't able to
8 give him an answer with the way he asked why he would
9 find a different way to ask why.

10 And I knew he was an attorney and so there's
11 many ways that he can ask why. So he just kept going on
12 and on.

13 Q. BY MR. KISTLER: Well, how many ways -- what
14 do you recall about Mr. Kaplan pressing you for an
15 answer?

16 MR. FITTS: Objection, form, foundation.

17 THE WITNESS: I'm not recalling exactly how.

18 Q. BY MR. KISTLER: Okay. Now, as you sit here
19 today, do you recall anything about your interaction
20 with Mr. Kaplan that you haven't told us about?

21 A. No.

22 Q. Okay. And, again, the purpose that I have in
23 asking you that question is six months from now I don't
24 want you to go before the court and say, oh, I remember
25 a whole lot more now, later --

1 were Mr. Kaplan."

2 Did I read that correctly?

3 A. Correct.

4 Q. Okay. Now, the word "pressed" is the -- is
5 the word I want to focus on at this point.

6 You used that word earlier in your testimony
7 here today. And then when I followed up with that, you
8 said, well, Mr. Kaplan wasn't happy, he was frustrated,
9 he was worried, he was annoyed.

10 Do you recall your testimony along those
11 lines?

12 A. Correct.

13 Q. And I asked you, well, did Mr. Kaplan raise
14 his voice, did Mr. Kaplan threaten you, did Mr. Kaplan
15 threaten to do anything?

16 A. No.

17 Q. Okay. And yet the word "pressed" is used in
18 this document that was filed on behalf of the bank in
19 this particular case.

20 Isn't it true that all Mr. Kaplan did was just
21 ask you why the account was closed?

22 MR. FITTS: Objection, form, foundation.

23 You can answer.

24 THE WITNESS: That's not all he did.

25 Q. BY MR. KISTLER: What else did he do?

1 A. That's true.

2 Q. -- than I remembered in Mr. Kistler's office
3 on October the 25th. That's the purpose that I'm asking
4 you the question.

5 A. I know.

6 Q. Okay. So I want you to sit back, reflect, use
7 your powers of recollection that you can summon up at
8 this point in time, and again I'll ask you the question:
9 Do you recall anything else about your interaction with
10 Mr. Kaplan in October, November, or any other time other
11 than what you've testified about here today in your
12 deposition?

13 A. To the best of my knowledge, he was being --
14 by saying that he was pressing me for an answer, the
15 context of being pressed, just pressing, by when I say
16 "pressed," it didn't involve him being loud or
17 threatening.

18 He simply, from the best of my knowledge.
19 I can remember he -- to me I interpreted him as being
20 annoyed, frustrated, and I remember the situation as me
21 just trying to help him to the best I can with what
22 I generally do with clients, which is, you know, turn
23 the frown upside down and try to get them to, you know,
24 realize, you know, where I come from working at the bank
25 and how much I can do, I'll do the best I can, and from

1 that realization be able to work with him.

2 So this emotional Mr. Kaplan was pressing me
3 for more, and the amount I can give you a year from then
4 was just me and how I generally deal with clients, is
5 trying to deal with emotion. I mean we are in an
6 environment in a bank that people have their money
7 there, it's an emotional place sometimes.

8 So dealing with emotion, providing the best
9 I -- that I can service, that I can -- best service that
10 I can communicate for the client, you know, being there
11 for them if they need me, being available. Those are
12 the kinds of things I was doing for Mr. Kaplan.

13 Specifically how much can I remember? I can't
14 tell you because it's been so long and I deal with
15 thousands of clients since then.

16 So I can just, you know, give you the best
17 that I can, like I would Mr. Kaplan being my client.
18 I would like to give you that too.

19 Q. Again the question is: Do you recall anything
20 that occurred, anything that was said between you and
21 Mr. Kaplan either on the phone, in person, by e-mail --

22 A. Not specifically.

23 Q. -- that you haven't told us about today in
24 your deposition?

25 A. I don't recall, no.

1 Q. Do you have any information that Mrs. -- that
2 Ms. Lisa Johnson has been engaged in any criminal
3 activity?

4 A. No.

5 Q. So you have -- just so the record is clear,
6 you have no information whatsoever that Ms. Johnson has
7 been engaged in criminal activity?

8 A. None.

9 Q. And that's true today?

10 A. That's true today.

11 Q. And it was true as of October 2011?

12 A. Correct.

13 Q. Do you have any information that Ms. Johnson,
14 Lisa Johnson, has any outstanding warrants for her
15 arrest?

16 A. No.

17 Q. Okay. And that's true today?

18 A. Correct.

19 Q. And that was true in October 2011, is that
20 right?

21 A. Correct.

22 Q. That you had no knowledge whatsoever of any
23 criminal activity or arrest warrants regarding Ms. Lisa
24 Johnson as of October 2011?

25 A. Correct.

1 MR. KISTLER: All right. I have no further
2 questions.

3 CROSS-EXAMINATION

4 BY MR. FITTS:

5 Q. Mr. Arash, just a couple questions so I know
6 I understand your testimony today.

7 This is your first deposition?

8 A. It is.

9 Q. Kind of nervous?

10 A. Very. Sweaty palms, kind of cold, jittery
11 from coffee.

12 Q. In your capacity as a personal banker for
13 Wells Fargo Bank, are you motivated to please the
14 customer?

15 MR. KISTLER: Objection, leading.

16 Q. BY MR. KISTLER: You can answer.

17 A. Very.

18 Q. Okay. Why is that?

19 A. My context in my life, helping people, it's
20 just -- even before working at Wells Fargo, I love
21 helping people. It's rewarding to know that I have that
22 ability to, you know, give away what I want for myself.
23 I would want to have someone be just as helpful and
24 there for me as I want to be for them. So that's why.

25 Q. Okay. And is that how you generally felt with

1 respect to Mr. Kaplan and Ms. Johnson?

2 MR. KISTLER: Objection, leading.

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

4 A. I didn't hear you because the objection came
5 up.

6 Q. Is that how you generally felt -- well, just
7 is that how you generally felt with respect to
8 Mr. Kaplan and Ms. Johnson as customers of the bank?

9 MR. KISTLER: Objection, leading.

10 THE WITNESS: Yes, yeah.

11 Q. BY MR. KISTLER: Do you have any ill will
12 toward Mr. Kaplan?

13 A. No.

14 Q. Any ill will toward Ms. Johnson?

15 A. No.

16 Q. You said you knew that or you were aware that
17 Mr. Kaplan was an attorney?

18 A. Correct.

19 Q. How did you become aware of that?

20 A. I probe my clients for -- to get to know more
21 about them. Within the bank they call it peeling the
22 onion, I just personally like to know little tidbits of
23 things about my clients so that I can build a
24 relationship with them.

25 He's just extremely, you know, interesting.

1 He's funny and he has a -- you know, he's just
 2 interesting to talk to. So sitting down with him I had
 3 a great time getting to know him because he's pretty
 4 open about himself and things like that.
 5 Q. Okay. So you generally recall a conversation
 6 with Mr. Kaplan about the fact that he's an attorney?
 7 MR. KISTLER: Objection, leading.
 8 Q. BY MR. FITTS: You can answer.
 9 A. Generally what I would do is while I'm working
 10 with a client start talking to them about whatever. So
 11 I do recall learning that information early on about him
 12 while I was looking up his account, possibly talking to
 13 him about what does he do, so what do you do for a
 14 living, Mr. Kaplan, something like that, along that
 15 line. So I do remember like early on finding out about
 16 him as much as I can while I'm working with him to help
 17 him -- well, while I'm helping him.
 18 Q. Okay. Let's go to Exhibit 7.
 19 Have you read through these responses?
 20 A. I haven't.
 21 Q. I'm sorry?
 22 A. Skimming through it right now.
 23 Q. Okay. You were asked about the response to
 24 No. 5.
 25 Do you see that on the third page?

1 that?
 2 A. Yes.
 3 Q. Do you recall the specific words, though, that
 4 were spoken a year ago?
 5 A. No.
 6 Q. Okay. Do you -- and I think Mr. Kistler
 7 wanted -- he wants to know everything that you know --
 8 that you can recall about your conversations.
 9 A. Right.
 10 Q. Okay. And you want to provide that
 11 information?
 12 A. Absolutely.
 13 Q. Okay. So I want to make sure you understand,
 14 did -- do you recall what you said in response to
 15 Mr. Kaplan's, you know, general inquiry regarding what
 16 you would do if you were in his position?
 17 A. Yeah, he was asking me about what I would do
 18 as part of his pressing me for more, way of asking, you
 19 know, why it was it closed, what would I do, he wanted
 20 to know what to do. I remember this event.
 21 I remember telling him that, hey, you know,
 22 you're an attorney, and you should know more than
 23 I would. You'd probably know more than I would about
 24 this.
 25 Q. That's your general recollection?

1 A. It's -- one, two, three.
 2 Q. Do you see that?
 3 A. It's the fourth page.
 4 Q. Okay.
 5 A. I do see it.
 6 Q. And if you go to the next page, there's the
 7 completion of the response.
 8 A. Correct.
 9 Q. Okay. And let's see, do you see the -- the
 10 text does not line up specifically with the numbers on
 11 the left side, does it, at least on my copy, but --
 12 A. Correct.
 13 Q. -- do you see about line 6 where it says --
 14 A. You're right. I didn't notice that.
 15 Q. Generally states that Mr. Kaplan asked
 16 Mr. Dounel for his opinion regarding what Mr. Dounel
 17 would do if he were Mr. Kaplan.
 18 A. Correct.
 19 Q. Okay. Do you -- is that correct?
 20 A. What?
 21 Q. Is that a correct statement?
 22 Did Mr. Kaplan ask you what you would do if
 23 you were in his position?
 24 A. Oh, yes.
 25 Q. Okay. Do you have a general recollection of

1 A. Yeah, generally.
 2 Q. Okay.
 3 A. I don't know the specific way I said it, but
 4 something along those lines.
 5 Q. Do you remember anything else when Mr. Kaplan
 6 generally asked you, well, what would you do if you were
 7 in my -- if you were he or in his shoes?
 8 A. I remember telling him like I -- I would
 9 probably consult an attorney myself, but you're already
 10 an attorney. And that's about it, yeah.
 11 Q. You talked about the initial screening
 12 process.
 13 A. Correct.
 14 Q. And there was a conversation where --
 15 regarding -- between you and Mr. Kaplan in the e-mails
 16 regarding whether or not accounts could be opened again?
 17 A. Correct.
 18 Q. Okay. And that you said you used customer
 19 profile --
 20 A. Yes.
 21 Q. -- information.
 22 Was that the customer profile information that
 23 had been provided -- that the bank had in connection
 24 with the joint accounts that Mr. Kaplan and Ms. Johnson
 25 had?

1 A. Yeah, they were existing profiles.
 2 Q. Okay. And I just want to clarify, I believe
 3 at the beginning of the deposition you were asked
 4 whether you were on medical leave up until this time.
 5 Do you remember that?
 6 A. Yeah, up until today's date.
 7 Q. And your answer to that question was "no"?
 8 A. "No."
 9 Q. Why did you answer "no" when you subsequently
 10 told Mr. Kistler that, yes, you had been on medical
 11 leave?
 12 A. Because I was up -- I was on medical leave up
 13 until early October, not today's date.
 14 Q. So that's why you said "no"?
 15 A. Yeah.
 16 Q. Okay. And then later on you wanted to let
 17 Mr. Kistler know that you had, in fact, been on medical
 18 leave?
 19 A. Yes, I have.
 20 Q. But it just wasn't up until today?
 21 A. It just wasn't up until today.
 22 Q. You've worked for the bank for five and a half
 23 years?
 24 A. Yes, sir.
 25 Q. Okay. How many people do you -- customers do

1 he should hire a private investigator.
 2 Did you say that?
 3 A. No.
 4 Q. Do you recall saying that?
 5 A. I don't recall saying that.
 6 Q. Okay. When Mr. Kaplan asked you what you
 7 would do if you were him, did you say anything about
 8 conducting an investigation?
 9 A. I do recall saying that I would investigate it
 10 for myself, I would call the 800 number I'm giving him.
 11 for example, I would call and investigate what's going
 12 on.
 13 Q. Do you recall that?
 14 A. Yes.
 15 Q. Do you recall that generally or do you recall
 16 that specifically?
 17 A. I recall that specifically.
 18 Q. Okay. Because we want to make sure that you
 19 share with Ms. Johnson and Mr. Kistler everything that
 20 you recall.
 21 A. Right. I want to give you guys as much as
 22 possible.
 23 Q. Okay. And so do you feel you've done that to
 24 the best of your ability today?
 25 A. Yes, sir.

1 you generally converse with on a daily basis?
 2 A. It could be anywhere from 10 to 30.
 3 Q. Oh, yeah?
 4 So it's fair to state that you've talked to a
 5 lot of customers over the past year as an employee of
 6 the bank?
 7 A. Oh, yeah. And there's a lot that I probably
 8 am not even counting, if you're talking about taking
 9 straight deposits and stuff, you know, get even higher
 10 than that.
 11 Q. And so you've -- you've stated your answers to
 12 the best of your recollection today?
 13 A. Yes, sir.
 14 Q. Do you ever recall telling any customer or
 15 anyone that a customer had a criminal background?
 16 A. Do I ever recall telling a customer?
 17 Q. Do you ever recall ever stating that a bank
 18 customer that you had dealt with had a criminal
 19 background?
 20 A. No.
 21 Q. Do you ever recall stating that a customer
 22 you've ever dealt with had arrest warrants?
 23 A. No.
 24 Q. Now, there's this allegation that Mr. Kaplan
 25 states that you told him that -- in general terms, that

1 MR. FITTS: Okay, all right.
 2 MR. KISTLER: All right. I have no further
 3 questions.
 4 THE REPORTER: And signature, read and sign or
 5 waive?
 6 MR. FITTS: You can send it to me and I'll
 7 send it to Mr. Dounel.
 8 (Deposition was concluded at 11:44 a.m.)
 9 * * * * *

CERTIFICATE OF WITNESS

PAGE LINE CHANGE REASON

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

ARASH DOUNEL, Witness

Subscribed and sworn to before me this ____ day of _____, 2012.

Notary Public

CERTIFICATE OF REPORTER

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

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

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

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

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

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

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

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

Pamela A. Manning, RMR, CCR 226

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EXHIBIT PAGE ONLY

EXHIBIT 10

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

AA000996

Michael Kaplan
Kaplan Enterprises, LLC.
9517 Canyon Mesa Drive
Las Vegas, Nevada 89144
(702) 812-3444

From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Wednesday, November 02, 2011 1:05 PM
To: Dounel, Arash
Subject: Re: RE:

Please send the letter to me in Las Vegas at:
9517 Canyon Mesa Drive
Las Vegas, Nevada 89144

Thanks

Michael Kaplan

On Nov 2, 2011, at 1:38 PM, "Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>"
<Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>> wrote:
Mr. Kaplan,

I would like to mail out your letter priority mail, I can send it to your Las Vegas address if you would like. Also, as per your request, I can also reopen Lisa's accounts. The only problem with that is keeping the same account numbers. I would have to change those to different numbers, is this ok?

Thank you,

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on the information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Wednesday, November 02, 2011 11:44 AM
To: Dounel, Arash
Subject: Fwd:

I still haven't received a response from you on the email I sent. Please advise.

Michael Kaplan

Begin forwarded message:

From: "Michael Kaplan" <michael@kaplanlv.com<<mailto:michael@kaplanlv.com>>>
Date: October 31, 2011 9:25:13 AM MDT
To: <arash.dounel@wellsfargo.com<<mailto:arash.dounel@wellsfargo.com>>>

A week ago, you had called me to offer your apology for your comments regarding Lisa. I had asked you to send me a written apology--I have not heard back from you.

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

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Wednesday, November 02, 2011 4:18 PM
To: Dounel, Arash
Subject: Re: RE: RE: RE:

It's important to maintain the same account numbers to show that Lisa was not in any kind of error with Wells Fargo. To make sure there is no red flag on her account.

Michael Kaplan

On Nov 2, 2011, at 5:13 PM, "Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>"
<Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>> wrote:
Mr. Kaplan,

I have already expressed to you that the accounts with the same numbers cannot be reopened. I can still open the accounts for you, they will just be a different account number. May I ask of you why it is important that you continue to maintain the same account number?

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Wednesday, November 02, 2011 3:57 PM
To: Dounel, Arash
Subject: Re: RE: RE:

Can you also scan and email the letter to me.

Michael Kaplan

On Nov 2, 2011, at 2:11 PM, "Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>"
<Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>> wrote:
Sure thing, so open the accounts back up as well?

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

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To: Michael Kaplan
Subject: RE: RE: RE: RE: RE: RE:

Yes sir,

I checked up on the account profile and essentially you may walk into any branch of Wells Fargo Bank and reopen new accounts. I was willing to do this for you through our branch here in Malibu as well. There are no issues from our end here at our branch in Malibu, please let me know if you encounter any. Thank you.

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on the information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Thursday, November 03, 2011 1:53 PM
To: Dounel, Arash
Subject: Re: RE: RE: RE: RE: RE:

Based upon your email, can we go into Wells in Las Vegas and open new accounts, without any issues?

Michael Kaplan

On Nov 2, 2011, at 5:43 PM, "Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>><Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>>> wrote:
That is fine, however they would still need to be different account numbers.

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Wednesday, November 02, 2011 4:28 PM
To: Dounel, Arash
Subject: Re: RE: RE: RE: RE: RE:

I had pointed out to you that all of our accounts need to reflect Las Vegas, as where they are opened.

Michael Kaplan

On Nov 2, 2011, at 5:24 PM, "Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>><Arash.Dounel@wellsfargo.com<<mailto:Arash.Dounel@wellsfargo.com>>>> wrote:

The "red flags" were on those specific accounts. That is why they cannot be reopened. I can make sure that we compensate any fees for new checks and move forward with new account numbers. Can I call you now?

Subject: RE: RE: RE: RE: RE: RE: RE:

I never received the letter of apology that you told me you were sending to me. Please advise as to where the letter is.

Michael Kaplan

On Nov 10, 2011, at 10:32 AM, "Arash.Dounel@wellsfargo.com" <Arash.Dounel@wellsfargo.com> wrote:

I need to ask you for more details.

I can either call you, or you may call my office at 310-317-1740 or my direct line at 310-317-1752. which would you prefer?

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Thursday, November 10, 2011 9:52 AM
To: Dounel, Arash
Subject: FW: RE: RE: RE: RE: RE: RE:

I went in to the Wells Fargo Branch at Rainbow and Sahara, and they refused to allow me to open the accounts. Please advise as to what is going on with this matter.

Michael Kaplan

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

From: Arash.Dounel@wellsfargo.com [<mailto:Arash.Dounel@wellsfargo.com>]
Sent: Thu 11/3/2011 1:59 PM

Reply Reply to all Forward | X | Close | Help

You replied on 12/5/2011 9:40 AM.

From: Arash.Dounel@wellsfargo.com [Arash.Dounel@wellsfargo.com]

Sent: Thu 12/1/2011 9:19 AM

To: Michael Kaplan

Cc:

Subject: RE: RE: RE: RE: RE: RE: RE: RE:

Attachments:

[View As Web Page](#)

Hello Mr. Kaplan,

I regret to inform you that I have sent the letter to my management and our legal department cannot allow me to send an official letter of apology. I hope the apology that I have given you thus far verbally can suffice and that in the future we can help you meet all of your financial needs as a bank branch and a financial institution.

Sincerely,

Arash Dounel | Licensed Banker | Malibu Office | Office: 310-317-1740 | Direct: 310-317-1752 | Fax: 310-317-1745 | MAC: E2349-011 |

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From: Michael Kaplan [mailto:michael@kaplanlv.com]

Sent: Wednesday, November 30, 2011 4:48 PM

To: Dounel, Arash

Subject: Fwd: RE: RE: RE: RE: RE: RE: RE:

I still haven't received the letter you promised.

Michael Kaplan

Begin forwarded message:

From: "Michael Kaplan" <michael@kaplanlv.com>

Date: November 14, 2011 3:31:24 PM PST

To: <Arash.Dounel@wellsfargo.com>

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EXHIBIT PAGE ONLY

EXHIBIT 11

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

 Reply  Reply to all  Forward |   X |  Close |  Help

From: Chad.W.Maze@wellsfargo.com [Chad.W.Maze@wellsfargo.com]

Sent: Wed 11/30/2011 4:54 PM

To: Michael Kaplan

Cc: Andrew.M.Noll@wellsfargo.com

Subject: Re: Wells Fargo

Attachments:

[View As Web Page](#)

Mr. Kaplan,

Unfortunately, yes the account would not be accepted if Lisa was associated with it. Of course you could open an account in your name, or the name of your trust, but including Lisa could not be one of the options.

Chad

Chad W Maze
Vice President

Wells Fargo - The Private Bank
3800 Howard Hughes Parkway, Second Floor,
Las Vegas, NV 89169

Office 702.791.6224
Cell 702.275.7435
Fax 702.791.6488
Email chad.w.maze@wellsfargo.com

Wells Fargo Private Bank provides products and services through Wells Fargo Bank, N.A. and its various affiliates and subsidiaries.

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Wednesday, November 30, 2011 06:43 PM
To: Maze, Chad W.
Cc: Noll, Andrew M.
Subject: Re: Wells Fargo

So if I want to set up a multi million dollar account with Lisa at Wells Fargo--they would refuse that?

Michael Kaplan

On Nov 30, 2011, at 3:30 PM, "Chad.W.Maze@wellsfargo.com" <Chad.W.Maze@wellsfargo.com> wrote:

She did not. Her specific words are what I used in the email below. I wish I could be of more help.

From: Michael Kaplan [mailto:michael@kaplanlv.com]
Sent: Wednesday, November 30, 2011 1:17 PM
To: Maze, Chad W.
Cc: Noll, Andrew M.
Subject: Re: Wells Fargo

Did she provide any explanation?

Michael Kaplan

On Nov 30, 2011, at 12:52 PM, "Chad.W.Maze@wellsfargo.com" <Chad.W.Maze@wellsfargo.com> wrote:

Mr. Kaplan --

Thank you so much for your patience while I researched your request. While we are happy and willing to continue our relationship with you, the bank has made a business decision not to support any relationship with Lisa. I was not provided any additional details.

I took this request to our head of compliance for this area, Rachel Romijn. Although she will not be able to provide any additional information on the reasoning behind the decision, she did offer her number so that you can call her directly. Rachel can be reached at 704-383-0013.

Thank you again,

Chad W Maze

Vice President

Wells Fargo Private Bank | 3800 Howard Hughes Parkway, Second Floor |
Las Vegas, NV 89169

MAC S4733-025

Tel 702.791.6224 | Cell 702.275.7435 | Fax 702.791.6488

chad.w.maze@wellsfargo.com

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From: Michael Kaplan [mailto:michael@kaplanlv.com]

Sent: Wednesday, November 30, 2011 10:00 AM

To: Maze, Chad W.

Cc: Noll, Andrew M.

Subject: RE: Wells Fargo

Chad:

As a follow-up to our call of yesterday, did you speak with your contact to find out what is happening?

Thanks

Michael Kaplan

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

From: Chad.W.Maze@wellsfargo.com [<mailto:Chad.W.Maze@wellsfargo.com>]

Sent: Tue 11/22/2011 10:23 AM

To: Michael Kaplan; Andrew.M.Noll@wellsfargo.com

Subject: RE: Wells Fargo

Mr. Kaplan -

I have finally reach the person that is providing some answers for us. She leads the department that manages this type of reporting. She is getting the archived folder out and is sending it to me.

More to come...

Thank you for your patience.

Chad Maze

From: Michael Kaplan [<mailto:michael@kaplanlv.com>]

Sent: Tuesday, November 22, 2011 9:02 AM

To: Maze, Chad W.; Noll, Andrew M.

Subject: RE: Wells Fargo

Have you been able to determine what happened, and if we can expand a banking relationship?

Thank you

Michael Kaplan

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

From: Chad.W.Maze@wellsfargo.com [<mailto:Chad.W.Maze@wellsfargo.com>]

Sent: Thu 11/17/2011 1:05 PM

To: Michael Kaplan; Andrew.M.Noll@wellsfargo.com

Subject: RE: Wells Fargo

Mr. Kaplan,

We have sourced this back to the correct area, and have a call into the manager of that area. I hope to hear back soon, and will email you right away once we are able to determine the source / reason this action was taken.

We will be in-touch.

Chad W Maze
Vice President

Wells Fargo Private Bank ? 3800 Howard Hughes Parkway, Second Floor? Las Vegas, NV 89169
MAC S4733-025
Tel 702.791.6224?Cell 702.275.7435? Fax 702.791.6488

chad.w.maze@wellsfargo.com

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Thursday, November 17, 2011 12:16 PM
To: Noll, Andrew M.
Cc: Maze, Chad W.
Subject: RE: Wells Fargo

Andy
Do you believe that you and your department will be able to resolve this matter, without my having to take other actions.
Thank you

Michael Kaplan

Lisa J. 0052

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

From: Andrew.M.Noll@wellsfargo.com
[mailto:Andrew.M.Noll@wellsfargo.com]
Sent: Wed 11/16/2011 10:44 AM
To: Michael Kaplan
Cc: Chad.W.Maze@wellsfargo.com
Subject: RE: Wells Fargo

Hi Michael:

Thanks for your e-mail. Chad and I enjoyed meeting you yesterday.

We are working on clarifying the issue at hand and will get back to you as soon as we find a resolution.

Best regards,
Andy

Andrew M. Noll, CFP(r), CTFA
Vice President, Trust & Fiduciary Specialist
Wells Fargo Private Bank, 3800 Howard Hughes Parkway, 2nd Floor, Las Vegas,
Nevada 89169
MAC S4733-025
Tel 702.791.6135 ?Fax 702.791.6131
andrew.m.noll@wellsfargo.com<<mailto:andrew.m.noll@wellsfargo.com>>

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Wednesday, November 16, 2011 10:41 AM
To: Maze, Chad W.; Noll, Andrew M.
Subject: Wells Fargo

It was good meeting with both of you yesterday. Please let me know where we can proceed with respect to the closure of those accounts that we discussed.
Thanks

Michael Kaplan
Kaplan Enterprises, LLC.
9517 Canyon Mesa Drive
Las Vegas, Nevada 89144

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 12

ECCP

Kent F. Larsen, Esq.

Nevada Bar No. 3463

Stewart C. Fitts, Esq.

Nevada Bar No. 5635

SMITH LARSEN & WIXOM

Hills Center Business Park

1935 Village Center Circle

Las Vegas, Nevada 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

Email: kfl@slwlaw.com

scf@slwlaw.com

Attorneys for Defendants

Wells Fargo Bank, N.A.

DISTRICT COURT**CLARK COUNTY, NEVADA**

LISA JOHNSON, a Nevada resident,

Plaintiff,

v.

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

Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

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

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

...

...

I. PERSONS WITH KNOWLEDGE

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Custodians of Records, as may be needed.

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

14. Rebuttal witnesses, as may be needed.

15. Wells Fargo incorporates all persons disclosed by Plaintiff.

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

III. DOCUMENTS

Wells Fargo identifies and/or discloses the following documents:

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

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

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

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

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

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

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

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

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

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

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

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

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

...
...
...
...

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

IV. RESERVATIONS

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

DATED this 15th day of May, 2012.

SMITH LARSEN & WIXOM



Kent F. Larsen, Esq.
Nevada Bar No. 3463
Stewart C. Fitts, Esq.
Nevada Bar No. 5635
SMITH LARSEN & WIXOM
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1935 Village Center Circle
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Wells Fargo Bank, N.A.

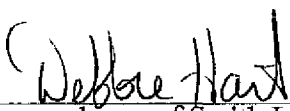
CERTIFICATE OF SERVICE BY MAIL

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

EARLY CASE CONFERENCE DISCLOSURES OF DEFENDANT WELLS FARGO

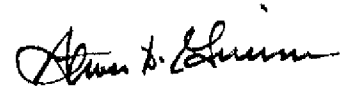
BANK N.A. was mailed, postage prepaid, to the following as noted:

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


an employee of Smith Larsen & Wixom

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CLERK OF THE COURT

ROPP
Kent F. Larsen, Esq.
Nevada Bar No. 3463
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pmh@slwlaw.com
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON,
Plaintiff,

v.

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
Defendant.

CASE NO.: A-12-655393-C
DEPT. NO.: 26

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

Hearing Date: 01/10/14
Hearing Time: 9:00 a.m.

Defendant Wells Fargo Bank, N.A. ("WFB") hereby submits its Reply to Plaintiff's
Opposition to Defendant's Motion for Summary Judgment.

POINTS AND AUTHORITIES

Introduction

Johnson's opposition makes clear that the only statements she considers defamatory and
actionable as a false light invasion of her privacy are those supposedly made by WFB employee
Arash Dounel to Michael Kaplan concerning the Kaplan/Johnson joint Account on October 6,
2011 in California. According to Johnson, summary judgment as to her *defamation* claim is not
appropriate because issues of fact remain about (1) whether Dounel's statements were based on

1 fact or were just opinions aimed at assisting Kaplan; (2) whether Kaplan was acting on authority
2 of Johnson at the time the statements were received; and (3) whether Dounel's statements were
3 made with actual malice. Johnson argues also that her *false light invasion of privacy* claim is not
4 subject to summary judgment because (1) whether Dounel's statements were fact-based or
5 otherwise is an issue for trial; and (2) even though Johnson lacks proof that WFB publicized
6 anything about her to the general public, trial *may* reveal that WFB did so. Finally, Johnson
7 argues that summary judgment should be denied as to her *declaratory relief* claim because WFB
8 has pled "truth" as an affirmative defense to Johnson's other claims, which WFB can only
9 establish by a disclosure of the reasons for closing the Accounts. Johnson's arguments are each
10 ineffectual as they either raise matters that are inconsequential to the legal inquiries presented,
11 contravene the complaint's factual assertions or prior discovery, fail to satisfy her burden in
12 opposing summary judgment, or otherwise fail to establish that her claims have sufficient legal
13 or evidentiary merit to warrant a trial.
14
15

Argument and Authority

16
17 A. Summary judgment is appropriate as to Johnson's *defamation* claim.

18 1. Dounel's statements can only be construed as an opinion aimed at addressing
19 Kaplan's inquiry about the closure of the joint Account.

20 Johnson acknowledges that whether a statement is defamatory is a question of law and
21 that defamation can only be predicated on a statement of fact and not opinion. *Chowdhry v.*
22 *NLVH, Inc.*, 109 Nev. 478, 484, 851 P.2d 459, 463 (1993); *PETA v. Bobby Berosini, Ltd.*, 111
23 Nev. 615, 622, 895 P.2d 1269, 1275 (1995). However, Johnson seeks to expand the inquiry by
24 arguing that the Court cannot determine whether Dounel's statements were factual or merely
25 opinion without first probing whether his statements were based on or the product of factual
26 information contained in WFB's system. In other words, Johnson seeks to have the Court
27 speculate about the basis for Dounel's alleged remarks when the only relevant inquiry is
28

1 “whether a reasonable person would be likely to understand the remark as an expression of the
2 source’s opinion or as a statement of existing fact.” *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d
3 422, 426 (2001) (quoting *Nevada Ind. Broadcasting v. Allen*, 99 Nev. 404, 410, 664 P.2d 337,
4 342 (1983), and *PETA*, 111 Nev. at 624, 895 P.2d at 1275). In this case, Dounel’s statements
5 conveyed only his “judgment as to the quality of another’s behavior” and therefore were not
6 statements of fact.” *Id.* To a reasonable person, Dounel’s statements do not convey an
7 unequivocal and direct accusation that Johnson is a criminal. To the contrary, the statements
8 reflect Dounel’s conjecture and opinion about why the Kaplan/Johnson Account may have been
9 closed – a subject brought to his attention by Kaplan. An examination of the exchange between
10 Kaplan and Dounel, based on Johnson’s complaint and the discovery in the case, makes this
11 apparent.

12 Johnson’s complaint described the exchange between Kaplan and Dounel as follows:

13 [O]n October 6, 2011, *Kaplan approached [Dounel]*, who is a brokerage
14 associate at Wells Fargo, *and asked him why the accounts were closed*. Dounel at
15 first stated that he could not see any reason why Wells Fargo closed the accounts.
16 However, as the conversation progressed, Dounel asserted that Johnson *must have*
17 some type of criminal background, thereby suggesting that the accounts were
18 closed due to alleged criminal activity by Johnson. Dounel further asserted to
19 Kaplan that Johnson “*must have* arrest warrants outstanding.” Dounel also advised
20 Kaplan that he “*should hire a private investigator to check up on [Johnson].*”¹

21 In her amended responses to interrogatories, Johnson described the Kaplan-Dounel exchange as
22 follows:

23 [Kaplan] went into the Wells Fargo Bank Branch at Cross Creek Center in
24 Malibu, California to cash a check. While Mr. Kaplan was cashing the check, the
25 teller stated to him that he was leaving too much money in his account and that he
26 should open a separate savings account. At that point, *Mr. Kaplan told the teller*
27 *that was strange since Wells Fargo had recently closed his other account at Wells*
28 *Fargo*. The teller then brought [Dounel] over and introduced him to Mr. Kaplan,
telling him that Mr. Dounel could help him. Mr. Dounel brought Mr. Kaplan to
his desk to speak. *Mr. Kaplan advised Mr. Dounel of Wells Fargo’s closure of the*
joint account with Plaintiff. Mr. Kaplan asked Mr Dounel to communicate with

¹ *Comp.* ¶¶ 10-14 (emphasis added)

1 Plaintiff so that she could e-mail him the closure letters. Following a phone
2 discussion between Mr. Dounel and Plaintiff, the letters were emailed to Mr.
3 Dounel. *Thereafter*, Mr. Dounel told Mr. Kaplan that Plaintiff *must have* some
4 type of criminal background or have arrest warrants out for her, implying that
5 Wells Fargo closed the accounts due to Plaintiff's alleged criminal activity. Mr
Dounel also advised Mr. Kaplan that Mr. Kaplan should hire a private investigator
to investigate Plaintiff, as Plaintiff must be in trouble with the law for the
accounts to have been closed.²

6 In her deposition, Johnson described Kaplan's discussion with Dounel as follows:

7 Then Michael went into the bank, he happened to be in Malibu and he went into
8 the Malibu branch and commonly the tellers will always say to him, "Mr. Kaplan,
9 you're leaving too much money in your bank account. Please, will you come and
10 speak to one of our bankers to see how we may be able to serve you and all of
11 your excess money?" And so Michael was escorted over to a gentleman named
12 Arash Dounel as a business banker at the Malibu branch, *And he said, "You know,*
13 *it's funny you guys want my funds, yet you've just closed my bank account, my*
14 *girlfriend's bank account. What's going on?"* And Arash Dounel went into our
15 personal account that had been -- that was a joint account that had been closed,
16 and he said to Michael something to the effect of, "Oh, it shows unusual activity
17 here. There *must have been* something really bad with Lisa. She must have a
18 criminal background." Or, "You looked to be a man of means, you're a wealthy
19 man. Why don't you hire a private investigator and find out if Lisa's been in jail
20 or has warrants out for her arrest," *something to that effect.*³

21 The foregoing accounts of what happened with Dounel were undoubtedly the product of
22 conversations between Johnson and Kaplan.⁴ Nevertheless, for his part, Kaplan directly describes
23 his encounter with Dounel as follows:

24 [A]fter I approached a Wells Fargo teller at the Malibu Branch to cash my check;
25 and as the teller was cashing the check, I believe that she looked at my account
26 balance, following which she stated that I was leaving too much money in my
27 account. The teller stated to me that I should have Wells Fargo open a new
28 savings account for me. I was bewildered as to why a Wells Fargo representative
would ask me to open a new account when Wells Fargo recently closed my joint
account. Accordingly, I asked the teller why she would solicit me to open a new
account in light of the joint account closure. At that point, the teller brought over
Arash Dounel ("Dounel") - another Wells Fargo employee - who introduced
himself as the teller's manager. Dounel then brought me to his desk, at which

² EX. 2 to Motion: Am. Resp to Interrog No. 1 (emphasis added)

³ EX. 1 to Motion: Johnson Dep. Tr. 48:7 -- 49:6

⁴ EX. 2 to Opp.: Kaplan Decl. 3:7-9

1 point I proceeded to tell Dounel about Wells Fargo's joint account closure letter.
2 Dounel then asked me about my background, in response to which I told Dounel
3 that I had sold my business a few years earlier. Dounel also asked me about my
4 banking relationships, to which I provided information to Dounel regarding my
5 other bank accounts. Dounel then me [sic] asked if I had the joint account closure
6 letter with me. I responded that I did not have the letter, as I did not go into the
7 Malibu Branch to discuss that account. However, I stated to Dounel that Johnson
8 probably had a copy of the letter. Dounel and I then called Johnson and spoke
9 with her. Dounel" asked Johnson to email him the closure letter, which Johnson
10 agreed to do...After Johnson e-mailed Dounel the letter, I observed Dounel
11 reading the letter, then looking at something on his computer. After Dounel
12 looked at his computer, he stated to me that Johnson *must have* been in jail or
13 have arrest warrants. I then stated to Dounel that he must be mistaken, to which
14 Dounel replied that I was a person of means and that I should hire a private
15 investigator to thoroughly investigate Johnson. Dounel stated, "that's what I
16 would do if it were me."⁵

17 None of the foregoing accounts of what transpired with Dounel support the prospect that
18 a reasonable person would construe Dounel's statements as definitive factual assertions about
19 Johnson. The discussion of the Account's closure was plainly raised by Kaplan. Dounel's
20 qualifying use of the terms "*must have*" and "*must be*" augur against a determination that they
21 were statements of fact. Instead, the qualified phrases evince Dounel's lack of factual
22 information or lack of intent to convey factual information. The remarks merely represented
23 Dounel's view that bank accounts can be closed based on a suspicion of criminal activity. As
24 such, the comments represent Dounel's evaluative opinion about why the Account may have
25 been closed. His remarks do not unequivocally convey the reason why the Kaplan/Johnson
26 Account was in fact closed. Stated differently, Dounel's alleged remarks do not convey any
27 assertion that Johnson was in fact a criminal and that is why the Account was closed.

- 28 2. At the time Dounel made the alleged remarks, Kaplan was acting on behalf of
Johnson and Dounel was acting on the instructions of Kaplan, a co-owner of the
Account.

Publication of defamatory statements to an agent of the defamed plaintiff who is acting at
plaintiff's behest and on her behalf is tantamount to a publication to the plaintiff herself, and as

⁵ EX. 2 to *Opp.*; *Kaplan Decl.* ¶¶ 7-14, 17-19 (emphasis added)

1 such does not fulfill the publication requirement for defamation. *See Ning Ye v. Holder*, 667
2 F.Supp.2d 103, 105 fn. 2 (D.C.D.C. 2009); *30 River Court East Urban Renewal Co. v.*
3 *Capograsso*, 383 N.J.Super. 470, 477, 892 A.2d 711, 715 (2006); *Delval v. PPG Industries, Inc.*,
4 590 N.E.2d 1078, 1080-81 (Ct.App.Ind. 1992); *Kirk Jewelers v. Bynum*, 222 Miss. 134, 139, 75
5 So.2d 463, 464 (1954); *Beck v. Tribert*, 312 N.J.Super. 335, 350, 711 A.2d 951, 959 (1998);
6 *McDaniel v. Crescent Motors*, 249 Ala. 330, 332, 31 So.2d 343, 344 (1947); *Mims v.*
7 *Metropolitan Life Ins. Co.*, 200 F.2d 800, 802 (5th Cir. 1952); *see also Restatement (Second) of*
8 *Torts* § 577 cmt. (e) (1977) (“[I]f the [allegedly defamatory] communication is in answer to a
9 letter or a request from the other or his agent, the publication may not be actionable in
10 defamation”).

11
12 In an effort to diminish the authority under which Kaplan acted, Johnson points to
13 Kaplan’s declaration offered in support of her opposition:
14

15 Johnson did not request that I ask Dounel why Wells Fargo closed Johnson’s and
16 my joint account or her two Guitarfile, LLC accounts at Wells Fargo. I never
17 stated to anyone that I would make any inquiries on Johnson’s behalf or otherwise
18 take any action on her behalf at the Malibu Branch.⁶

19 However, both Johnson’s and Kaplan’s account of the exchange with Dounel establish that it
20 was Kaplan who instigated discussion about the closure of the Account to begin with and that
21 Dounel responded to Kaplan’s inquiry. As for the authority to inquire on behalf of Johnson,
22 Kaplan’s comments in the declaration are immaterial. First, Kaplan plainly acted with Johnson’s
23 knowledge and authority in making inquiry on behalf of Johnson regarding the reason for WFB
24 closing the Accounts. *See Restatement (Second) of Agency* § 1 (1958) (agency results from the
25 manifestation of consent by one person to another that the other shall act on his behalf and
26 subject to his control, and consent by the other so to act). Johnson acknowledged as much in her
27

28 ⁶ EX. 2 to Opp.: *Kaplan Decl.* ¶¶ 15-16

1 deposition.⁷ Second, Kaplan's authority to act on Johnson's behalf relative to the joint Account is
2 expressly recognized in the Account agreement: "[WFB] may act on the instructions of any co-
3 owner (or a co-owner's legal representative), including instructions to withdraw or transfer
4 funds, make payments or close the account."

5
6 In the face of the evidence adduced in the litigation, Johnson cannot escape the argument
7 that when Dounel made the alleged defamatory statements about Johnson to Kaplan that he
8 effectively made them to Johnson herself. Defamatory statements made only to the person
9 alleging defamation are not actionable. *Simpson v. Mars Inc.*, 113 Nev. 188, 192, 929 P.2d 966,
10 968 (1997). There must be communication to a third person. *M & R Inv. Co., Inc. v. Mundarino*,
11 103 Nev. 711, 715, 748 P.2d 488, 491 (1987). In this case, Kaplan does not qualify as a third
12 person to make Dounel's remarks actionable.

13
14 **3. Johnson cannot establish *actual malice* in order to defeat application of the**
15 **common interest privilege to Dounel's statements.**

16 Where the defamatory communication is in answer to an inquiry or demand by the
17 defamed party, or her agent, the communication is privileged and not actionable unless the
18 privilege is abused by defendant's publication of the communication with actual malice. This
19 follows because, by reason of the relationship of the agent to the person defamed, both the agent
20 and defendant have a common interest in the subject matter of the inquiry. *See Thomas v.*
21 *Kaufmann's*, 436 F.Supp. 293, 297 (W.D.Pa. 1977); *Millsaps v. Bankers Life Co.*, 35 Ill.App.3d
22 735, 742, 342 N.E.2d 329, 335 (1976); *Hellesen v. Knaus Truck Lines, Inc.*, 370 S.W.2d 341
23 (Mo. 1963); *see also* Restatement (Second) of Torts § 596 (an occasion makes a publication
24 conditionally privileged if the circumstances lead any one of several persons having a common
25 interest in a particular subject matter correctly or reasonably to believe that there is information
26

27
28 ⁷ EX. 1 to Motion: *Johnson Dep. Tr.* 58:11 – 58:23; 58:24 – 59:2; 63:12-19; 66:21 – 67:20; 69:3-9; 71:23 – 72:4;
85:12-13

1 that another sharing the common interest is entitled to know).

2 Here, the common interest privilege would apply to protect Dounel's alleged defamatory
3 statements because the communications were made in response to an authorized inquiry by
4 Johnson's agent and a co-owner of the Account. The communications involved a subject matter
5 in which the parties all had a common interest, namely the Account. Johnson argues that the
6 privilege does not apply because Dounel's statements may have been made with actual malice
7 toward Johnson and that determination can only be made at trial. Johnson, however, ignores her
8 burden of proof on the issue of malice and seeks to marginalize the heavy burden imposed in
9 establishing actual malice.
10

11 An absence of malice is presumed. Malice on the part of a defendant sufficient to negate
12 the privilege is the burden of the person allegedly defamed. *See e.g., Lever v. Community First*
13 *Bankshares, Inc.*, 989 P.2d 634, 638-39 (Wyo. 1999) (statements made by bank loan officer
14 allegedly impugning character of prospective borrower's real estate agent were conditionally
15 privileged and agent failed to demonstrate actual malice). Actual malice is a stringent standard
16 that is proven by demonstrating that a "statement is published with knowledge that it was false or
17 with reckless disregard for its veracity. *Pope*, at 317 (quoting *Pegasus*, 118 Nev. at 722, 57 P.3d
18 at 92). Such malice involves the subjective state of mind of the defendant and "focuses on the
19 defendant's belief." *Schwartz v. estate of Greenspun*, 110 Nev. 1042, 1046 n. 2, 881 P.2d 638,
20 641 n. 2 (1984). Finally, it is within the power of the court to say as a matter of law that the
21 motive of the alleged defamatory communication was without malice. *Williams v. Standard-*
22 *Examiner Pub. Co.*, 83 Utah 31, 27 P.2d 1, 17 (1933); *Hellesen*, 370 S.W.2d at 345.
23
24

25 In this case, Johnson argues malice is a fact question for trial but offers no proof of its
26 existence in opposition to WFB's motion. She merely argues that Dounel's statements could not
27 have been true; therefore, they were malicious. Johnson also seems to suggest that she may be
28

1 able to uncover proof of actual malice at trial. These arguments neither satisfy the standard for
2 overcoming the presumption of an absence of malice or the burden imposed on a party seeking to
3 defeat summary judgment. Johnson presents no evidence that Dounel ever even met Johnson, let
4 alone that he intended to disparage her or that he subjectively acted in reckless disregard of his
5 knowledge about the Account's closure. As stated repeatedly, Dounel merely offered his opinion
6 about why the Account may have been closed. Because Johnson cannot present any evidence
7 sufficiently supporting a finding of actual malice, the common interest privilege operates to
8 shield Dounel's alleged statements from being found defamatory.

10 **B. Summary judgment is appropriate as to Johnson's *false light* claim.**

11 Like defamation, false light invasion of privacy requires a statement of objective fact.
12 *Flowers v. Carville*, 310 F.3d 1118, 1132 (9th Cir. 2002) (citing Restatement (Second) of Torts §
13 652E(b) (1977)) As discussed above, Dounel's alleged statements were not statements of fact.
14 Rather, the statements were evaluative opinions or were generic categorizations of the basis for
15 the Account's closure. In addition, proof of false light invasion of privacy requires proof of
16 "publicity" of Dounel's statements. "Publicity"...means that the matter is made public, by
17 communicating it to the public at large." Restatement (Second) of Torts § 652D, comm. a
18 (1977).

19
20 In her opposition to summary judgment, Johnson effectively concedes that she has no
21 proof of the "publicity" of Dounel's statements to the public. However, she blames the paucity of
22 evidence of publicity on WFB, stating that WFB "has failed to disclose any information
23 regarding its criminal allegations against Johnson, including to whom it has disclosed this
24 information." In essence, Johnson seeks to reverse the burden of proof on the issue of publicity
25 by imposing on WFB the burden to prove a negative. The fact remains that there is no evidence
26 that Dounel's remarks were made public or shared with anyone other than Kaplan. There is
27
28

1 evidence, however, that Kaplan publicized the remarks. By his own admission he spoke to
2 Cheryl Taylor, Kate Wright, Andrew Noll, Robert Martin, and Richard Bryan.

3 **C. Summary judgment is appropriate as to Johnson's declaratory relief claim.**

4 Johnson's declaratory relief claim seeks to compel WFB's disclosure of "a detailed
5 explanation as to why [WFB] decided to close her accounts and why it alleged she was/is
6 involved in criminal activities."⁸ The Court has already determined as a matter of law that WFB
7 is not required to disclose the reasons why it closed the Accounts because the information is
8 protected under the Bank Secrecy Act and other federal law authorities. Still, Johnson argues her
9 declaratory relief claim should remain because WFB has pled "truth" as an affirmative defense to
10 her other claims and that in order for WFB to establish the defense it must disclose the basis for
11 Dounel's alleged statements. WFB denies that Dounel ever made the alleged statements at issue
12 to Kaplan; the only proof of the statements comes from Kaplan who is clearly an interested
13 party. In addition, WFB admits it does not have proof sufficient to support the affirmative
14 defense and therefore intends to abandon the same prior to or at trial. See EJD CR 2.67.
15
16

17 **Conclusion**

18 The purpose of summary judgment is to avoid unnecessary trials when they would serve
19 no useful purpose. *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212,
20 984 P.2d 164 (1999). In this case, there is no reason to burden the Court with a trial. As the trier
21 of fact, the Court has in its view the evidence that will be presented at trial and based thereon
22

23 //

24 //

25 //

26
27
28 ⁸ *Comp.* ¶ 46

1 may determine at this juncture whether Johnson's claims have merit, legally or factually. WFB
2 respectfully submits that Johnson has neither and summary judgment should be granted.

3 DATED: January 6, 2014

4 SMITH LARSEN & WIXOM

6 By: 

7 Kent F. Larsen, Esq.

8 Nevada Bar No. 3463

9 Paul M. Haire, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 1, 2014, I served the following document(s):

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

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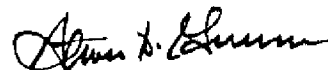
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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 LISA JOHNSON, a Nevada resident,

12 Plaintiff,

13 vs.

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

16 Defendants.
17

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

18 **PLAINTIFF'S PRE-TRIAL**
19 **MEMORANDUM**

20 Date of Trial: January 13, 2014

21 Time of Trial: 9:00 a.m.

22 Plaintiff Lisa Johnson ("Plaintiff" or "Johnson") submits her pre-trial memorandum in
23 the above-entitled action.

24 **I. Statement of Facts**

25 On January 26, 2012, Johnson filed a lawsuit against defendant Wells Fargo Bank, NA
26 ("Defendant" or "Wells Fargo") because Arash Dounel ("Dounel"), a Wells Fargo
27 representative, made defamatory and otherwise wrongful statements against Johnson to Michael
28 Kaplan ("Kaplan"), a non-party to this case, concerning the closures of Johnson's and Kaplan's
joint bank account at Wells Fargo. Specifically, Dounel falsely stated to Kaplan that Johnson
must have some type of criminal background, thereby suggesting that the account was closed

1 due to criminal activity by Johnson. Dounel further falsely asserted to Kaplan that Johnson
2 "must have arrest warrants outstanding." Dounel also advised Kaplan that he "should hire a
3 private investigator to check up on [Johnson]." Johnson has never been arrested, much less
4 convicted, of any crime in her life.

5 **II. Plaintiff's Claims**

6 Plaintiff alleges claims against Defendant for defamation, false light, and declaratory
7 relief and seeks recovery of the following:

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

14 **III. Affirmative Defenses**

- 15 1. The Complaint fails to state a claim upon which relief can be granted.
- 16 2. The Complaint is barred, in whole or in part, by the doctrines of estoppel and/or waiver.
- 17 3. The Complaint is barred, in whole or in part, by the doctrine of release.
- 18 4. The Complaint is barred, in whole or in part, by the doctrine of justification.
- 19 5. The Complaint is barred by agreement and satisfaction of its terms.
- 20 6. The Complaint is barred by the doctrines of unclean hands, *in pari delicto*, and/or
21 laches.
- 22 7. The Complaint is barred or limited by Plaintiff's own conduct and/or negligence. The
23 damages, if any, sustained by Plaintiff were the result of or caused by the fault,
24 carelessness, contributory negligence, and/or comparative negligence of Plaintiff, which
25 operates to eliminate or reduce any award herein.
- 26 8. The Complaint is barred, by the applicable statutory periods of limitation, preclusion, or
27 otherwise by the passage of time.

- 1 9. Plaintiff has not sustained any damages including, without limitation, special or
2 compensatory damages, and/or has failed to mitigate her alleged damages.
- 3 10. The damages Plaintiff is alleged to have suffered, if any, are the result of actions of third
4 parties over whom Wells Fargo has no influence or control, which further entitles Wells
5 Fargo to contribution and/or indemnification.
- 6 11. Wells Fargo complied with applicable state and federal statutes, constitutional rights,
7 rules, and regulations, and the claims of Plaintiff are barred or limited, in whole or in
8 part, by such provisions, statutes, rights, rules, and regulations.
- 9 12. Wells Fargo acted in accordance with reasonable and customary commercial and
10 lending practices, in good faith, and with ordinary care; and its actions did not
11 substantially contribute to damages, if any, allegedly sustained by Plaintiff.
- 12 13. This matter may be subject to federal diversity jurisdiction. Further, this action and/or a
13 portion of these proceedings may be subject [sic.] federal subject matter jurisdiction.
- 14 14. The Complaint is barred or limited by the doctrines of ratification, confirmation, and
15 acquiescence.
- 16 15. The Complaint is barred or limited by the doctrines of actual, apparent, and/or
17 ostensible authority, including the authority and representations of Plaintiff which Wells
18 Fargo reasonably and justifiably relied.
- 19 16. The Complaint is barred by novation and/or accord and satisfaction.
- 20 17. The Complaint is barred by the contract doctrines of integration and merger.
- 21 18. The Complaint fails to set forth certain allegations and/or claims with particularity as
22 required by NRCP 9(b).
- 23 19. Plaintiff is a public figure and/or a limited-purpose public figure, and the alleged
24 statements, if any, were not made with malice. Further, the alleged statements, if any,
25 were not publicly disclosed and did not pertain to private life activities.
- 26 20. There has been no fraud, malice, or oppression, and the claims for punitive damages, if
27 any, are barred or limited by the provisions of NRS 42.005 and applicable case law.
- 28

- 1 There has been no conscious or wilful disregard of the rights of Plaintiff. Further, such
2 damages are subject to constitutional restrictions and limitations.
- 3 21. The claims are subject to the applicable provisions of any agreement between Wells
4 Fargo and Plaintiff.
- 5 22. There is no special or fiducial relationship between Plaintiff and Wells Fargo.
- 6 23. Plaintiff has failed to exhaust all alternate remedies, including arbitration.
- 7 24. Plaintiff is not entitled to declaratory relief under NRS 30.010 *et seq.* and applicable
8 case law.
- 9 25. Plaintiff's complaint and the claims alleged therein, are barred and/or preempted, in
10 whole or in part, by the principles of confidentiality, privilege, and federal law
11 including, without limitation, the Bank Secrecy Act (31 USC § 5311 *et seq.* and 31 CFR
12 Chapter X, formerly 31 CFR Part 103).
- 13 26. Plaintiff's claims are barred, in whole or in part, by principles of truth, duty or interest,
14 consent, immunity, fair comment, opinion, lack of negligence, lack of malice, and
15 privilege, whether absolute, qualified, or conditional.
- 16 27. The Complaint does not state a sufficient claim for relief in that the alleged statements,
17 if any, were expressions of opinion, and were not made with knowledge of their falsity,
18 false light, or with reckless disregard for their truth. Further, the alleged statements, if
19 any, were not publicly made and Wells Fargo did not place Plaintiff in the public light.
- 20 28. There is no justiciable controversy, no ripe controversy and/or issue, no legally
21 protected interest, nor any other sufficient ground for declaratory relief.
- 22 29. Wells Fargo incorporates all other defenses enumerated in NRCP 8, which defenses are
23 incorporated for purpose of not waiving any such defense.

24 **IV. Claims or Defenses to be Abandoned**

25 To be determined.

26 ///

27

28

V. List of Exhibits

The following documents were produced by Plaintiff and Defendant and may be used at trial:

1. Letter to Jennifer L. Scafe dated December 16, 2011, bates-numbered Lisa J. 001 - Lisa J. 003.
2. Letter from Kate Wright dated October 26, 2011, bates-numbered Lisa J. 004.
3. Letter from Dirk A. Ravenholt, Esq. dated October 17, 2011, bates-numbered Lisa J. 005.
4. Letter from Wells Fargo dated August 18, 2011, bates-numbered Lisa J. 006.
5. Letter from Wells Fargo dated August 15, 2011, bates-numbered Lisa J. 007.
6. Letter from Wells Fargo dated August 18, 2011, bates-numbered Lisa J. 008.
7. E-mail correspondence between Michael Kaplan and Wells Fargo, bates-numbered Lisa J. 009 - Lisa J. 0011.
8. Letter to Jennifer L. Scafe dated December 16, 2011, bates-numbered Lisa J. 0012 - Lisa J. 0013.
9. E-mail correspondence between Michael Kaplan and Wells Fargo, bates-numbered Lisa J. 0014 - Lisa J. 0018.
10. Mailing information re: a letter from Dirk Ravenholt, Esq., bates-numbered Lisa J. 0019.
11. E-mail correspondence between Michael Kaplan and Wells Fargo, bates-numbered Lisa J. 0020 - Lisa J. 0021.
12. Mailing information re: a letter from Dirk Ravenholt, Esq., bates-numbered Lisa J. 0022.
13. Letter from Dirk A. Ravenholt, Esq. dated October 17, 2011, bates-numbered Lisa J. 0023.
14. E-mail correspondence between Michael Kaplan and Wells Fargo, bates-numbered Lisa J. 0024 - Lisa J. 0053.
15. Business cards of Arash Duonel and Joceda Freeman, bates-numbered Lisa J. 0054 - Lisa J. 0057.
16. Glitterati agreement, bates-numbered Lisa J. 0058 - Lisa J. 0079.

///

- 1 17. E-mail correspondence between Lisa Johnson and Ramy Zaki, bates-numbered Lisa J. 0080
2 - Lisa J. 0084.
- 3 18. Documentation concerning Jeff Albright, bates-numbered Lisa J. 0085 - Lisa J. 0086.
- 4 19. Check dated September 22, 2011, payable to Jeff Albright, bates-numbered Lisa J. 0087.
- 5 20. E-mail correspondence between Lisa Johnson and Jeff Albright, bates-numbered Lisa J.
6 0088.
- 7 21. Nevada State Bank statement dated August 31, 2006, bates-numbered Lisa J.0089
- 8 22. Nevada State Bank statement dated August 31, 2007, bates-numbered Lisa J.0090
- 9 23. All depositions and exhibits to such depositions.
- 10 24. Consumer Account Agreement re: Account ending in #4164, bates-numbered WFB 0001 -
11 WFB 0002.
- 12 25. Consumer Account Agreement re: Account ending in #4164, bates-numbered WFB 0003 -
13 WFB 0074.
- 14 26. Account Statements re: Account ending in #4164, bates-numbered WFB 0075 - WFB 0257.
- 15 27. Closure Notification re: Account ending in #4164, bates-numbered WFB 0258.
- 16 28. Business Account Application re: Accounts ending in #7051, #7036, #4981 and Business
17 Credit Card #2957, bates-numbered WFB 0259 - WFB 0263.
- 18 29. Business Account Agreement re: Accounts ending in #7051, #7036, and #4981, bates-
19 numbered WFB 0264 - WFB 0335.
- 20 30. Account Statements re: Account ending in #7051, bates-numbered WFB 0336 - WFB 0398.
- 21 31. Account Statements re: Account ending in #7036, bates-numbered WFB 0399 - WFB 0417.
- 22 32. Account Statements re: Account ending in #4981, bates-numbered WFB 0418 - WFB 0436.
- 23 33. Closure Notification re: Account ending in #7051, bates-numbered WFB 0437.
- 24 34. Business Card Agreement re: Account ending in #2957, bates-numbered WFB 0438 - WFB
25 0439.
- 26 35. Account Statements re: Account ending in #2957, bates-numbered WFB 0440 - WFB 0465.
- 27 36. Closure Notification re: Account ending in #2957, bates-numbered WFB 0466.
- 28

- 1 37. Email correspondence re: Michael Kaplan/Chad Maze/Andrew Noll (November-December
2 2011), bates-numbered WFB 0467 - WFB 0471.
- 3 38. Email correspondence re: Michael Kaplan/Jennifer Scafe (December 2011), bates-
4 numbered 0472 - WFB 0475.
- 5 39. Dirk A. Ravenholt, Esq. letter, dated October 17, 2011, bates-numbered WFB 0476.
- 6 40. Wells Fargo letter to Dirk Ravenholt, Esq., dated October 26, 2011, bates-numbered WFB
7 0477.
- 8 41. Michael Kaplan letter, dated December 16, 2011, bates-numbered WFB 0478 - WFB 0479.
- 9 42. Guitarfile, LLC Advantage Business Package accounts ending in \$7051, #7036, and #4981,
10 bates-numbered WFB 0480 - WFB 0486.
- 11 43. Checking account ending in #4164, bates-numbered WFB 0487 - WFB 0631.
- 12 44. Expert report of Paul Workman and supporting documentation, bates-numbered Workman-
13 LJ 001 - Workman-LF 031.

14 **VI. Evidence to be Limited or Excluded**

15 To be determined.

16 **VII. List of Witnesses**

17 **A. Plaintiff:**

- 18 1. Lisa Johnson
19 c/o Hutchison & Steffen, LLC
20 Peccole Professional Park
21 10080 West Alta Drive, Suite 200
22 Las Vegas, Nevada 89145
- 23 2. Michael Kaplan
24 9517 Canyon Mesa Drive
25 Las Vegas, Nevada 89144
- 26 3. Arash Dounel
27 c/o Smith Larson & Wixom
28 1935 Village Center Circle
Las Vegas, Nevada 89134
4. M. Paul Workman
1405 Unbridled Circle
Las Vegas, Nevada 89117

27 ///

5. Robert Martin
2200 Paseo Verde Parkway, Suite 200
Henderson, Nevada 89052
6. Person(s) most knowledgeable and/or custodian of records for Wells Fargo Bank, NA, c/o Smith Larson & Wixom, 1935 Village Center Circle, Las Vegas, Nevada 89134. It is expected that the person(s) most knowledgeable and/or custodian of records will testify as to their knowledge of the facts and circumstances of the allegations as alleged in the complaint and to the authenticity of records provided.
7. Joceda Freeman of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Joceda Freeman, who is/was a personal banker for Wells Fargo, will testify to her knowledge of the facts and circumstances of the allegations as alleged in the Complaint.
8. Jennifer L. Scafe of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Jennifer L. Scafe, who is/was senior legal counsel at Wells Fargo, will testify to her knowledge of the facts and circumstances of the allegations as alleged in the Complaint.
9. Chad Maze of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Chad Maze, who is/was an employee in Wells Fargo's private wealth department, will testify to his knowledge of the facts and circumstances of the allegations as alleged in the Complaint.
10. Sheila of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Sheila, who is/was a Wells Fargo representative, will testify to her knowledge of the facts and circumstances of the allegations as alleged in the Complaint.
11. Kate Wright, Vice President Western Mountain District Manager of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Kate Wright will testify to her knowledge of the facts and circumstances of the allegations as alleged in the Complaint.
12. Andrew M. Noll, Vice President of Trust & Fiduciary of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Andrew Noll will testify to his knowledge of the facts and circumstances of the allegations as alleged in the Complaint.
13. Rachel Romijn of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Rachel Romijn, who is a head of compliance for Wells Fargo, will testify to her knowledge of the facts and circumstances of the allegations as alleged in the Complaint.
14. Kirk Clausen, Regional President of Wells Fargo, c/o SMITH LARSON & WIXOM, 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Kirk Clausen will testify to his knowledge of the facts and circumstances of the allegations as alleged in the Complaint.

- 1 15. All witnesses identified by all other parties.
2 16. Any rebuttal witnesses necessitated by the testimony of witnesses.

3 B. Defendant:

4 **VIII. Statement of Issues**

5 The following are issues will to be determined at trial: to be determined.

6 **IX. Time Required for Trial**

7 Plaintiff's view: 2-3 days

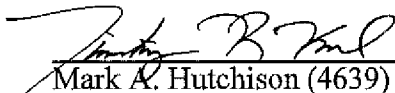
8 Defendants' view: 2-3 days

9 **X. Other Matters**

10 None.

11 DATED this 13th day of December, 2013.

12 HUTCHISON & STEFFEN, LLC

13
14 

15 Mark A. Hutchison (4639)
16 Joseph S. Kistler (3458)
17 Timothy R. Koval (12014)
18 Peccole Professional Park
19 10080 West Alta Drive, Suite 200

20 Las Vegas, NV 89145

21 *Attorneys for Lisa Johnson*

CERTIFICATE OF SERVICE

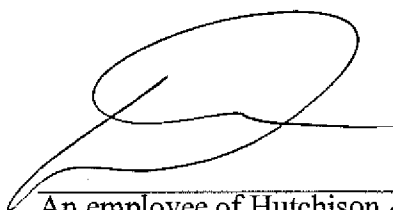
Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 3rd day of December, 2013, I caused the above and foregoing document entitled **PLAINTIFF'S PRE-TRIAL MEMORANDUM** to be served as follows:

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

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

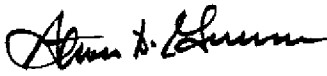
To the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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



An employee of Hutchison & Steffen, LLC

RTRAN


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON,

Plaintiff,

v.

WELLS FARGO BANK NATIONAL
ASSOCIATION,

Defendant.

CASE NO. A-655393

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

FRIDAY, JANUARY 10, 2014

**RECORDER'S TRANSCRIPT
MOTIONS HEARING**

APPEARANCES:

For the Plaintiff: JOSEPH S. KISTLER, ESQ.
TIMOTHY R. KOVAL, ESQ.
Hutchison & Steffen, LLC.

For the Defendant: KENT F. LARSEN, ESQ.
PAUL M. HAIRE, ESQ.
Smith Larsen & Wixom

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 FRIDAY, JANUARY 10, 2014 AT 11:38 A.M.

2 THE COURT: Okay. We have motion to strike an expert
3 witness and a motion for summary judgment.

4 MR. HAIRE: That is correct.

5 THE COURT: I think the first one would be the expert
6 witness motion would be probably a good place to start.

7 MR. HAIRE: I'm happy to address that first, Your Honor.
8 This relates to Plaintiff's designated expert Paul Workman who
9 by all accounts is a banking expert. We don't challenge his
10 qualifications. We just don't know why -- what he brings to
11 our trial --

12 THE COURT: Right.

13 MR. HAIRE: -- if we are to have one. And that the issue
14 of the reasons for the accounts' closure, the accounts that
15 are at issue in this case, has already been determined by this
16 Court through what I understand was rather protracted hearings
17 and other matters. It was before my involvement in the case.
18 But that's the gist of the motion, Your Honor.

19 THE COURT: Okay. So it just goes to that one issue
20 which is the assistance that the expert is to assist and that
21 there's no -- his testimony is not relevant. And is that an
22 issue as to whether he should be excluded or does it go to the
23 weight of his testimony?

24 MR. HAIRE: I don't believe he has -- he should be
25 testifying in what is effectively a defamation and false light

1 invasion of privacy case. Unless he's somehow clairvoyant or
2 an expert on discerning the attitudes and subjective beliefs
3 of my client I don't see what he offers in terms of the
4 Plaintiff meeting the prima facie elements of a defamation or
5 false light claim.

6 THE COURT: Okay. Mr. Kistler?

7 MR. KISTLER: Your Honor, Joseph Kistler on behalf of the
8 Plaintiff on this case. And it's interesting the position
9 that the bank is taking here. If Your Honor will recall the
10 litigation concerning quote, unquote, the reasons if you will
11 for the account being closed came up before the Court on the
12 basis of a discovery dispute on our motion to compel the bank
13 to disclose documents pertaining to the closure of the
14 account. And Your Honor ruled based upon the bank's position
15 and urging the Court to adopt nonbinding authority from -- to
16 expand nonbinding authority from the State of California.

17 That we could not compel the Defendant to produce
18 information regarding -- certain information regarding the
19 closure of the account. That we couldn't compel documents
20 that were used in connection with any suspicious activity
21 report. That we could not compel the bank to even tell us if
22 there had been a suspicious activity report. That we couldn't
23 compel copies of any suspicious activity reports if in fact
24 there had been any that actually occurred.

25 That's what Your Honor found. Your Honor did not,

1 could not and has not found that the reasons for the closure
2 of the account are irrelevant, not relevant to this case.

3 That's the ending point, Your Honor. The beginning
4 point, Your Honor, is the way the defamatory statement
5 occurred was in asking a bank official why was my joint
6 account closed and the defamatory statement was made.

7 Therefore the fact of why the bank closed the
8 account is imminently reasonable not only to our declaratory
9 relief action claim, but also to the defamation claim itself.
10 Because the bank has made -- the bank is taking the position
11 that the defamatory statements that were made to Mr. Kaplan
12 were in fact true, or at least they've taken that position for
13 nearly two years during the pendency of this litigation. I
14 understand now that they wish to abandon their truth defense
15 to the defamation.

16 But they've raised other issues as well concerning
17 well, the signal wasn't made, these statements weren't made
18 maliciously, these statements weren't made recklessly, et
19 cetera, et cetera, et cetera. Well, what could be more
20 probative of malice or recklessness on behalf of the bank's
21 employee than evidence showing that why or why at least in our
22 view the accounts were closed, or why the accounts could not
23 have been closed. What reasons that do not support the bank's
24 activities in this case.

25 So the bottom line is this, Your Honor. Your Honor

1 has not, could not, and we suggest it would be an error for
2 the Court to determine that the rationale or reasons for the
3 account being closed is irrelevant to this litigation. That
4 would be an erroneous determination by the Court. And the
5 Court has never made that determination.

6 What the Court has made -- the determination the
7 Court has made is that I cannot compel the bank to disclose
8 its reasons for closing the account. I certainly should be
9 permitted to put forth affirmative evidence by an expert whose
10 qualifications according to Mr. Haire are uncontested. That
11 based upon his experience, his expertise, and his review of
12 the documents that the bank did provide that he found no
13 reason, no justiciable reason for the bank to act in closing
14 this account.

15 It's relevant to our defamation claim. It's
16 relevant to our debt relief claim; it's relevant to the false
17 light claim. And Your Honor has never made a determination
18 that the reason for the accounts being closed and our
19 opportunity to submit affirmative evidence concerning the lack
20 of a reason for the account being closed is not relevant to
21 any of our claims.

22 THE COURT: Okay, thanks.

23 MR. HAIRE: The reason as I understand it, Your Honor,
24 that the position that the bank cannot be compelled to
25 disclose the reasons for the accounts closure was premised on

1 the fact that the bank can't do that. They simply cannot
2 disclose those reasons under bank secrecy laws as the Court
3 has determined.

4 So in effect counsel would have -- would place the
5 bank in a position to act unlawfully relevant to those cases
6 in order to rebut the claims. Now bear in mind, Your Honor,
7 that Wells Fargo does not agree that these comments were ever
8 even made. And the inquiry here is whether the comments are
9 defamatory, relative to the summary judgment motion. The
10 inquiry is whether they can -- they're even actionable at that
11 point.

12 But -- and I would also point out that Mr. Workman
13 in his supplemental report did find a basis for suspicious
14 activity in the account. Now Ms. Johnson responds with well,
15 I can explain all of that. But that's beside the point. The
16 expert says yeah, there's a reason here that a bank could find
17 some basis. But even underlying all of that is the argument
18 that this is not some indentured servitude contract. Wells
19 Fargo can agree to discontinue its relationship with anyone at
20 any time. It's contained in the account agreement and that
21 relates to the Plaintiff as well. She can discontinue her
22 relationship.

23 Do we need an expert to tell us what is irrelevant?
24 And that is there's no basis for closing an account here when
25 both sides have the right to do so. And then past that you

1 have an expert that's potentially going to testify well, I do
2 see some basis for that. And then you've got a plaintiff
3 who's going to say well, that shouldn't be because I can
4 explain all of that.

5 The point is, Your Honor, I don't know what Mr.
6 Workman offers the Court who will sit as the trier of fact in
7 this case that would help the Court discern whether the
8 statement is defamatory and actionable. And whether they have
9 placed the Plaintiff in false light as a result of those again
10 alleged statements. There's no confirmation that those
11 statements even took place.

12 THE COURT: Okay. Well, I think that the -- what I read
13 in Mr. Workman's letter or his reports, was sort of basic
14 explanation of suspicious activity reports, or unusual
15 activity reports. And you know, what typically triggers
16 those. I think the defendant is -- or the Plaintiff is
17 entitled in her own case to put forward her version of what
18 should trigger that kind of thing. It doesn't get to perhaps
19 the ultimate issue, but I think she's entitled to have her
20 evidence.

21 I think that the question of how much value there is
22 to the ultimate issue in the case is as you point out, just a
23 question of fact for the Court to make an ultimate
24 determination. And there may not be much weight to this
25 testimony ultimately, but I think that the Plaintiff is

1 entitled in presenting her case to have an expert come in and
2 testify as to her version of what these reports are. I
3 understand the bank may have its own version of what these
4 reports are. And you know, that's just the very fine line we
5 have to walk in this case because, you know, by law they --
6 these reports are not discoverable. So -- but she's entitled
7 to actually have her version of what they mean. Because I'm
8 assuming that you'll have people from the bank who can testify
9 as to what they mean for the bank.

10 So as I said, I think it goes to weight as to there
11 may not ultimately be a lot of weight to his testimony, but it
12 doesn't mean that she's not entitled to have somebody come in
13 in her case in-chief and testify as to what they believe
14 proper banking procedures are with respect to, you know,
15 triggering these kinds of reports.

16 MR. HAIRE: Well, if I may, Your Honor?

17 THE COURT: Yeah.

18 MR. HAIRE: That then places the burden upon Wells Fargo
19 to rebut Mr. Workman's potential testimony that they are not
20 -- that they do not rise to the level of suspicious activity.
21 And how is Wells Fargo --

22 THE COURT: I don't know if he necessarily says that. He
23 says --

24 MR. HAIRE: Well, he saw no basis for closing the
25 accounts based upon --

1 THE COURT: But he did say that he saw three transactions
2 that he would think would trigger. Isn't that the language
3 used, that this is probably what triggered -- I think he uses
4 some language in his supplement --

5 MR. HAIRE: All right.

6 THE COURT: -- as you pointed out. He's basically -- he
7 concedes that are some unusual activities that would trigger
8 inquiry of them.

9 MR. HAIRE: So we have an admission by an expert that a
10 bank may have probable cause to close the account --

11 THE COURT: He didn't say that. He did not say that.
12 And I don't know that necessarily ultimately that's the issue.
13 I'm simply saying I think she's got the right to have an
14 expert testify in her case in-chief as to what the standard
15 operating procedures and practices are in the banking industry
16 in dealing with unusual activities or suspicious activities I
17 think are the languages -- is the language that he uses.

18 Just she's entitled to have somebody who can come in
19 and testify about that. As I said, the whole issue of whether
20 it goes to the -- whether there's defamation I agree with you.
21 And I think the rest of it just is a question of weight. But
22 I think she's entitled to put her case on. So that's -- she
23 can't testify about what triggers suspicious activity reports
24 for a bank. So she has an expert do it, okay.

25 MR. HAIRE: The question then becomes though, Your Honor

1 -- and I apologize, of we're going to let an expert testify to
2 something that's irrelevant if both sides as per the agreement
3 can terminate the relationship at any time for any reason.

4 THE COURT: Okay.

5 MR. HAIRE: So does suspicious activity --

6 THE COURT: That's what I said.

7 MR. HAIRE: -- make any difference?

8 THE COURT: I said it goes to weight.

9 MR. HAIRE: All right.

10 THE COURT: I don't think it's grounds to exclude him. I
11 think she's entitled to put her case on. If that's the only
12 way she's going to get that evidence in, that's how she gets
13 it in, okay.

14 So denied. Mr. Kistler, you're to prepare an order.
15 Show it to Mr. Haire before you submit it.

16 Next issue, motion for summary judgment.

17 MR. HAIRE: The fact that you agreed to hear the first
18 motion, or the motion to strike first suggests something to
19 me, Your Honor. I hope I am not accurately reading the Court.
20 Let me just reiterate what the factual scenario that we're
21 dealing with here. We have the common law partner, to use
22 Plaintiff's words, of 15 years who goes into a branch of the
23 bank in Malibu, California. And despite the machinations that
24 Plaintiff, or spin that they would put on this, inquires as to
25 why the account is closed. He is then told that the

1 statements that are at issue are then made.

2 The thrust of the motion for summary judgment has to
3 do with the context in which those were made because the law
4 makes clear that there must be publication to a third party.
5 Well, who is the third party in this case? Well, it is the
6 common law partner of 15 years of Ms. Johnson, who is in a
7 better position than anyone to know what criminal activity, or
8 anything else that she may have been involved in. He is a
9 joint owner of the account. And he only receives those
10 statements after there is communication with Ms. Johnson about
11 the closures letters. Add to that Ms. Johnson's deposition
12 testimony that he had her permission to inquire about the
13 account closure at that time.

14 All those things added up amount to a de facto
15 agency between these two parties, or certainly someone acting
16 on the behalf and authority of the person. And therefore at
17 that moment ceases to be a third person to which a defamatory
18 -- or a defamation claim can attach.

19 That's the thrust of the defamation claim -- or the
20 summary judgment as to the defamation claim. I'm happy to
21 address the privacy claims. I don't know what the Court's
22 wishes are in terms of addressing these three separately or
23 distinctly.

24 THE COURT: And I think you can just go through the rest
25 of them. Because --

1 MR. HAIRE: All right. The invasion of privacy claim has
2 no merit, Your Honor, because there is absolutely no
3 indication that Wells Fargo publicized these alleged
4 statements to anyone other than Mr. Kaplan. And the case law
5 is ample. To suggest that a false light invasion claim
6 requires general dissemination beyond one person, a small
7 group of people, but to the general public. There is no
8 evidence.

9 Plaintiff would suggest well, we can't really know
10 that until we have a trial. Well, this is summary judgment.
11 Discovery is closed. Now is the time to put forth your
12 evidence that you should have obtained through the course of
13 discovery to establish whether there had been any general
14 dissemination of these alleged defamatory comments. They
15 haven't done so. That case -- that claim should be dismissed.

16 The declaratory relief claim has already been the
17 subject of some discussion, Your Honor. I think Your Honor is
18 well-aware of our position relative to that.

19 THE COURT: Okay.

20 MR. KISTLER: Your Honor, it's a very creative argument
21 that the Defendant makes concerning Mr. Kaplan and this agency
22 theory. And what I'd like to do is to review with Your Honor
23 some of the evidence that is before, Your Honor, both by Ms.
24 Johnson and her opposition and also by the bank in its motion.

25 First of all, the bank in its motion identifies Mr.

1 Kaplan as the owner of the, what's been referenced as a joint
2 account with Ms. Johnson being listed as a signator on that
3 account. And I believe that's Exhibit 4 to the motion,
4 paragraph 3.

5 So the account that was being discussed on the day
6 in question on October was Mr. Kaplan's account as the
7 signator -- as an owner with Ms. Johnson being the signator on
8 that account. And if I have the -- I hate to flounder around,
9 but -- anyway, it's cited as identified -- the account is
10 identified as that by the bank.

11 What's also interesting in the bank's position
12 before you, Your Honor, is that Mr. Denell, the individual
13 that according to Mr. Kaplan made the statement never says
14 once that I, Denell thought I was talking to Johnson's agent
15 at the time that I was talking to Mr. Kaplan.

16 So there's no evidence before the Court, whatsoever,
17 Your Honor, nothing that's been presented that the bank's
18 manager considered Mr. Kaplan as Ms. Johnson's agent at the
19 time that the statement was made.

20 THE COURT: And I think there's something in there also
21 about he's an attorney and she references him as her attorney
22 as well, but I don't see --

23 MR. KISTLER: But there's no evidence that Denell knew
24 that --

25 THE COURT: -- anybody knew that.

1 MR. KISTLER: -- that Denell knew that.

2 So there's nothing from the bank's officer that was
3 involved in the meeting. And the meeting clearly occurred. I
4 mean, we know the meeting occurred. What was said at the
5 meeting is a matter of disagreement somewhat, although
6 interesting Mr. Denell's denials are pretty soft denials here.
7 What he'll say is, he'll say well, geez, that doesn't sound
8 like something I would say when asked, did you say certain --
9 that doesn't sound like something I would say. But above and
10 beyond that, Your Honor, there's no evidence that Mr. Denell,
11 the individual that made statements, some statements of which
12 we believe and we've alleged were defamatory, there's no
13 allegation that Mr. Denell thought that Mr. Kaplan was Ms.
14 Johnson's attorney. That Mr. Kaplan was acting as Ms.
15 Johnson's agent.

16 Rather all of the evidence before Your Honor, at
17 least at this point in motion practice is, Mr. Kaplan shows up
18 at the Malibu branch of Wells Fargo bank. He attempts to cash
19 a check. The teller says hey, you have a lot of money here.
20 Why don't you think about expanding your relationship with the
21 bank? And his response, according to his declaration that's
22 attached to our opposition is, that's strange because you just
23 closed an account that I was jointly on.

24 That gave rise to the Denell conversation. And the
25 Denell conversation is clearly Mr. Denell talking to Mr.

1 Kaplan about Mr. Kaplan being a joint account holder at Wells
2 Fargo Bank.

3 There's no evidence, Your Honor, and as a matter of
4 common sense and knowledge of the ways of the world, there's
5 no evidence that Ms. Johnson was contacted by the bank before
6 this conversation to say hey, is it okay if we talk with this
7 other guy about your account? There's no evidence to that --
8 of that.

9 In fact, the evidence is after the litigation was
10 filed they wouldn't even talk -- the bank wouldn't even
11 produce documents to anyone unless both signers on that
12 account, or both either the owner and the signor, Mr. Kaplan
13 and Ms. Johnson, signed waivers, and authorizations, and
14 everything else.

15 So in order for counsel's theory to work you would
16 have to assume that Mr. Denell blatantly and improperly talked
17 about another customer's account with Mr. Kaplan at the time
18 that he was there in October; makes no sense. Bottom line is,
19 factual issues. And so the whole --

20 THE COURT: What about the distinction between defamation
21 and false light? The elements are somewhat different, and are
22 all the elements of both them present?

23 MR. KISTLER: Well, their motion is on the same agency
24 issue. Your Honor, the -- we will have evidence at trial to
25 say that if in fact -- and just to be clear, the bank -- it's

1 one of those we can't confirm or deny that we have nuclear
2 weapons. Under the position they've taken before, Your Honor,
3 that Your Honor has followed, they're not saying that there's
4 an SAR in existence. They're not saying that they have any
5 evidence of SAR worthy information. They're saying maybe we
6 do, maybe we don't, maybe we reported, maybe we didn't. But
7 we don't have to tell you because of the way we have convinced
8 the Court to interpret the bank secrecy act and also the
9 patriot act based upon this non-binding California case.

10 So Your Honor, we're very interested in finding out
11 exactly what's been reported and exactly -- we do have
12 evidence from Mr. Workman that will be presented that yes, in
13 fact if there was a reporting, that reporting would be
14 published at least to a portion of the world.

15 But that's not the grounds for it. The grounds for
16 false light summary judgment is back to the agency issue. And
17 the agency issue is an issue of fact that the fact finder
18 needs to resolve. And we'll resolve at trial in this case.

19 THE COURT: And finally defamation -- I mean, not --
20 declaratory relief. If -- you know, I understand you disagree
21 with what we ruled, that they don't have -- they cannot
22 disclose what is contained in an SAR. That's not technically
23 -- specifically what the request for declaratory relief says
24 is: "Johnson is entitled to know why her accounts were closed
25 as well as the basis for its defamatory statements against

1 her. She's entitled to a declaration by this Court that Wells
2 Fargo must provide her a detailed explanation as to why the
3 bank decided to close her accounts and why it alleged she was
4 involved in criminal activities."

5 MR. KISTLER: Thank you, Your Honor. We don't think that
6 -- we don't think either one of those requests runs afoul of
7 the previous discovery evidentiary orders that were entered by
8 the case. We think that the bank could certainly say why they
9 closed the account, as long as it doesn't fall within the
10 parameters of an SAR, or documents underlying an SAR, or
11 anything like that.

12 But I can tell you this, Your Honor. They have
13 defended this action using an affirmative defense of
14 truthfulness. And you can bet that those questions will come
15 out, what was your reasonable basis for alleging that these
16 statements were truthful? When you answer the complaint, and
17 when you maintain this action for the last 18 months you tell
18 me the facts upon which you base that position.

19 And that's part of our debt relief claim. Why do
20 you say those statements were true? And the fact that Mr.
21 Haire now says well, we're willing to withdraw that
22 affirmative defense. Why did you ever bring it to begin with?
23 What facts did you have at your disposal that you claim that
24 you had at your disposal by filing an answer and including a
25 Rule 11 affirmative defense of truthfulness? What facts did

1 you have at your disposal at that time that my client had been
2 in jail, had arrest warrants out, was involved in criminal
3 conduct?

4 And we're entitled to a declaration from the Court
5 concerning that belief by the bank concerning its position,
6 Your Honor.

7 Unless Your Honor has any other questions of my
8 position, I'll sit down.

9 THE COURT: No.

10 MR. KISTLER: Thank you, Judge.

11 THE COURT: Yeah.

12 MR. HAIRE: Your Honor, we're off in the weeds with all
13 due respect. This is a defamation false light declaratory
14 relief claim that has morphed into something well-beyond its
15 scope.

16 I appreciate counsel's efforts to try to muddy the
17 waters with tidbits of facts that he believes make a
18 difference. But in the end you have no right to make an
19 inquiry at trial about a matter that is abandoned. If he
20 abandoned a claim and questions directed to well, why did you
21 ever assert it, I've never seen that happen in a trial. It
22 would be inappropriate to do it at a trial.

23 So now let's talk about the creative argument that I
24 apparently make relative to defamation. Well, it's creative
25 lies in law. It's the law. If you're acting on behalf of,

1 and on the authority of someone else then it's the same as if
2 the person that you are allegedly defamed is sitting before
3 you.

4 Now what evidence do we have that the bank knew, or
5 felt authorized to share the information? Well, you've got
6 Mr. Kaplan there. Mr. Kaplan is -- well, okay. We'll go with
7 Plaintiff's version. He's a signator on the account. But
8 those -- by the Plaintiff's own admission those defamatory
9 comments do not come until after the Plaintiff has faxed to
10 Mr. Denell the closure letters.

11 There is a discussion with the Plaintiff. The
12 Plaintiff in her deposition:

13 "Q And so you knew, you Ms. Johnson, knew
14 Michael was there trying to find out for himself and
15 on your behalf why the joint account was closed?

16 "A Yes.

17 "Q You had given Michael your authority to
18 find out for you?

19 "A Yes."

20 So what is it that we're trying to create here that
21 doesn't comport with the status of the law? He's
22 communicating to someone who is tantamount to talking with
23 Mrs. Johnson herself. He's even gone to the point of
24 communicating either directly with her or through Kaplan, send
25 me the closure letters. Now what else could he possibly

1 presume by that? That he's acting -- or that Mr. Kaplan at
2 that point is acting on behalf of Ms. Johnson. If that is
3 true there is no defamation claim.

4 Those statements may or may not have been
5 defamatory. Doesn't matter at that point. The element of the
6 claim says it has to be unprivileged and there must be
7 publicity to a third party. If it isn't there, doesn't matter
8 if the statements are defamatory; the claim is gone.

9 Evasion of privacy by false light is -- it's simple.
10 I haven't heard anything yet, any evidence that we've
11 disseminated this to the general public or to anybody. What I
12 can establish for the Court is that Mr. Kaplan has a
13 propensity for going around and telling people what Mr. Denell
14 apparently said. He wants to talk to Mr. Martin, he wants to
15 talk to Senator Brian, he wants to try to talk to Curt
16 Clawson, the president of Wells Fargo. So he has no problem
17 just out there sharing that information, but not one shred of
18 evidence that we did it and that's the burden, Your Honor,
19 relative to a false light invasion of privacy claim.

20 THE COURT: Okay, thanks. I do see a distinction between
21 defamation and false light. I have questions of fact, Mr.
22 Haire, as to who -- what the bank thought they were doing when
23 they were talking to Mr. Kaplan and what knowledge they had
24 with any relationship he had to the Plaintiff. I just -- I
25 have questions there.

1 I'm a little concerned, I'll tell you, Mr. Kistler,
2 with false light. I just don't see that there's been any
3 publication to any broader group of people. It seems to me
4 it's a defamation case. So my inclination would be to grant
5 the motion for summary judgment as to false light. I just --
6 I don't -- that's why I ask what's the difference between the
7 elements. I understand that the issue is, was he an agent or
8 not. But I think for that one false light requires publicity.
9 You have to publicize this, that you know, we want you to know
10 we closed this account. We're really strong on closing
11 accounts of bad people. And here's a person who's a bad
12 person. They never did that.

13 So for me I don't see this as a false light case.
14 It just seems to me to be a defamation case. And since we
15 know you can have inter corporate defamation, because the Mars
16 case totally changed the law on that, I'm not convinced that
17 telling somebody else who's just a co-signatory on the account
18 with you -- I don't know. Just for me there's a question of
19 fact as to what were they -- who were they communicating with?
20 Who did they believe they were communicating with when they
21 communicated in that fashion?

22 The one that gives me -- so I'm going to deny it as
23 to defamation, but grant it as to false light.

24 The one that I'm just still -- that has just puzzled
25 me is this declaratory relief because I'm not sure portions of

1 it. It seems to me that the ruling that is -- to the extent
2 that this is based on a SARs report you cannot disclose that
3 because they are prohibited by law under the Patriot Act for
4 some reason for making those disclosures.

5 But she asks for more than that in her request for
6 declaratory relief. So I just think that we have to wait
7 until the time of trial, Mr. Haire, and to see what the
8 defenses are to say whether or not she gets some of the
9 information she's looking for. But I would tell you, Mr.
10 Kistler, I'm not inclined to revisit at all my previous ruling
11 that if this is based on any kind of a protected
12 communication, an SAR that is by law not -- cannot be
13 disclosed -- poor Mr. Fitz, I thought he was going to have a
14 stroke that day. They cannot disclose it. And that's
15 understood.

16 So I want to make it clear, by holding this issue of
17 the declaratory relief issue until trial I'm not indicating
18 that it's my inclination to change my view of that. It's just
19 that the declaratory relief request was somewhat broader. I
20 don't think it's totally disposed of by the ruling, Mr. Haire,
21 that the SAR is not disclosable. Because there's other things
22 that she asks for in there that are a little broader.

23 This general request, "is entitled to know why her
24 accounts were closed as a basis for the defamatory statement
25 against her." I don't know. That may or may not be barred by

1 the previous ruling. "She's entitled to declaration as to why
2 the bank decided to close her account." Maybe not, but why
3 she was involved in criminal activities again, maybe, maybe
4 not. I just don't know until all the evidence is here if we
5 can say no, they don't have to get into that. Because if they
6 raise that privilege then that's as far as we can go with that
7 inquiry.

8 So I just don't think I can rule on it in advance,
9 Mr. Haire. I think we have to wait and see what the evidence
10 is at trial. And if they say that's privileged information; I
11 can't disclose it then unfortunately I think we're stuck.

12 MR. HAIRE: But --

13 THE COURT: So that's why I don't -- I can't say that
14 it's such a broadly written request for relief that I'm not
15 sure that it's all barred.

16 MR. HAIRE: I agree with the last statement that the
17 Court made. That it's so broadly stated.

18 THE COURT: Yeah.

19 MR. HAIRE: And here's my dilemma. It's so broadly
20 stated that it appears to me to say we want declaratory
21 relief. We want the court to compel you, the person who
22 denies that you ever made a defamatory statement to tell me
23 why you defamed me.

24 THE COURT: Right. And I --

25 MR. HAIRE: I mean, that's preposterous.

1 THE COURT: And I know. I understand that the -- I don't
2 think it's necessarily by any previous rulings that she's not
3 entitled to all or any relief. I would say she's probably not
4 entitled to all of the relief. Did that make sense? That
5 it's so broadly written that I think that there's a lot of
6 this that, because of the ruling and Mr. Kistler I know
7 disagrees with my ruling, and this will be resolved by
8 somebody at a higher pay grade. But I -- there's going to be
9 some problems with that. But I can't say she's not entitled
10 to any relief under that. Do you see what I'm saying? I
11 can't say now as a matter of law she's entitled to no relief
12 under that because there's nothing that she could ever hope to
13 be told.

14 I think there are some things that she might be able
15 to be told totally within, you know, the realm of what's --

16 MR. KISTLER: I understand.

17 THE COURT: -- what would be testified about.

18 MR. KISTLER: Your Honor, just for a matter of
19 clarification and I'm sure I do understand Your Honor's
20 ruling. Just so it's clear, Your Honor's ruling on the false
21 light case is based on new evidence of publication.

22 THE COURT: No evidence of publication --

23 MR. KISTLER: Because they made an allegation of agency
24 and all this and all that.

25 THE COURT: Right, correct.

1 MR. KISTLER: And Your Honor has stated that --

2 THE COURT: I'm not --

3 MR. KISTLER: -- there exists material issues of fact at
4 this point concerning that.

5 THE COURT: Concerning defamation. I think it's
6 defamation. False light to me it would have to be, as I think
7 Mr. Haire pointed out, something more than just a
8 communication to him and whatever capacity he was, but that
9 there would have had to have been some communication to some
10 broader -- like there were people standing around --

11 MR. KISTLER: I understand.

12 THE COURT: -- who heard this said to Mr. Kaplan and they
13 were my friends. And they knew --

14 MR. KISTLER: I just didn't --

15 THE COURT: Yeah, that kind of thing.

16 MR. KISTLER: I just didn't want findings in Your Honor's
17 summary judgment --

18 THE COURT: Right.

19 MR. KISTLER: -- order that could --

20 THE COURT: Right.

21 MR. KISTLER: -- that were anything other than totally
22 accurate in terms of what you were doing on the --

23 THE COURT: Correct.

24 MR. KISTLER: -- false light case.

25 THE COURT: It is simply because to my view false light

1 requires a publication to a broader group than a statement
2 that is allegedly defamatory to one person. And that's --
3 false light's different in that respect. It quires --

4 MR. KISTLER: I understand.

5 THE COURT: -- publicity and I didn't see any evidence --

6 MR. KISTLER: Evidence of that.

7 THE COURT: -- that was publicized in any way.

8 MR. KISTLER: So, Your Honor, so should I prepare the
9 denial of the striking of the expert and Mr. Haire --

10 THE COURT: Mr. Haire, are you going to address the
11 summary judgment? Because you've got one that's granted, one
12 that's denied and one that's reserved for trial.

13 MR. KISTLER: Right.

14 MR. HAIRE: I will do my best, Your Honor. And of course
15 we'll pass it by Mr. Kistler.

16 THE COURT: Yeah.

17 MR. KISTLER: And we'll pass our expert --

18 THE COURT: Yes.

19 MR. KISTLER: -- for --

20 THE COURT: Just -- I just --

21 MR. HAIRE: Judge, just so that I know, there's one other
22 matter and I apologize, Your Honor.

23 THE COURT: Uh-huh.

24 MR. HAIRE: This may or may not be persuasive to the
25 Court, but the complaint as well as the discovery in this case

1 suggests that she was told a basis for the account closure.

2 Albeit very general --

3 THE COURT: Right.

4 MR. HAIRE: -- she was told a basis.

5 THE COURT: That's why --

6 MR. HAIRE: So I --

7 THE COURT: What's why I said, I just don't think you can
8 grant -- you can deny -- that you can grant the dismissal of
9 declaratory relief because I think there's some information --
10 there may be evidence that in fact she has been told.

11 MR. KISTLER: And Workman will say that that's false.

12 THE COURT: Correct. And that's --

13 MR. KISTLER: That the statement in the letter --

14 THE COURT: Right.

15 MR. KISTLER: -- is incorrect, but --

16 THE COURT: And that's --

17 MR. KISTLER: -- that's for another day.

18 THE COURT: -- that's why I said it's all got to be
19 decided at trial because it's so broadly written I think
20 there's some requests for relief in there that we just can't
21 grant. And I just think we have to hear at the time of trial
22 and I'm sure it'll be a subject of a motion at the close of
23 her case as to what can and can't be granted. Because I just
24 -- she asks for a lot in her declaratory relief. And some of
25 it I think we're just prohibited from lawfully doing, but not

1 all of it.

2 MR. KISTLER: Very well, Your Honor.

3 MR. HAIRE: One final housekeeping matter, Your Honor --

4 THE COURT: Sure.

5 MR. HAIRE: -- if you don't mind, Sid. This is a bench
6 trial set --

7 THE COURT: Correct.

8 MR. HAIRE: -- still for February 5th. Is that still a
9 good date?

10 THE COURT: Yeah.

11 MR. HAIRE: All right, very well.

12 THE CLERK: Retrial is 1/29.

13 MR. HAIRE: January 29th.

14 THE COURT: At 11:00.

15 [Court and Clerk confer]

16 THE COURT: Yeah. And that's when you bring your
17 exhibits and --

18 MR. HAIRE: Right.

19 MR. KISTLER: Okay. So exhibits, all that kind of stuff
20 then?

21 THE COURT: -- proposed findings of fact and conclusions
22 of law in electronic and hard copy.

23 MR. HAIRE: I think you've given us your guidelines as
24 to --

25 THE COURT: Okay.

1 MR. HAIRE: -- on bench trials. I just wasn't here for
2 the last conference so.

3 THE COURT: Okay.

4 MR. KISTLER: Great, thank you, Judge.

5 THE COURT: Thank you.

6 [Proceedings Concluded at 12:17 p.m.]

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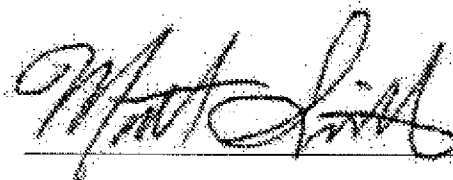
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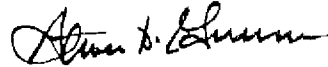
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

A handwritten signature in dark ink, appearing to read 'Matthew Smith', is written over a horizontal line.

Matthew Smith

Certified Transcriber


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DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,
Plaintiff,

vs.

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

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

) PLAINTIFF LISA JOHNSON'S
) TRIAL BRIEF

) Date of Trial: February 5, 2014

1. Introduction.

Plaintiff Lisa Johnson ("Johnson" or "Plaintiff") will prove that Wells Fargo Bank, National Association ("Wells Fargo" or "Defendant") made false, defamatory, and malicious statements concerning Johnson to a third-party and that Johnson suffered damages as a result of those statements.

As background, Johnson and Michael Kaplan ("Kaplan"), who are a couple that have been together for over ten years, maintained a joint bank account at Wells Fargo. Inexplicably, Wells Fargo decided to close Johnson's and Kaplan's joint account, as well as other Wells Fargo accounts that Johnson maintained through her company, Guitarfile, LLC ("Guitarfile").

///

1 Thereafter, Kaplan went to a Wells Fargo branch on his own accord to cash a check, at
2 which time Wells Fargo representative Arash Dounel ("Dounel") and another Wells Fargo
3 representative solicited Kaplan to open a new bank account. Kaplan asked why they would
4 solicit him to open a new account when it recently closed his joint account with Johnson. As
5 the conversation progressed, and after Dounel researched the closure on his computer, he stated
6 that Wells Fargo closed the joint account because of Johnson and falsely stated to Kaplan that
7 Johnson must have been in jail or have arrest warrants outstanding. Further, Dounel
8 recommended that Kaplan hire a private investigator to uncover Johnson's alleged prior
9 criminal conduct for himself. Dounel was acting in the scope and course of his employment at
10 Wells Fargo when he made these statements.

11 Thereafter, Kaplan confronted Johnson with Dounel's accusations, all of which are
12 demonstrably false. Wells Fargo's defamatory statements have caused Johnson substantial
13 general and special damages in an amount to be proven at trial. In addition to Johnson's
14 entitlement to monetary damages, she is also entitled to a judicial declaration that her Wells
15 Fargo accounts were not closed based upon any criminal activity regarding Johnson, as Johnson
16 has no criminal history.

17 **2. Factual background.**

18 Johnson, at all times relevant, was and is the managing member of Guitarfile. Johnson,
19 as manager of Guitarfile, opened three accounts for Guitarfile at Wells Fargo on about May 12,
20 2010.¹ The lead account number for these business accounts was a Wells Fargo account
21 number ending in #7051 ("Guitarfile Business Account").² Johnson, as manager of Guitarfile,
22 opened a Guitarfile business credit card account prior to 2011 with account number ending in
23 #2957 ("Guitarfile Credit Card Account"). Further, Johnson and Kaplan signed a consumer
24 account application to open and did open a Wells Fargo account ending in #4164 on October 2,

25
26
27 ¹ See the relevant Guitarfile account application, presented as Trial Exhibit 1.

28 ² See *id.*

1 2004 ("Joint Account").³ Kaplan was identified as the primary Joint Account holder while
2 Johnson was identified as the secondary Joint Account holder.⁴

3 Between August 15, 2011 and August 18, 2011, Wells Fargo sent letters stating that
4 Wells Fargo would unilaterally close the Guitarfile Business Account, Guitarfile Credit Card
5 Account, and Joint Account in September 2011.⁵ Wells Fargo refused to state to Johnson why
6 it unilaterally was closing these accounts. In September 2011, Wells Fargo closed the accounts
7 as stated.

8 Thereafter, on October 6, 2011, while Kaplan was in Southern California, Kaplan went
9 into a Wells Fargo branch located in Malibu, California (the "Malibu Branch") to cash a check.
10 Kaplan went to the Malibu Branch that day solely on his own behalf and not as Johnson's
11 agent. As Kaplan and Johnson planned to attend a concert later that evening, Kaplan intended
12 to cash an insurance refund check at Wells Fargo accounts for concert purchases. Kaplan had
13 no intention of discussing the Joint Account closure – or any other account closures – with
14 Wells Fargo personnel at that time. While completing Kaplan's check-cashing transaction, the
15 Wells Fargo teller reviewed Kaplan's Wells Fargo account information and stated to Kaplan
16 that he was leaving too much money in his personal checking account, that it was not safe to
17 leave that much money in his account, and that he should have Wells Fargo open a new savings
18 account for him, thereby increasing his business with Wells Fargo. Kaplan asked the teller why
19 she would solicit him to open a new account in light of Wells Fargo's recent closure of his Joint
20 Account.

21 At that point, the teller engaged Dounel – another Wells Fargo employee – who
22 introduced himself as the teller's manager. Dounel further identified himself to Kaplan as a
23 Wells Fargo premier banker and brokerage associate.⁶ Dounel then brought Kaplan to his desk,

24 ³ See the Joint Account application, presented as Trial Exhibit 2.

25 ⁴ See *id.*

26 ⁵ See Trial Exhibits 4-6.

27 ⁶ See copies of Dounel's business cards that he presented to Kaplan, presented as Trial
28 Exhibits 13-14.

1 at which point Kaplan proceeded to tell Dounel about Wells Fargo's Joint Account closure
2 letter. Dounel and Kaplan conversed about Wells Fargo's closure of the Joint Account and the
3 rationale for the closure. Dounel then asked Kaplan if he had the Joint Account closure letter
4 with him. Kaplan responded that he did not have the letter, as he did not go into the Malibu
5 Branch to discuss any of the closed accounts.

6 At Dounel's request, Kaplan then called Johnson and asked her to e-mail Dounel the
7 closure letter for the Joint Account, which Johnson agreed to do. After Johnson e-mailed
8 Dounel the Joint Account closure letter, Kaplan observed Dounel reading the letter, then
9 reviewing information on his computer screen. While Dounel was reviewing his computer
10 screen, he asked Kaplan questions about certain checks from the Joint Account. Kaplan
11 answered Dounel's questions as to the payees of those checks. Dounel then continued to
12 examine information on his computer screen. Kaplan could not see Dounel's computer screen.

13 After Dounel reviewed his computer screen, he stated to Kaplan that Johnson must have
14 been in jail or have arrest warrants and that was the reason why the Joint Account was closed.
15 However, Wells Fargo has presented no evidence that would support Dounel's statements that
16 Johnson must have been in jail or have arrest warrants, or words to that effect, as being truthful.
17 In fact, all evidence presented is to the contrary and that Dounel's statements were false.

18 Kaplan then stated to Dounel that Dounel must be mistaken regarding Johnson's alleged
19 criminal history, to which Dounel replied that he was not mistaken, and since Kaplan was a
20 person of means, Kaplan should hire a private investigator to thoroughly investigate Johnson.
21 Dounel stated, "that's what I would do if it were me," or words to that effect.

22 Dounel's comments were upsetting to Kaplan, as it was clear that Dounel was making
23 these remarks to Kaplan based on what Dounel saw on his computer. Dounel then brought an
24 additional Wells Fargo employee to his desk and introduced her to Kaplan as working in Wells
25 Fargo's private wealth department. The two Wells Fargo representatives then discussed with
26 Kaplan the prospect of opening one or more new accounts for Kaplan with Wells Fargo.
27 Kaplan stated that he did not understand how they could be talking about opening a new
28 account if they just closed the Joint Account. Dounel then stated that the Joint Account closure
was because of Johnson -- not Kaplan.

1 Later that day, Kaplan approached Johnson about Dounel's accusations and began
2 questioning her in that regard. Johnson responded to Kaplan by stating that Dounel's
3 accusations were outrageous and that Johnson had never had any run-ins with the law. Kaplan
4 then made various statements and asked multiple questions to Johnson such as, "is there stuff I
5 need to know about or worry about?" Johnson then appeared defensive and essentially stated to
6 Kaplan, "I have nothing to hide."

7 Before Dounel made his statements to Kaplan regarding Johnson's alleged criminal
8 activities, Kaplan had committed to open another joint account with Johnson at Wells Fargo
9 ("Proposed Account") for Johnson's use. Kaplan intended to deposit approximately \$3,000,000
10 into the Proposed Account to be made available to Johnson. However, after Dounel made the
11 statements to Kaplan regarding Johnson's alleged criminal activities, Kaplan decided not to
12 open the Proposed Account, leaving Johnson unable to access the proposed deposit funds of
13 approximately \$3,000,000 from the date of Dounel's statements to Kaplan to the present.

14 Approximately two weeks after Dounel made his statements to Kaplan regarding
15 Johnson's alleged criminal history, Dounel communicated with Kaplan and attempted to
16 apologize for stating that Johnson must have been in jail or had arrest warrants, or words to that
17 effect, and that Kaplan should hire a private investigator to investigate Johnson. Kaplan
18 responded that Dounel's comments had upset him and caused significant stress between
19 Johnson and Kaplan. Kaplan stated to Dounel that if Wells Fargo wanted to apologize, then
20 Wells Fargo should send Kaplan an apology letter. Thereafter, as no apology letter was
21 received, Kaplan contacted Dounel to ask for the status. Dounel responded, "I have sent the
22 letter to my management and our legal department cannot allow me to send an official letter of
23 apology. I hope the apology that I have given you thus far verbally can suffice"⁷

24 **3. Wells Fargo defamed Johnson.**

25 Wells Fargo is liable to Johnson for defamation *per se*. The elements of defamation are:
26 (1) defendant made a false and defamatory statement concerning the plaintiff; (2) an
27 unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4)

28 ⁷ See the e-mail correspondence between Kaplan and Dounel, presented as Trial Exhibit
21 at Lisa J. 0045.

1 actual or presumed damages. *See Shafer v. City of Boulder*, 896 F.Supp.2d 915, 940 (D. Nev.
2 2012); *see also Wynn v. Smith*, 117 Nev. 6, 10-11, 16 P.3d 424, 427 (2001); *Pacquiao v.*
3 *Mayweather*, 803 F.Supp.2d 1208, 1211 (D. Nev. 2011). A statement is defamatory if it would
4 tend to lower the subject in the estimation of the community, excite derogatory opinions about
5 the subject, and hold the subject up to contempt. *See K-Mart Corp. v. Washington*, 109 Nev.
6 1180, 1191, 866 P.2d 274, 281-82 (1993) (overturned on other grounds by *Pope v. Motel 6*, 121
7 Nev. 307, 114 P.3d 277 (2005)). To constitute slander *per se*, the alleged defamation must be
8 oral and must fall into one of four categories: (1) that the plaintiff committed a crime; (2) that
9 the plaintiff has contracted a loathsome disease; (3) that a woman is unchaste; or (4) the
10 allegations must be one which would tend to injure the plaintiff in his or her trade, business,
11 profession, or office. *See Nevada Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 409,
12 664 P.2d 337, 341 (1983).

13 As a general rule, only assertions of fact, not opinion, can be defamatory. However,
14 expressions of opinion may suggest that the speaker knows certain facts to be true or may imply
15 that facts exist which will be sufficient to render the message defamatory if false. *See Shafer v.*
16 *City of Boulder*, 896 F.Supp.2d, at 940. Statements of belief are defamatory if they imply the
17 existence of defamatory facts that are not disclosed to the listener. *See id.* at 941.

18 Here, Dounel's statements to Kaplan that Johnson must have been in jail or have arrest
19 warrants outstanding are demonstrably false, as Johnson has no criminal history. Dounel's
20 subsequent wrongful confirmation to Kaplan that Johnson had a criminal history and that
21 Kaplan should hire a private investigator to investigate Johnson were likewise false and
22 wrongful. Dounel's statements are defamatory because they disparage Johnson as an alleged
23 criminal and subject her to contempt and lower esteem in the community. In fact, Dounel's
24 statements constitute slander *per se*, as Dounel falsely stated to Kaplan – a third party – that
25 Johnson committed a crime. It was clear that Dounel made these statements to Kaplan based on
26 what Dounel saw on his computer screen. Thus, Dounel wrongfully implied to Kaplan that
27 Wells Fargo's computer system contained facts supporting Johnson's alleged criminal history,
28 rendering Dounel's statements defamatory.

Further, Dounel made these defamatory statements intentionally and maliciously, as Dounel knowingly besmirched Johnson's status as a law-abiding citizen to Kaplan without any basis whatsoever. Dounel was acting in the scope and course of his Wells Fargo employment at the time the aforementioned statements were made to Kaplan, thereby imputing liability to Wells Fargo under a theory of *respondeat superior*. See *National Convenience Stores, Inc. v. Fantauzzi*, 94 Nev. 655, 657, 584 P.2d 689, 691 (1978) (holding that an employer is vicariously responsible for acts of its employees when the employee is under the employer's control).

4. Johnson is entitled to special, general, and punitive damages.

Wells Fargo's defamation has damaged Johnson. In all slander actions, special damages must be proven. See *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1194, 866 P.2d 274, 283 (1993) (overruled in part on other grounds by *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005)). Special damages are quantifiable monetary losses that flow directly from the injury to reputation caused by the defamation. See *id.*, 114 P.3d, at 284. With slander *per se*, the plaintiff is entitled to presumed, general damages. See *Bongiovi v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006). General damages are those awarded for loss of reputation, shame, mortification, and hurt feelings. See *id.* General damages are presumed upon proof of the defamation alone because that proof establishes that there was an injury that damages plaintiff's reputation and because of the impossibility of affixing an exact monetary amount for present and future injury to the plaintiff's reputation, wounded feelings, and humiliation, loss of business, and any consequent physical illness or pain. See *id.* An award of presumed damages must be supported by competent evidence but not necessarily of the kind that assigns an actual dollar value to the injury. See *id.*

Further, punitive damages may be awarded when the plaintiff proves by clear and convincing evidence that the defendant is guilty of oppression, fraud or malice, express or implied. See NRS 42.005(1) (2013). "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person. See NRS 42.001(4). "Malice, express or implied" means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or

1 safety of others. *See* NRS 42.001(3). "Conscious disregard" means the knowledge of the
2 probable harmful consequences of a wrongful act and a willful and deliberate failure to act to
3 avoid the consequences. *See* NRS 42.001(1).

4 Here, Wells Fargo's actions have subjected Johnson to special damages based on proof
5 at trial. Wells Fargo's actions have also subjected Johnson to general damages, which are
6 presumed and awardable due to Wells Fargo's slander *per se* against Johnson. Further, Wells
7 Fargo's wrongful conduct entitles Johnson to punitive damages, as Dounel made the statements
8 regarding Johnson's alleged criminal activities to Kaplan with knowledge of the probable
9 harmful consequences and a deliberate failure to act to avoid those consequences. Johnson is
10 further entitled to attorney's fees and costs in an amount to be determined in a post-trial motion.

11 **5. Johnson is entitled to declaratory relief.**

12 Pursuant to NRS 30.030, "Courts of record within their respective jurisdictions shall
13 have power to declare rights, status and other legal relations whether or not further relief is or
14 could be claimed. No action or proceeding shall be open to objection on the ground that a
15 declaratory judgment or decree is prayed for. The declaration may be either affirmative or
16 negative in form and effect; and such declarations shall have the force and effect of a final
17 judgment or decree."

18 Here, Wells Fargo will present no evidence that Johnson has a criminal history, nor
19 could it. Johnson has no criminal record and, as such, is entitled to a declaration that Johnson's
20 Wells Fargo accounts were not closed based upon any criminal activity regarding Johnson.

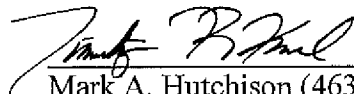
21 ///

1 **6. Conclusion.**

2 Johnson will prove that Wells Fargo defamed her and that she is entitled to special,
3 general, and punitive damages based on Wells Fargo's conduct. Further, Johnson will prove
4 that she is entitled to a declaration that her Wells Fargo accounts were not closed based upon
5 any criminal activity regarding Johnson.

6 DATED this 3rd day of February, 2014.

7 HUTCHISON & STEFFEN, LLC

8
9 

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 30th day of February, 2014, I caused the above and foregoing document entitled **PLAINTIFF LISA JOHNSON'S TRIAL BRIEF** to be served as follows:

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DISTRICT COURT
CLARK COUNTY, NEVADA

11 LISA JOHNSON,

12 Plaintiff,

13 v.

14 WELLS FARGO BANK, NATIONAL
15 ASSOCIATION,

16 Defendant.

CASE NO.: A-12-655393-C
DEPT. NO.: 26

WELLS FARGO BANK, N.A.'S
EDCR 7.27 CIVIL TRIAL
MEMORANDUM

17
18 Defendant Wells Fargo Bank, National Association submits the following EDCR 7.27
19 civil trial memorandum.

20 A. Factual overview

21 Lisa Johnson is the long-time girlfriend of Michael Kaplan. The two have lived together
22 since 2000. Kaplan supports Johnson financially and serves as her financial advisor and attorney.

23 In September 2004, Kaplan opened a bank account with Wells Fargo Bank, N.A.
24 ("WFB"). A few days later, Johnson was made a co-owner of the account (the "Joint Account").
25 In August 2011, WFB notified Kaplan and Johnson that it had decided to close the Joint
26 Account. WFB also notified Johnson that it had decided to close an operating account and
27

1 business credit card account in the name of Guitarfile, LLC, a Nevada limited liability company
2 for which Johnson is the managing member. The agreements governing the accounts state that
3 either an account holder or WFB, in its sole discretion, may close an account anytime.

4 After receiving notice of WFB's decision to close her accounts, Johnson contacted WFB
5 to determine why the accounts were being closed. Kaplan also contacted WFB to find out why
6 the Joint Account was being closed. WFB refused to disclose information to Johnson or Kaplan
7 regarding the reason for WFB's closure of the accounts, including the Joint Account.

8 On October 6, 2011, Kaplan went into a WFB branch in Malibu, California to cash a
9 check drawn on another WFB account. While there, Kaplan was invited by the bank teller to
10 open a separate savings account. Kaplan told the teller that he thought the request was strange
11 since WFB had recently closed the Joint Account. Kaplan then met with WFB employee, Arash
12 Dounel, who brought Kaplan to his desk. Kaplan told Dounel of WFB's closure of the Joint
13 Account. During their conversation, Kaplan asked Dounel to contact Johnson to have her email
14 him (Dounel) the closure letter from WFB. Dounel and Johnson had a telephone conversation,
15 after which Johnson emailed the closure letter. Prior to speaking with Johnson on the telephone,
16 Dounel and Johnson had neither met nor spoken to one another.

17 Johnson admits in retrospect that Kaplan had her consent and authority to discuss her
18 closed accounts with Dounel. Kaplan, after all, was her partner, financial advisor and attorney.
19 At the time, Dounel's authority to discuss the accounts with Kaplan was reasonably based on
20 implied/apparent authority from Johnson to talk with Kaplan. After all, she had spoken to him
21 and had emailed him the closure letter knowing Kaplan was present. Moreover, Dounel's
22 authority to discuss the accounts with Kaplan was express in the account agreement whereby
23 WFB may act on the instructions of any co-owner of an account (or a co-owner's legal
24 representative).

1 Dounel in turn looked the Joint Account up on his computer, which indicated only that
2 the Joint Account was closed. Dounel told Kaplan that he was not sure why the Joint Account
3 was closed. With Kaplan present, Dounel telephoned WFB's internal support team, the Banker
4 Connection, in an attempt to obtain more information. The Banker Connection did not tell
5 Dounel why the Joint Account was closed; only that it was closed due to an investigation.
6 Dounel told Kaplan about his conversation with the Banker Connection and that he (Dounel) did
7 not have any other information; in his capacity with WFB he was not able to obtain the specific
8 information for the Joint Account's closure. Kaplan persisted in trying to get information about
9 why the Joint Account was closed. Dounel gave Kaplan a toll-free WFB telephone number to
10 call for additional assistance.

11
12 Kaplan alleges that during his conversation with Dounel, Dounel told him that Johnson
13 "must have some type of criminal background or have arrest warrants out for her." Kaplan also
14 alleges that Dounel suggested that Kaplan "should hire a private investigator to investigate
15 [Johnson], as [Johnson] must be in trouble with the law for the accounts to have been closed."
16 Dounel does not recall telling Kaplan these things; however, he does not believe he would speak
17 like that or say such things about a bank client.¹
18
19

20 ¹ Johnson's complaint describes the exchange between Kaplan and Dounel as follows:

21 *Kaplan approached [Dounel]...and asked him why the accounts were closed. Dounel at first*
22 *stated that he could not see any reason why Wells Fargo closed the accounts. However, as the*
23 *conversation progressed, Dounel asserted that Johnson must have some type of criminal*
24 *background, thereby suggesting that the accounts were closed due to alleged criminal activity by*
25 *Johnson. Dounel further asserted to Kaplan that Johnson "must have arrest warrants outstanding."*
26 *Dounel also advised Kaplan that he "should hire a private investigator to check up on [Johnson]."*
27 *[Comp. ¶¶ 10-14 (emphasis added)]*

28 In her responses to interrogatories, Johnson describes the Kaplan-Dounel exchange as follows:

[Kaplan] went into the Wells Fargo Bank Branch...Malibu, California to cash a check. While Mr. Kaplan was cashing the check, the teller stated to him that he was leaving too much money in his account and that he should open a separate savings account. At that point, Mr. Kaplan told the teller that was strange since Wells Fargo had recently closed his other account at Wells Fargo. The teller then brought [Dounel] over and introduced him to Mr. Kaplan, telling him that Mr. Dounel could help him. Mr. Dounel brought Mr. Kaplan to his desk to speak. Mr. Kaplan advised

1 Kaplan alleges he later told Johnson about what Dounel had said and asked Johnson
2 about any criminal background or involvement she had. Johnson denied any criminal
3 background or criminal involvement. Despite his long-time relationship with Johnson and
4 Johnson's assurances that she was not, nor had she ever, engaged in criminal activity, Kaplan
5 contacted myriad people both within and without WFB attempting to find out exactly why the
6 Johnson's accounts were closed. There is no evidence that Dounel communicated his alleged to
7 anyone but Kaplan.
8

9 Johnson alleges Dounel's statements have affected her in the following ways (in order of
10
11

12 *Mr. Dounel of Wells Fargo's closure of the joint account with Plaintiff. Mr. Kaplan asked Mr*
13 *Dounel to communicate with Plaintiff so that she could e-mail him the closure letters. Following a*
14 *phone discussion between Mr. Dounel and Plaintiff, the letters were emailed to Mr. Dounel.*
15 *Thereafter, Mr. Dounel told Mr. Kaplan that Plaintiff must have some type of criminal background*
16 *or have arrest warrants out for her, implying that Wells Fargo closed the accounts due to Plaintiff's*
17 *alleged criminal activity. Mr. Dounel also advised Mr. Kaplan that Mr. Kaplan should hire a*
18 *private investigator to investigate Plaintiff, as Plaintiff must be in trouble with the law for the*
19 *accounts to have been closed. [Trial Exhibit 30: Pl. Am. Resp to Interrog. No. 1 (emphasis added)]*

20 Kaplan describes his encounter with Dounel as follows:

21 [A]fter I approached a Wells Fargo teller at the Malibu Branch to cash my check; and as the teller
22 was cashing the check, I believe that she looked at my account balance, following which she stated
23 that I was leaving too much money in my account. The teller stated to me that I should have Wells
24 Fargo open a new savings account for me. I was bewildered as to why a Wells Fargo
25 representative would ask me to open a new account when Wells Fargo recently closed my joint
26 account. Accordingly, *I asked the teller why she would solicit me to open a new account in light of*
27 *the joint account closure.* At that point, the teller brought over Arash Dounel ("Dounel") - another
28 Wells Fargo employee - who introduced himself as the teller's manager. Dounel then brought me
to his desk, at which point *I proceeded to tell Dounel about Wells Fargo's joint account closure*
letter. Dounel then asked me about my background, in response to which I told Dounel that I had
sold my business a few years earlier. Dounel also asked me about my banking relationships, to
which I provided information to Dounel regarding my other bank accounts. *Dounel then me [sic]*
asked if I had the joint account closure letter with me. I responded that I did not have the letter, as
I did not go into the Malibu Branch to discuss that account. However, I stated to Dounel that
Johnson probably had a copy of the letter. Dounel and I then called Johnson and spoke with her.
Dounel" asked Johnson to email him the closure letter, which Johnson agreed to do...After
Johnson e-mailed Dounel the letter, I observed Dounel reading the letter, then looking at
something on his computer. After Dounel looked at his computer, he stated to me that Johnson
must have been in jail or have arrest warrants. I then stated to Dounel that he must be mistaken, to
which Dounel replied that I was a person of means and that I should hire a private investigator to
thoroughly investigate Johnson. Dounel stated, "that's what I would do if it were me." [Trial
Exhibit 28: Decl. of Kaplan (emphasis added)]

1 priority).²

- 2 1. She was defamed.
- 3 2. Her 15-year relationship with Kaplan has been strained.
- 4 3. She had to hire a lawyer.
- 5 4. For years, she has asked Kaplan to set up some kind of account to where if he
- 6 passed away she would not be left financially devastated. He wants to set up such
- 7 a joint account at WFB with a balance of approximately \$3 million, but WFB will
- 8 not open an account if she is identified as a co-owner. Now, Kaplan does not want
- 9 to open any joint account with her.
- 10 5. She will need to establish lines of credit in conjunction with launching a product
- 11 line to accompany the publication of her book about guitar photography.
- 12 6. She was embarrassed by having to disclose the closure of her WFB accounts to
- 13 her publicist.

14 **B. Procedural overview**

15 Johnson sued WFB for (1) defamation; (2) false light invasion of privacy; and (3)

16 declaratory relief requesting (a) that the Court compel WFB to disclose its reasons for closing

17 Johnson's accounts, and (b) that the Court compel WFB to disclose why Dounel "alleged that

18 [Johnson] was/is involved in criminal activities." [Comp. ¶¶ 28-46]

19 The Court has already granted summary judgment in favor of WFB as to Johnson's false

20 light invasion of privacy claim. The Court has also already determined that "[WFB] is not

21 required to disclose the reasons why it closed [Johnson's] accounts, as this information is

22 protected under the Bank Secrecy Act and other federal law authorities." [DCRR 2:14-16]

23 WFB denies Dounel made the statements he is alleged to have made to Kaplan about

24 Johnson. If it is proven that Dounel did make the statements, WFB denies the statements are

25 actionable.

26 //

27

28 ² The damages and their order of priority were set forth by Johnson in her deposition.

1 C. The law applicable to the facts

2 1. Defamation

3 To prove defamation, a plaintiff must establish the following elements: (1) the defendant
4 made a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication
5 of the statement was made to a third person; (3) the defendant was at least negligent in making
6 the statement; and (4) the plaintiff sustained actual or presumed damages as a result of the
7 statement. *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005); *Pegasus v. Reno*
8 *Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). If Johnson proves that Dounel
9 made the statements he is alleged to have made to Kaplan, the statements are not actionable.
10

11 a. The statements were not defamatory.

12 Defamation requires publication of a false statement of fact. *Pegasus*, 118 Nev. at 714, 57
13 P.3d at 87 (emphasis added). Statements of opinion are not actionable. *PETA v. Bobby Berosini,*
14 *Ltd.*, 111 Nev. 615, 622, 895 P.2d 1269, 1275 (1995). The test for whether a statement
15 constitutes fact or opinion is “whether a reasonable person would be likely to understand the
16 remark as an expression of the source’s opinion or as a statement of existing fact.” *Lubin v.*
17 *Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (quoting *Nevada Ind. Broadcasting v. Allen*,
18 99 Nev. 404, 410, 664 P.2d 337, 342 (1983), and *PETA*, 111 Nev. at 624, 895 P.2d at 1275). An
19 evaluative opinion conveys “the publisher’s judgment as to the quality of another’s behavior and,
20 as such, it is not a statement of fact.” *Id.*
21

22 A reasonable person would not likely have understood Dounel’s statements to be
23 statements of existing fact. The nature and context of Dounel’s statements confirm they were but
24 statements of his evaluative opinion made in response to Kaplan’s inquiry about the closed
25 account. Dounel was not privy to the specific reasons for WFB’s decision to close the accounts;
26 only that the accounts were closed due to an investigation. The nature or results of the
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1 investigation was not known to Dounel. In the face of Kaplan's prodding to know why the
2 accounts were closed, Dounel offered Kaplan a possibility – that the accounts were closed due to
3 criminal activity on the part of Johnson. In doing so, Dounel used the equivocal, non-committal
4 phrases "must have" and "must be" in presenting the possibility. These phrases belie statements
5 of fact. To the contrary, the phrases evidence Dounel's lack of factual information, which, in
6 turn, led to his offering an evaluative opinion in response to Kaplan's inquiry about the accounts.
7 Stated differently, Dounel's statements were his evaluative opinion about the quality of
8 Johnson's possible behavior leading to the closure of her accounts. The statements were
9 therefore not defamatory.
10

11 **b. The statements were not made to a "third person."**

12 For purposes of establishing a defamation claim, "[p]ublication...is the communication
13 of the defamatory matter to some third person..." *Id.* (quoting *Jones v. Golden Spike Corp.*, 97
14 Nev. 24, 26, 623 P.2d 970, 971 (1981). Defamatory statements made only to the person alleging
15 defamation are not actionable. *Simpson v. Mars Inc.*, 113 Nev. 188, 192, 929 P.2d 966, 968
16 (1997) (adopting position of Restatement (Second) of Torts § 577(1) that "publication of
17 defamatory matter is its communication intentionally or by negligent act to one other than the
18 person defamed"). Publication of defamatory statements to an agent of the plaintiff who is acting
19 at plaintiff's behest and on her behalf is tantamount to a publication to the plaintiff herself, and
20 as such does not fulfill the publication requirement. *See Ning Ye v. Holder*, 667 F.Supp.2d 103,
21 105 fn. 2 (D.C.D.C. 2009); *30 River Court East Urban Renewal Co. v. Capograsso*, 383
22 N.J.Super. 470, 477, 892 A.2d 711, 715 (2006); *Delval v. PPG Industries, Inc.*, 590 N.E.2d
23 1078, 1080-81 (Ct.App.Ind. 1992); *Kirk Jewelers v. Bynum*, 222 Miss. 134, 139, 75 So.2d 463,
24 464 (1954); *Beck v. Tribert*, 312 N.J.Super. 335, 350, 711 A.2d 951, 959 (1998); *McDaniel v.*
25 *Crescent Motors*, 249 Ala. 330, 332, 31 So.2d 343, 344 (1947); *Mims v. Metropolitan Life Ins.*
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Co., 200 F.2d 800, 802 (5th Cir. 1952); *see also* Restatement (Second) of Torts § 577 cmt. (e) (1977) (“[I]f the [allegedly defamatory] communication is in answer to a letter or a request from the other or his agent, the publication may not be actionable in defamation”). Dounel’s statements were uttered in response to the inquiry of Kaplan who was acting on Johnson’s behest and on her behalf with her full consent and authority. *See* Restatement (Second) of Agency § 1 (1958) (agency results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act). Kaplan’s agency and authority to inquire about the accounts was obvious to Dounel. First, Dounel spoke to Johnson who consented to emailing him the closure letter. This conveyed implied authority to discuss the accounts with Kaplan. Second, Dounel’s authority to discuss the accounts with Kaplan was express in the account agreement which stated that WFB may act on the instructions of any co-owner of an account (or a co-owner’s legal representative). Under the circumstances, Dounel’s statements were made as if made to Johnson herself and not to any “third person” as required to make out a defamation claim.

c. **The statements were privileged and there is no proof of actual malice such that the privilege was abused.**

Nevada recognizes a common interest privilege that protects publication of defamatory statements if the defendant made the statement “in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or a duty, if it is made to a person with a corresponding interest or duty.” *Lubin v. Kunin*, 117 Nev. 107, 115, 17 P.3d 422, 428 (2001) (citing *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983) and *Bank of America Nevada v. Bourdeau*, 115 Nev. 263, 982 P.2d 474 (1999)); *Williams v. Univ. Med. Ctr of Southern Nev.*, 688 F.Supp.2d 1134, 1146-47 (D.Nev. 2010); *see also* *Thomas v. Kaufmann’s*, 436 F.Supp. 293, 297 (W.D.Pa. 1977) (alleged defamatory statements by defendant to plaintiff’s father made as a result of demand for explanation after

1 plaintiff was accused of stealing were privileged); *Millsaps v. Bankers Life Co.*, 35 Ill.App.3d
2 735, 742, 342 N.E.2d 329, 335 (1976) (alleged defamatory letter directed to plaintiff's duly
3 authorized agent in response to agent's inquiry was equivalent to a publication to plaintiff
4 himself and therefore privileged and not actionable); *Hellesen v. Knaus Truck Lines, Inc.*, 370
5 S.W.2d 341 (Mo. 1963) (publication of defamatory statement to plaintiff's union agent was
6 privileged and thus not actionable because it was procured or invited by plaintiff or his agent). In
7 order to overcome the privilege, the plaintiff must prove the defendant abused the privilege by
8 publishing the defamatory communication with actual malice. *Pope v. Motel 6*, 121 Nev. 307,
9 317, 114 P.3d 277, 283-84 (2005); see e.g., *Lever v. Community First Bancshares, Inc.*, 989 P.2d
10 634, 638-39 (Wyo. 1999) (statements made by bank loan officer allegedly impugning character
11 of prospective borrower's real estate agent were conditionally privileged and agent failed to
12 demonstrate actual malice).

13
14
15 The common interest privilege applies to protect Dounel's statements because the
16 communications were made in response to Johnson's inquiries through her agent, Kaplan.
17 Accordingly, Johnson consented to, authorized, invited or procured the statements, which
18 statements involved a subject matter in which the parties had a common interest, namely the
19 accounts. The only way for Johnson to rebut the privilege is to prove that Dounel acted with
20 actual malice. Actual malice is a stringent standard that is proven by demonstrating that a
21 "statement is published with knowledge that it was false or with reckless disregard for its
22 veracity. *Pope*, at 317 (quoting *Pegasus*, 118 Nev. at 722, 57 P.3d at 92). Such malice involves
23 the subjective state of mind of the defendant and "focuses on the defendant's belief." *Schwartz v.*
24 *estate of Greenspun*, 110 Nev. 1042, 1046 n. 2, 881 P.2d 638, 641 n. 2 (1984). In this case,
25 Dounel's statements may have been unartful and careless, but they were not made with actual
26 malice. They could not have been because Dounel did not know enough about the reasons for
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28

1 WFB closing Johnson's accounts. He could not have known his statements were false. Moreover,
2 he was simply trying to assist Kaplan with a possible explanation for the closure of the accounts.

3 **d. Johnson has not sustained any damages or has sustained only nominal**
4 **damages as a result of Dounel's statements.**

5 To be defamatory, a statement must harm the plaintiff's reputational interest. "A
6 communication is defamatory if it tends so to harm the reputation of another as to lower him [or
7 her] in the estimation of the community or to deter third persons from associating or dealing with
8 him [or her]." Restatement (Second) of Torts § 558; *K-Mart Corp. v. Washington*, 109 Nev.
9 1180, 866 P.2d 274 (1993); Nevada Jury Instructions-Civil, 2011 Ed. Inst. 6IT.10. Arguably,
10 none of Johnson's alleged damages relate directly to Dounel's alleged comments. Rather,
11 Johnson's anger, stress and anxiety relate more to the fact that WFB elected to close her
12 accounts. Specifically, there is no evidence that Johnson has been or will be denied lines of credit
13 in relation to her merchandising venture as a result of Dounel's alleged statements.³ As for
14 disclosing to her publicist that her WFB accounts were closed, this was Johnson's choice. The
15 disclosure was not necessary and did not relate to Dounel's alleged statements. Because Dounel
16 made the alleged defamatory statements only to Kaplan, any harm to Johnson would relate to her
17 reputation with Kaplan. Harm to Johnson's reputation as to lower her in the estimation of the
18 community is not implicated. Any such harm resulted solely from the re-publication of Dounel's
19 statements by Johnson and/or Kaplan. There is no evidence that Dounel made his
20 communications known to anyone else.

21 Johnson may be awarded special damages only upon proof of actual injury or
22 loss. Special damages are quantifiable monetary losses that flow directly from the injury to
23 reputation caused by the defamation. *Branda v. Sanford*, 97 Nev. 643, 647, 637 P.2d 1223, 1226
24
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26

27
28 ³ Incidentally, since WFB's closure of her accounts, Johnson has opened one or more demand deposit accounts at Chase Bank with no difficulty.

(1981). Here, Johnson is unable to sufficiently establish any quantifiable losses flowing from Dounel's alleged statement. She has not sought medical help or bona fide psychological counseling for her alleged harm. Any other claimed special damages are mere speculation. Dounel's statements may constitute defamation *per se*. A statement is considered slander *per se*, and thus actionable without a showing of special damages, if it imputes that the plaintiff has committed a crime. *Branda*, 97 Nev. at 646, 637 P.2d at 1225; *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005). Johnson is entitled to an award of general damages for the "effects of the defamation on her, including loss of reputation [with Kaplan], shame, mortification, and hurt feelings." *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1195, 866 P.2d 274, 284 (1993) (receded from on other grounds by *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005)). The law assumes she has suffered some such harm. Johnson may receive compensation for the assumed harm in an amount that is reasonable and commensurate with the circumstances. At least a nominal sum, such as one dollar, must be awarded. *See* CACI 1704.

In determining the amount of general damages to award, it is appropriate to consider Johnson's reputation with Kaplan when Dounel's statements were made. Consideration of all of the circumstances surrounding the making of the statements is also appropriate. Nominal damages are awarded because the defamatory statements were of an insignificant character so that no substantial harm has been done to Johnson's reputation, or there is no proof that serious harm has been done to her reputation. Nominal damages are also awarded when they are the only damages claimed and the action is brought for the purpose of vindicating Johnson's character by a determination that the defamatory statements were false.

In this case, Johnson is entitled to only nominal damages if she is successful in convincing the Court that Dounel's statements are actionable as defamation.

//

1 **2. Punitive damages**

2 There is no basis for an award of punitive damages because WFB cannot be held liable
3 for punitive damages under NRS 42.007, and because there is insufficient proof that Dounel
4 acted with oppression, fraud or malice as required under NRS 42.005.

5 NRS 42.007 states as follows in relevant part:

6 [I]n an action for the breach of an obligation in which exemplary or punitive
7 damages are sought pursuant to subsection 1 of NRS 42.005 from an employer for
8 the wrongful act of his or her employee, the employer is not liable for the
9 exemplary or punitive damages unless:

10 (a) The employer had advance knowledge that the employee was unfit for the
11 purposes of the employment and employed the employee with a conscious
12 disregard of the rights or safety of others;

13 (b) The employer expressly authorized or ratified the wrongful act of the
14 employee for which the damages are awarded; or

15 (c) The employer is personally guilty of oppression, fraud or malice, express
16 or implied.

17 If the employer is a corporation, the employer is not liable for exemplary or
18 punitive damages unless the elements of paragraph (a), (b) or (c) are met by an
19 officer, director or managing agent of the corporation who was expressly
20 authorized to direct or ratify the employee's conduct on behalf of the corporation.

21 Johnson cannot prove that an officer, director or managing agent of WFB with express
22 authorization to direct or ratify Dounel's conduct had advance knowledge that Dounel was unfit
23 for the purposes of his employment and employed him with a conscious disregard of the rights or
24 safety of others. Johnson also cannot prove that an officer, director or managing agent of WFB
25 expressly authorized or ratified Dounel's wrongful act; neither can Johnson prove that WFB
26 itself is guilty of oppression, fraud or malice. Accordingly, punitive damages against WFB
27 cannot be awarded.

28 In addition, there is insufficient proof that Dounel acted with oppression, fraud or malice
in making the alleged statements. The circumstances of the conversation between Dounel and
Kaplan, as well as the qualifying language of the statements, removes the statements from a
determination that he uttered them with the intent to injure Johnson or that his conduct was

despicable and engaged in with a conscious disregard of Johnson's rights or safety. See NRS 42.005 and 42.001.

3. Declaratory relief

Johnson's claim for declaratory relief is without merit. The Court has previously ordered that "[WFB] is not required to disclose the reasons why it closed [Johnson's] accounts, as this information is protected under the Bank Secrecy Act and other federal law authorities." Any other requests for relief included within Johnson's claim for declaratory relief are subsumed in the Court's determination of Johnson's defamation claim.

D. Conclusion

Dounel did not make the statements he is alleged to have made to Kaplan. However, even if the statements were made, they are not actionable as defamation. In addition, there is no basis to award Johnson punitive damages. Finally, Johnson's requests for declaratory relief are without merit. As already determined by the Court, WFB is not required to disclose the reasons why it closed Johnson's accounts, as this information is protected under the Bank Secrecy Act and other federal law authorities. Further, because Johnson's claim for defamation is not legally cognizable, there is no basis to compel WFB to disclose why Dounel alleged Johnson was or is involved in criminal activities.

The Court should order that judgment be entered for WFB. Alternatively, the Court should award Johnson only nominal compensatory damages on her defamation cause of action.

DATED: February 3, 2014

SMITH LARSEN & WIXOM

By: 

Paul M. Haire, Esq.

Nevada Bar No. 5656

1935 Village Center Circle

Las Vegas, Nevada 89134

Attorneys for Defendant

Page 13 of 14

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing WELLS FARGO BANK, N.A.'S EDCR 7.27
CIVIL TRIAL MEMORANDUM is hereby acknowledged.

DATED: February 4, 2014

HUTCHISON & STEFFEN, LLC

By: Joseph F. Kistler, Esq.

Joseph F. Kistler, Esq.

Timothy R. Koval, Esq.

10080 West Alta Dr., #200

Las Vegas, NV 89145

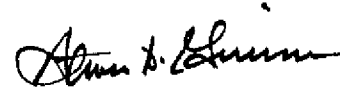
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CLERK OF THE COURT

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SMITH LARSEN & WIXOM
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON,

Plaintiff,

CASE NO.: A-12-655393-C
DEPT. NO.: 26

v.

WELLS FARGO BANK, NATIONAL
ASSOCIATION,

Defendant.

**JOINT PRE-TRIAL
MEMORANDUM**

Plaintiff Lisa Johnson ("Plaintiff" or "Johnson") and Defendant Wells Fargo Bank, National Association ("Defendant" or "WFB") submit their joint pretrial memorandum. Pursuant to EDCR 2.67, the parties held a telephonic pretrial conference on January 17, 2014. Timothy R. Koval, Esq. attended the pretrial conference on Johnson's behalf and Paul M. Haire, Esq. attended the conference on WFB's behalf.

I. Statement of the case

Lisa Johnson alleges that Arash Dounel, an employee of WFB, made defamatory statements about her to her long-time boyfriend Michael Kaplan concerning WFB's decision to close a bank account owned jointly by Johnson and Kaplan. Specifically, Johnson alleges Dounel told Kaplan that Johnson must have a criminal background, that Johnson must have arrest warrants outstanding,

1 and that Kaplan should hire a private investigator to check up on Johnson. Johnson denies any
2 criminal background. For its part, WFB denies the statements were made, and even if made, the
3 statements are not actionable.

4 **II. Plaintiff's claims**

5 Johnson originally asserted claims for defamation, false light invasion of privacy, and
6 declaratory relief. The Court granted WFB summary judgment as to Johnson's false light claim.

7 Johnson seeks the following relief:

- 8 1. Compensatory damages in excess of \$10,000, plus interest at the legal rate for each
9 applicable claim;
- 10 2. Punitive damages in excess of \$10,000, plus interest at the legal rate for each
11 applicable claim;
- 12 3. Declaratory relief; and
- 13 4. Attorneys' fees, costs, and interest.

14 **III. Defendant's affirmative defenses**

- 15 1. Plaintiff fails to state a claim upon which relief can be granted.
- 16 2. Plaintiff's claims are barred by the doctrines of estoppel and/or waiver.
- 17 3. Plaintiff's claims are barred by the doctrine of release.
- 18 4. Plaintiff's claims are barred, in whole or in part, by the doctrine of justification.
- 19 5. Plaintiff's claims are barred by agreement and satisfaction of its terms.
- 20 6. Plaintiff's claims are barred by the doctrines of unclean hands, *in pari delicto*, and/or
21 laches.
- 22 7. Plaintiff's claims are barred or limited by Plaintiff's own conduct and/or negligence.
23
24 The damages, if any, sustained by Plaintiff were the result of or caused by the fault,
25 carelessness, contributory negligence, and/or comparative negligence of Plaintiff,
26 which operates to eliminate or reduce any award.
27
28

- 1 8. Plaintiff's claims are barred, by the applicable statutory periods of limitation,
2 preclusion, or otherwise by the passage of time.
- 3 9. Plaintiff has not sustained any damages and/or has failed to mitigate her alleged
4 damages.
- 5 10. The damages Plaintiff is alleged to have suffered, if any, are the result of actions of
6 third parties over whom WFB has no influence or control, which further entitles WFB
7 to contribution and/or indemnification.
- 8 11. WFB complied with applicable state and federal statutes, constitutional rights, rules,
9 and regulations, and the claims of Plaintiff are barred or limited, in whole or in part,
10 by such provisions, statutes, rights, rules, and regulations.
- 11 12. WFB acted in accordance with reasonable and customary commercial and lending
12 practices, in good faith, and with ordinary care; and its actions did not substantially
13 contribute to the damages, if any, allegedly sustained by Plaintiff.
- 14 13. This matter may be subject to federal diversity jurisdiction. Further, this action and/or
15 a portion of these proceedings may be subject to federal subject matter jurisdiction.
- 16 14. Plaintiff's claims are barred or limited by the doctrines of ratification, confirmation,
17 and acquiescence.
- 18 15. Plaintiff's claims are barred or limited by the doctrines of actual, apparent, and/or
19 ostensible authority, including the authority and representations of Plaintiff upon
20 which WFB reasonably and justifiably relied.
- 21 16. Plaintiff's claims are barred by novation and/or accord and satisfaction.
- 22 17. Plaintiff's claims are barred by the contract doctrines of integration and merger.
- 23 18. Plaintiff's complaint fails to set forth certain allegations and/or claims with
24 particularity as required by NRCP 9(b).

- 1 19. There has been no fraud, malice, or oppression, and the claims for punitive damages,
2 if any, are barred or limited by the provisions of NRS 42.005 and applicable case law.
3 There has been no conscious or willful disregard of the rights of Plaintiff. Further,
4 such damages are subject to constitutional restrictions and limitations.
- 5 20. Plaintiff's claims are subject to the applicable provisions of any agreement between
6 WFB and Plaintiff.
- 7 21. There is no special or fiduciary relationship between Plaintiff and WFB.
- 8 22. Plaintiff has failed to exhaust all alternate remedies, including arbitration.
- 9 23. Plaintiff is not entitled to declaratory relief under NRS 30.010 *et seq.* and applicable
10 case law.
- 11 24. Plaintiff's claims are barred and/or preempted, in whole or in part, by federal law
12 including, without limitation, the Bank Secrecy Act (31 USC § 5311 *et seq.* and 31
13 CFR Chapter X, formerly 31 CFR Part 103).
- 14 25. Plaintiff's claims are barred, in whole or in part, by principles of truth, duty or interest,
15 consent, immunity, fair comment, lack of negligence, lack of malice, and privilege,
16 whether absolute, qualified, or conditional.
- 17 26. Plaintiff's complaint does not state a sufficient claim for relief in that the alleged
18 statements, if any, were expressions of opinion, and were not made with knowledge of
19 their falsity, false light, or with reckless disregard for their truth. Further, the alleged
20 statements, if any, were not publicly made and WFB did not place Plaintiff in the
21 public light.
- 22 27. WFB incorporates all other defenses enumerated in NRCP 8, which defenses are
23 incorporated for the purpose of not waiving any such defense.

24 //

25 //

1 **IV. Abandoned claims or defenses**

2 **A. Claims**

3 None

4 **B. Defenses**

- 5 • Plaintiff's claims are barred by the doctrines of estoppel and/or waiver (#2).
- 6 • Plaintiff's claims are barred, by the applicable statutory periods of limitation,
- 7 preclusion, or otherwise by the passage of time (#8).
- 8 • Plaintiff's claims are barred by novation and/or accord and satisfaction (#16).
- 9 • Plaintiff's claims are barred by the contract doctrines of integration and merger (#17).
- 10 • Plaintiff's complaint fails to set forth certain allegations and/or claims with
- 11 particularity as required by NRCP 9(b) (#18).
- 12 • Plaintiff's claims are barred, in whole or in part, by the principle of truth (#25 in part).
- 13
- 14

15 **V. Exhibits**

16 **A. Stipulated exhibits**

17

18

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| Ex. # | Description | Bates Nos. |
|-------|--|---------------------------------|
| 1 | Business account application for accounts ending 7051, 7036 and 4981 | WFB 0259-263 |
| 2 | Consumer account application for account ending 4164 | WFB 001-002 |
| 4 | Letter from Wells Fargo dated August 18, 2011 | Lisa J. 008 |
| 5 | Letter from Wells Fargo dated August 15, 2011 | Lisa J. 007 |
| 6 | Letter from Wells Fargo dated August 18, 2011 | Lisa J. 006 |
| 7 | Emails between Johnson and Rami Zaki dated 09/22/11 | Lisa J. 0081 |
| 8 | Emails between Johnson and Ramy Zaki dated 09/22/11-09/26/11 | Lisa J. 0083 |
| 9 | Emails between Johnson and Ramy Zaki dated 09/26/11 | Lisa J. 0084 |
| 10 | Emails between Johnson and Ramy Zaki dated 09/26/11 | Lisa J. 0080 |
| 13 | Arash Dounel business card | Lisa J. 0054 |
| 14 | Arash Dounel business card | Lisa J. 0055 |
| 18 | Letter from Ravenholt to Clausen dated 10/17/11 | Lisa J. 005, 0019 |
| 19 | Letter from Kate Wright dated October 26, 2011 | Lisa J. 004 |
| 24 | Emails among Chad Maze, Rachel Romjin, Andrew Noll and Michael Kaplan dated 11/16/11 to 12/05/11 | WFB 0467-0475 |
| 26 | Arash Dounel Deposition Transcript | -- |
| 27 | Declaration of Lisa Johnson | Lisa J. 091-093 |
| 28 | Declaration of Michael Kaplan | Lisa J. 094-098 |
| 29 | Emails between Michael Kaplan and Jennifer Scafe | Lisa J. 009-010 |
| 30 | Johnson 2 nd Amended responses to First Set of Interrogatories | L. Johnson Discovery 029-039 |
| 34 | WFB consumer account agreement | Lisa J. 0003-0074 |

| | | |
|----|--|---------------|
| 35 | Account statements for account ending 4164 | WFB 0075-0257 |
| 36 | WFB business account agreement | WFB 0264-0335 |
| 37 | Account statements for account ending 7051 | WFB 0336-0398 |
| 40 | Business card agreement for account ending 2957 | WFB 0438-0439 |
| 41 | Account statements for account ending 2957 | WFB0440-0465 |
| 42 | Guitarfile, LLC business package for accounts ending 7051, 7036 and 4981 | WFB 0480-0486 |
| 43 | Checking account information for account ending 4164 | WFB 0487-0631 |

B. Contested exhibits

| Ex. # | Description | Bates Nos. | Objection |
|-------|--|-----------------------------|------------------------------|
| 3 | WFB Responses to Second Set of Request for Production of Documents | L.Johnson-Discovery 001-004 | Relevance; objections within |
| 11 | Emails from Johnson to Jeff Albright dated 09/26/11 | Lisa J. 0085 | Relevance |
| 12 | Check from Guitarfile, LLC to Jeff Albright dated 09/22/11 | Lisa J. 0086 | Relevance |
| 15 | WFB Supplemental Responses to Requests for Admissions Nos. 2-9 | L.Johnson-Discovery 005-014 | Relevance; objections within |
| 16 | WFB Supplemental Responses to Amended First Set of Interrogatories | L.Johnson-Discovery 015-028 | Relevance; objections within |
| 17 | Email from Kate Wright to Michael Kaplan dated 10/12/11 | Lisa J. 0021 | Authentication; hearsay |
| 20 | Emails between Arash Dounel and Michael Kaplan dated 10/31/11-11/03/11 | Lisa J. 0027-0032 | Authentication; hearsay |
| 21 | Emails between Arash Dounel and Michael Kaplan dated 10/31/11-11/03/11 | Lisa J. 0040-0045 | Authentication; hearsay |
| 22 | Emails between Arash Dounel and Michael Kaplan dated 10/31/11-11/03/11 | Lisa J. 0011, 0014-0018 | Authentication; hearsay |
| 23 | Joceda Freeman business card | Lisa J. 0056-0057 | Relevance |
| 25 | Letter from Michael Kaplan to Jennifer Scafe dated 12/16/11 | Lisa J. 001-002 | Authentication; hearsay |
| 31 | Expert Report of M. Paul Workman dated 05/20/13 with supporting documentation | Workman-LJ 001-008 | Relevance; hearsay |
| 32 | Supplemental Expert Report of M. Paul Workman dated 07/15/13 with supporting documentation | Workman-LJ 009-031 | Relevance; hearsay |
| 33 | Nevada State Bank account statements for Bikram Yoga Las Vegas, LLC | Lisa J. 0089-0090 | Relevance |
| 38 | Account statements for account ending 7036 | WFB 0399-0417 | Relevance |
| 39 | Account statements for account ending 4981 | WFB 0418-0436 | Relevance |

VI. Evidence to be limited or excluded

None at this time

1 VII. Witnesses

2 A. Plaintiff

- 3 1. Lisa Johnson
4 c/o Hutchison & Steffen, LLC
5 Peccole Professional Park
6 10080 West Alta Drive, Suite 200
7 Las Vegas, Nevada 89145
- 8 2. Michael Kaplan
9 9517 Canyon Mesa Drive
10 Las Vegas, Nevada 89144
- 11 3. M. Paul Workman
12 1405 Unbridled Circle
13 Las Vegas, Nevada 89117
- 14 4. Arash Dounel¹
15 c/o Smith Larson & Wixom
16 1935 Village Center Circle
17 Las Vegas, Nevada 89134
- 18 5. Robert Martin
19 2200 Paseo Verde Parkway, Suite 200
20 Henderson, Nevada 89052
- 21 6. Person(s) most knowledgeable and/or custodian of records for Wells Fargo
22 Bank, NA, c/o Smith Larson & Wixom, 1935 Village Center Circle, Las
23 Vegas, Nevada 89134. It is expected that the person(s) most knowledgeable
24 and/or custodian of records will testify as to their knowledge of the facts and
25 circumstances of the allegations as alleged in the complaint and to the
26 authenticity of records provided.
- 27 7. Joceda Freeman of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM
28 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Joceda
Freeman, who is/was a personal banker for Wells Fargo, will testify to her
knowledge of the facts and circumstances of the allegations as alleged in the
Complaint.
8. Jennifer L. Scafe of Wells Fargo Bank, N.A., c/o SMITH LARSON &
WIXOM 1935 Village Center Circle, Las Vegas, NV 89134. It is expected
that Jennifer L. Scafe, who is/was senior legal counsel at Wells Fargo, will
testify to her knowledge of the facts and circumstances of the allegations as
alleged in the Complaint.

¹ Arash Dounel is no longer an employee of WFB. He also resides outside the jurisdiction in California. Accordingly, WFB cannot and will not guarantee his attendance at trial. Neither WFB nor its counsel can or will accept service of a trial subpoena compelling Dounel's attendance at trial.

- 1 9. Chad Maze of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM
2 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Chad
3 Maze, who is/was an employee in Wells Fargo's private wealth department,
4 will testify to his knowledge of the facts and circumstances of the allegations
5 as alleged in the Complaint.
6
7 10. Sheila of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935
8 Village Center Circle, Las Vegas, NV 89134. It is expected that Sheila, who
9 is/was a Wells Fargo representative, will testify to her knowledge of the facts
10 and circumstances of the allegations as alleged in the Complaint.
11
12 11. Kate Wright, Vice President Western Mountain District Manager of Wells
13 Fargo Bank, N.A., c/o SMITH LARSON & WIXOM 1935 Village Center
14 Circle, Las Vegas, NV 89134. It is expected that Kate Wright will testify to
15 her knowledge of the facts and circumstances of the allegations as alleged in
16 the Complaint.
17
18 12. Andrew M. Noll, Vice President of Trust & Fiduciary of Wells Fargo Bank,
19 N.A., c/o SMITH LARSON & WIXOM 1935 Village Center Circle, Las
20 Vegas, NV 89134. It is expected that Andrew Noll will testify to his
21 knowledge of the facts and circumstances of the allegations as alleged in the
22 Complaint.
23
24 13. Rachel Romijn of Wells Fargo Bank, N.A., c/o SMITH LARSON & WIXOM
25 1935 Village Center Circle, Las Vegas, NV 89134. It is expected that Rachel
26 Romijn, who is a head of compliance for Wells Fargo, will testify to her
27 knowledge of the facts and circumstances of the allegations as alleged in the
28 Complaint.
29
30 14. Kirk Clausen, Regional President of Wells Fargo, c/o SMITH LARSON &
31 WIXOM, 1935 Village Center Circle, Las Vegas, NV 89134. It is expected
32 that Kirk Clausen will testify to his knowledge of the facts and circumstances
33 of the allegations as alleged in the Complaint.
34
35 15. All witnesses identified by all other parties.
36
37 16. Any rebuttal witnesses necessitated by the testimony of witnesses.

38 **B. Defendant**

- 39 1. Arash Dounel²
40 5112 Sepulveda, Apt. # 120
41 Sherman Oaks, CA 91403

42 //

43 ² Arash Dounel is no longer an employee of WFB. He also resides outside the jurisdiction in California. Accordingly,
44 WFB cannot and will not guarantee his attendance at trial. Neither WFB nor its counsel can or will accept service of a
45 trial subpoena compelling Dounel's attendance at trial.

2. Sue Garvin
WFB Nevada Regional Services
3800 Howard Hughes Pkwy., #300
Las Vegas, NV 89169

Defendant reserves the right to call any witnesses identified in either Plaintiff's or Defendant's NRCP 16.1 disclosures, upon appropriate notice to Plaintiff.

VIII. Legal issues

1. Whether Arash Dounel made a false and defamatory statement concerning Johnson.
2. Whether the statements of Arash Dounel to Michael Kaplan, if made, were unprivileged and made to a "third person" for purposes of stating a claim for defamation.
3. Whether Arash Dounel was at least negligent in making the alleged statements to Michael Kaplan.
4. Whether Johnson sustained actual or presumed damages as a result of the statements allegedly made by Arash Dounel.
5. Whether Arash Dounel acted with malice when he made the alleged statements to Michael Kaplan.³
6. Whether NRS 42.007 bars Johnson's claim for punitive damages.
7. Whether Arash Dounel acted with fraud, malice, or oppression toward Johnson such that punitive damages are appropriate.
8. Whether Johnson is entitled to any relief pursuant to her claim for declaratory relief.

IX. Estimate of time required for trial

2-3 days

//

//

//

1 **X. Other matters**

2 None known at this time

3 DATED: February 3, 2014

DATED: February 3, 2014

4 HUTCHISON & STEFFEN, LLC

SMITH LARSEN & WILKOM

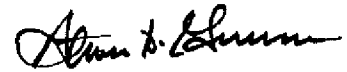
5
6 By: 

Joseph S. Kistler, Esq. (3458)
Timothy R. Koval, Esq. (12014)
10080 West Alta Dr., Suite 200
Las Vegas, Nevada 89145
Attorneys for Plaintiff

By: 

Kent F. Larsen, Esq. (3463)
Paul M. Haire, Esq. (5656)
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant

28 ³ The parties disagree as to whether malice or actual malice need be shown.



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | | |
|---------------------------|---|----------------------|
| LISA JOHNSON, |) | |
| |) | |
| Plaintiff |) | CASE NO. A655393 |
| |) | |
| vs. |) | DEPT NO. XXVI |
| |) | |
| WELLS FARGO BANK NATIONAL |) | |
| ASSOCIATION, |) | |
| |) | |
| Defendant |) | Transcript of |
| |) | Proceedings |

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 1

WEDNESDAY, FEBRUARY 5, 2014

APPEARANCES:

| | |
|--------------------|-------------------------|
| FOR THE PLAINTIFF: | JOSEPH S. KISTLER, ESQ. |
| | TIMOTHY R. KOVAL, ESQ. |
| FOR THE DEFENDANT: | PAUL M. HAIRE, ESQ. |

RECORDED BY: KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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FOR THE PLAINTIFF:

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MICHAEL KAPLAN:

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* * * * *

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1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 5, 2014, 1:34 P.M.

2 (Court was called to order)

3 THE COURT: State your appearances for the record, and
4 also for the record who is present with you in court.

5 MR. KISTLER: Good afternoon, Your Honor. Joseph
6 Kistler and Tim Koval with the law firm of Hutchison & Steffen
7 here in Las Vegas appearing for on behalf of the plaintiff Lisa
8 Johnson, and Ms. Johnson is also present in the courtroom.

9 THE COURT: Okay.

10 MR. HAIRE: Paul Haire for the defendant. I have with
11 me Sue Garvin with Wells Fargo Bank.

12 THE COURT: Okay. Well, this is a bench trial, but
13 nevertheless, do either party wish to exercise the exclusionary
14 rule?

15 MR. HAIRE: Your Honor, Mr. Kistler and I did discuss
16 invoking the rule. I've agreed to invoke the rule after opening
17 statements.

18 THE COURT: Okay. All right. So the parties which to
19 make opening statements. I'll just tell you that I do have the
20 pretrial memos filed by parties and disclosures, and the
21 proposed findings of fact and conclusions of law that the
22 parties did provide. I appreciate that. So I'm familiar with
23 some of what you've got kind of presented here. It's been
24 already filed with the Court, so if you want to begin with your
25 opening, then, Mr. Kistler.

1 PLAINIFF'S OPENING STATEMENT

2 MR. KISTLER: I will, Your Honor. Your Honor,
3 obviously this is a defamation per se case and declaratory
4 relief action that we have. We have two claims before the
5 Court. We will present two witnesses, plus documents in support
6 of our claims on behalf of Ms. Johnson.

7 The first witness that we'll call is Mr. Michael
8 Kaplan who was the recipient of the defamatory statement made by
9 the bank employee Mr. Dounel. The second witness that will be
10 called will be the plaintiff Ms. Johnson. She was a subject of
11 the defamatory statement and she will testimony after Mr. Kaplan
12 testifies.

13 Now, Your Honor, just to orient us all and to orient
14 the Court, I'm sure that you've already read the pleadings, we
15 understand that there's -- and the Court, I believe, understands
16 that there's three basic accounts that eventually gave rise to
17 the defamatory statement being made by Mr. Dounel on behalf of
18 Wells Fargo.

19 One of the accounts was the account where Mr. Kaplan
20 was the primary account holder with the additional signer Ms.
21 Johnson. We refer to that account, and the pleadings, I think,
22 refer to that account as the, quote, unquote, joint account.
23 There's two other accounts for Ms. Johnson's business entity,
24 Guitarfile, LLC, a business account and a credit card account.
25 So we have two Guitarfile, LLC accounts, a business account and

1 a credit card account, and then we have the joint account that
2 Ms. Johnson had with Michael Kaplan.

3 Your Honor, it's -- it's virtually undisputed, it is
4 undisputed about the closure, but perhaps the characterization
5 that I'm getting ready to give is slightly disputed. In our
6 view, all three of these accounts, the joint account and the two
7 Guitarfile accounts were precipitously closed by Wells Fargo
8 Bank in August 2011, effective in September 2011.

9 Your Honor, the evidence will show and Mr. Kaplan will
10 testify that on October 6, 2011, he went to the Wells Fargo
11 branch in Malibu, California for matters totally unrelated to
12 the closure of these three accounts. The evidence is consistent
13 and there will be no contrary evidence and Mr. Kaplan will
14 testify that he is a wealthy man.

15 While Mr. Kaplan was at the Malibu branch of Wells
16 Fargo in California, while he was transacting totally unrelated
17 banking business, the bank teller solicited him for additional
18 business, to open additional accounts at Wells Fargo Bank. Mr.
19 Kaplan will state that he responded to the teller and said words
20 more or less to the effect of he found it ironic or unusual or
21 surprising that Wells Fargo would solicit him to increase his
22 business with Wells Fargo Bank since Wells Fargo Bank just
23 closed one of his accounts for no reason.

24 In response, the teller said to Mr. Kaplan let me get
25 my boss. Enter Arash Dounel, the teller's boss. And Mr. -- Mr.

1 Kaplan will explain to you how he identified himself. He had
2 business cards, etcetera, etcetera, that were given to Mr.
3 Kaplan on that day.

4 So Mr. Dounel met with Mr. Kaplan. Mr. Kaplan said,
5 well, why would you want to increase business, my business with
6 the bank when you just closed one of my accounts. Mr. Dounel,
7 according to Mr. Kaplan, asked for a copy of the closure letter.
8 The closure letter was only -- the only closure letter that Mr.
9 Dounel asked for was the joint account closure letter, i.e., the
10 account that Mr. Kaplan had that Ms. Johnson was also on as an
11 additional signer.

12 Mr. Kaplan didn't have a copy of the closure letter
13 with him at that time. He didn't go to the bank to discuss the
14 closure of any accounts. He contacted Ms. Johnson who either
15 telefaxed or emailed a copy of the joint account closure letter
16 to Mr. Dounel's office. And so Mr. Dounel received a copy of
17 the joint account closure letter and he discussed the closure of
18 that account with Mr. Kaplan.

19 The evidence will show Mr. Kaplan will so testify that
20 upon receiving a closure letter Mr. Dounel reviewed the computer
21 screen on his desk and told Mr. Kaplan that Ms. Johnson must
22 have been in jail or must have had outstanding arrest warrants
23 in her background. That was immediately found in his review of
24 the computer screen. Mr. Kaplan inquired of Mr. Dounel if Mr.
25 Dounel could be mistaken, and Mr. Dounel responded in a negative

1 or stated, more or less, I am not mistaken.

2 That's the per se defamatory statement, that Ms.
3 Johnson was involved in, was a criminal, or was involved in
4 criminal activity. The only reasonable interpretation of being
5 in jail or having outstanding warrants was to impugn Ms.
6 Johnson's character to Mr. Kaplan and state that Ms. Johnson
7 was, in fact, involved in criminal activity.

8 Mr. Dounel then told Mr. Kaplan, as Mr. Kaplan will
9 tell the Court, well, Mr. Kaplan, you're a man of means, if I
10 were you I'd hire a private investigator to investigate Ms.
11 Johnson to look into her background. Again, the only reasonable
12 interpretation of Dounel's comments about Ms. Johnson being a
13 criminal is that Ms. Johnson was a criminal. And that is
14 defamation per se as we all learned in Torts 101 first year of
15 law school.

16 In fact, there is absolutely no evidence that will be
17 presented that Ms. Johnson is or ever has been a criminal, has
18 been arrested, jailed, or had warrants issued. All of the
19 evidence that will be presented here at trial will show that she
20 is a law abiding citizen with no criminal record whatsoever.
21 All of the evidence that will be presented before Your Honor is
22 that Mr. Kaplan went to the bank on his own and not acting in
23 any type of agency capacity to inquire on behalf of Ms. Johnson
24 at the time that the defamatory statements were made.

25 There will be no evidence, and there is no evidence

1 that could be submitted before the Court that Mr. Dounel had
2 ever met Ms. Johnson previously, had ever socialized with her,
3 ran in the same circles, or, in fact, had any -- any basis for
4 formulating a personal belief as to her being a criminal or not
5 being a criminal.

6 Your Honor, the evidence will show -- the documentary
7 evidence will show and the testimony of Mr. Kaplan will show
8 that Wells Fargo Bank, through its actions and words, ratified
9 and adopted Mr. Dounel's defamatory statements in its dealings
10 with Mr. Kaplan and Ms. Johnson thereafter. That is despite
11 many opportunities to do so, Wells Fargo Bank never disclaimed
12 their support for Dounel's statement. They never distanced
13 themselves from Dounel's statement.

14 They never stated anything such as we disagree with
15 your characterization of what Mr. Dounel said, but Mr. Dounel
16 did not speak for or on behalf of Wells Fargo Bank, and whatever
17 Mr. Dounel said was not the position of Wells Fargo Bank. You
18 will hear no evidence that any such statements were ever made by
19 Wells Fargo Bank, rather Your Honor will see documents that
20 clear and concisely show that through its actions and inactions,
21 Wells Fargo Bank adopted the -- adopted and ratified the
22 defamatory statements that Mr. Dounel made to Mr. Kaplan.

23 Your Honor will see that throughout this litigation
24 Wells Fargo Bank had taken the position that Mr. Dounel's
25 statements were truthful. Throughout the entire process into

1 this case, Your Honor, Wells Fargo Bank maintained a
2 truthfulness affirmative defense to the allegation that we made
3 bringing to light the defamatory statements of Mr. Dounel.

4 That truthfulness defense, affirmative defense that
5 Wells Fargo would have the burden of showing in defense of our
6 claim, that truthfulness defense was included in the joint
7 pretrial order, or joint pretrial memo yesterday that was filed
8 with the Court, whereby Wells Fargo Bank stated that they were
9 abandoning that defense. But for two years that defense
10 remained alive and viable in the position of Wells Fargo Bank in
11 this litigation.

12 Mr. Kaplan and Ms. Johnson will testify concerning the
13 specific damages that Ms. Johnson has suffered as a result of
14 Mr. Dounel's statements. Now, obviously, in a defamation per se
15 case, general damages are presumed. Again, Torts 101, first
16 year of law school. Specific damages must be shown to the Court
17 that there was specific harm to Ms. Johnson as a result of these
18 defamatory statements.

19 Whether or not specific damages are proven, general
20 damages, i.e., due to the nature of the statement itself,
21 stating that someone has a criminal history or criminal
22 background is a criminal are presumed and that would be up to
23 the Court to determine what the law awards as presumed general
24 damages. But Your Honor will hear testimony concerning specific
25 damages, as well as the impact that these defamatory statements

1 have on Ms. Johnson as told to her partner, her -- her
2 boyfriend. Her -- they have been a couple for over ten years at
3 the time that this happened in October 2011.

4 Your Honor, at the end of the case we will ask Your
5 Honor to award special damages, to award general damages, and
6 also to award to punitive damages against the defendant Wells
7 Fargo Bank. We will also ask the Court to state the obvious
8 following the trial, and that is that there was no evidence
9 presented at trial, that the three accounts were closed as a
10 result of any criminal conduct committed by Ms. Johnson. There
11 will be no such evidence presented by either side, and certainly
12 there will be no such evidence presented by the bank.

13 Now, Your Honor, you may hear some testimony about,
14 well, there's been a few speeding ticket -- tickets that were
15 issued that were minor traffic incidences. And we will give the
16 caveat that Ms. Johnson has had some minor speeding violations.
17 Her driver's license has never been suspended or anything of
18 that sort. The evidence is clear, the evidence will be clear,
19 that she has never been to jail, that she has never had any
20 outstanding warrants, that she is a law-abiding person, and Your
21 Honor will hear no evidence whatsoever to the contrary. Thank
22 you.

23 THE COURT: Thank you.

24 Mr. Haire.

25 MR. HAIRE: Thank you, Your Honor. Would the Court

1 have any objection to me occupying the well?

2 THE COURT: No.

3 MR. HAIRE: I presume the microphones can pick me up
4 in that area?

5 THE COURT: It's so small, the footprint.

6 MR. HAIRE: All right.

7 THE COURT: It picks up everything.

8 DEFENDANT'S OPENING STATEMENT

9 MR. HAIRE: Very well, Your Honor. Let me begin back
10 here. I appreciate Mr. Kistler's overview of the alleged
11 defamatory statements. I will endeavor not to go back through
12 what Mr. Kaplan and Ms. Johnson claim Mr. Dounel said. What I
13 would prefer to do, Your Honor, is to outline the context of
14 this case in an effort to give the Court a roadmap as to how the
15 evidence that we believe will be presented at trial fits into
16 the Court's determination of whether those facts comport with an
17 actionable cause for defamation.

18 As Mr. Kistler has indicated, there are two causes of
19 action, for lack of a better term, that remain in this case.
20 One, defamation; two, declaratory relief, which I would argue to
21 the Court is not necessarily a cause of action but it's simply a
22 request for relief. Nevertheless, Mr. Kistler has elected to
23 treat it as a cause. For sake of simplicity I will do the same.

24 So with that, Your Honor, let me just take a moment
25 and outline using what you're well familiar with relative to a

1 prima facie case of defamation. I'll begin there. First of
2 all, Your Honor, it is a matter of dispute as to whether Mr.
3 Dounel even made these alleged statements. You know, according
4 to Mr. Kistler's opening statement, Mr. Kaplan will testify to
5 that affect.

6 For his part, Mr. Dounel remembers the conversation,
7 remembers Mr. Kaplan, and remembers some aspects of the
8 conversation, but does not believe that he made those statements
9 to Mr. Kaplan, that he does not believe that that is something
10 that he would tell a customer of the bank. So it is disputed.

11 Nevertheless, the Court's first endeavor is were the
12 statements made? I would submit to the Court that that's
13 perhaps a function of credibility in the case. Next we get to
14 the elements of defamation. Because if the Court determines
15 that, in fact, the statements were made, the Court must then go
16 through a process to determine whether those statements are
17 actionable as defamation, a legal term of art. And as the Court
18 knows, the first requirement is the making of a false and
19 defamatory statement.

20 Now, the key here, Your Honor, and we believe the
21 evidence will indicate and demonstrate, that Mr. Dounel's
22 statements, even as characterized by the plaintiffs in this case
23 are not defamatory, that -- that they are -- were not statements
24 of fact, they were not intended to be statements of fact, and
25 that a reasonable person would not have appreciated them to be

1 statements of fact because there is sufficient qualifying
2 language in the statements and there is -- that the context of
3 the statements suggest that what Mr. Dounel was doing was simply
4 responding to Mr. Kaplan's inquiry with his evaluative opinion
5 of what may have been a possibility for the account being
6 closed. He was trying to be helpful.

7 Next, it needs to be an unprivileged publication to a
8 third person. Now, Your Honor will recall that we spent a
9 significant amount of time in the summary judgment process
10 discussing this. I will defer discussion of the privilege that
11 -- that would apply here and simply reaffirm and incorporate the
12 arguments that were made at summary judgment.

13 But let's talk about the third person requirement
14 because the evidence in this case is only that the -- that the
15 published statement, these alleged heinous statements made by
16 Mr. Dounel were made only to Mr. Kaplan. Mr. Kaplan was there,
17 he made an inquiry about the joint account. During that
18 encounter, that meeting with Mr. Dounel there was discussion
19 about the closed joint account to the point that Ms. Johnson was
20 contacted while the two were together, both on the phone, asking
21 her could you fax or email that closure letter down to us.

22 The evidence will be in addition to that that the
23 account agreement to which this account was subject allows a
24 co-owner of an account -- pardon me, Your Honor. The bank may
25 respond to direction and requests by a co-owner of a joint

1 account. The evidence in this case is that both Mr. Kaplan and
2 Ms. Johnson co-own this account.

3 Lastly, Your Honor, the circumstance -- well, third,
4 the circumstances in this case or the context of that
5 conversation, the evidence will show that there was apparent
6 authority on the part of Mr. Kaplan to inquire about the
7 account. And the evidence will be that it would not be
8 unreasonable for Mr. Dounel to appreciate that. Lastly, there
9 is no evidence to suggest that Ms. Johnson did anything but
10 ratify that whole conversation communication with -- with Mr.
11 Kaplan.

12 The long and short of it, Your Honor, the evidence in
13 its totality will demonstrate under the law that element that a
14 third person must be involved is absent in this case. That in
15 effect, Mr. Kaplan acting at the behest and on behalf of both
16 himself and Ms. Johnson eliminated himself from that third
17 person element. And it would be as if the communication was not
18 made to any third person and made only to the plaintiff herself.

19 Next, Your Honor, is the proof that it's plaintiff's
20 responsibility to prove by a preponderance of evidence that Mr.
21 Dounel was at least negligent. That's a fact determination, as
22 well as a legal determination that I will leave in the Court's
23 hands.

24 Lastly, damages. Well, Mr. Kistler did a fine job of
25 explaining what the damages are here. If the statement is --

1 statements are believed to have been defamatory and of such a
2 nature that they constitute defamation per se, the Court must
3 award damages. But the Court has great latitude in the amount
4 of damages.

5 We believe the evidence will show in this case that
6 the damages that have resulted to Ms. Johnson from the
7 defamatory statements of Mr. Dounel are nominal. That what the
8 real damages in this case are relate to the fact that the
9 accounts were closed. That's where the stress, that's where the
10 anger, that's where the mortification, that's the where
11 everything else came in in giving plaintiff or giving rise to
12 damages, but that's -- won't be the issue.

13 The issue here is defamation, not the closure of the
14 accounts, because the Court will knows that has been eliminated
15 from consideration in this trial. The Court has determined that
16 Wells Fargo Bank is not obligated and cannot be compelled to
17 disclose the reasons for closing any of these accounts that are
18 at issue.

19 So having said that, Your Honor, that brings me to
20 declaratory relief, and I've touched on it. Wells Fargo Bank
21 does not believe the declaratory relief cause of action has any
22 merit given the Court's already having determined that there is
23 no cause to do so. There is -- and now Mr. Kistler suggested
24 and stated to the Court that at the end of this case he will ask
25 the Court to render a declaratory order that -- and I wrote it

1 down if I could read my own writing -- that the accounts were --
2 were not closed due to plaintiff's criminal activity.

3 No evidence in this case is allowed, and, therefore,
4 Your Honor, in response to Mr. Kistler's statement I would
5 suggest to you that it would be improper to make that
6 determination. However, at best the Court can determine that
7 all things considered, after having heard all the evidence, that
8 Ms. Johnson is, in fact, not a criminal, that she was never
9 incarcerated, that she does not and did not have outstanding
10 warrants.

11 Finally, punitive damages, Your Honor. Mr. Dounel has
12 not been sued in this case. Wells Fargo, his then employer, has
13 been sued in this case. We have a statute in this jurisdiction
14 that states we don't hold employers liable for punitive damages
15 due to the wrongful acts of their employees unless and until
16 there is demonstrated proof of a number of things, that Wells
17 Fargo had advanced knowledge that Mr. Dounel was unfit and was
18 still employed, that the employer -- the word expressly
19 authorized or ratified the wrongful act, Mr. Kistler suggested
20 that can be done by silence. I disagree.

21 Thirdly, the employer is personally guilty of
22 oppression, fraud, or malice. The Court is well aware of the
23 standard there. And in addition to these elements, it must be
24 established not -- not just amorphously that the -- that the
25 company did these things. No, the statute says you have to

1 satisfy those elements by showing that an officer, director, or
2 managing agent of the corporation was expressly authorized to
3 direct or ratify Mr. Dounel's conduct in this case.

4 Past that, Your Honor, we do not believe there will be
5 evidence sufficient enough for the Court to find that Mr. Dounel
6 acted with malice, such that the 42.005 -- or is it .002 -- .005
7 basis for awarding punitive damages has or will be met in this
8 case. Thank you, Your Honor.

9 THE COURT: Thank you.

10 All right. So at this point, Mr. Kistler, I think we
11 were going to exercise the exclusionary rule, but you said your
12 first witness would be a party, so --

13 MR. KISTLER: The first witness will be a non-party,
14 Your Honor.

15 THE COURT: Okay. All right. So --

16 MR. KISTLER: Your Honor, if -- if -- would it be
17 possible for us to take a five minute break.

18 THE COURT: Sure. Absolutely.

19 MR. KISTLER: Thank you.

20 THE COURT: We'll be in recess for five minutes.

21 (Court recessed at 2:00 p.m., until 2:06 p.m.)

22 THE COURT: And we'll swear our first witness in.

23 MICHAEL KAPLAN, PLAINTIFF'S WITNESS, SWORN

24 THE CLERK: Please take a seat and spell your name for
25 the record.

1 THE WITNESS: Michael Kaplan; M-I-C-H-A-E-L, last name
2 Kaplan, K-A-P-L-A-N.

3 THE CLERK: Thank you.

4 THE COURT: You'll notice that's kind of -- it's a
5 handicap lift, so you've kind of got to move your chair over the
6 lift to get close to the --

7 THE WITNESS: Okay.

8 THE COURT: -- microphone. Sorry about that, but it's
9 some ADA thing. So sorry it's so uncomfortable. Thank you.

10 THE WITNESS: Thank you.

11 MR. KISTLER: And we do call Mr. Kaplan to the stand,
12 Your Honor.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MR. KISTLER:

16 Q Mr. Kaplan, could you please tell us your present
17 county of residency?

18 A Clark County, Las Vegas, Nevada.

19 Q If you'd tell the Court a little bit about your
20 background, where you were born, where you went to school,
21 things of that nature, please.

22 A I was born in Patterson, New Jersey, lived there until
23 my dad passed away when I was five. We moved to Oklahoma where
24 my mom was from, and I lived in Oklahoma City until my mom and
25 step-dad got married in 1966. They got married out here in Las

1 Vegas. We moved to Las Vegas at that point. After high school,
2 I went to University of Missouri, undergraduate --

3 Q Sir, did you go to high school here in Clark County?

4 A I did. Valley High School.

5 Q Valley.

6 A It was a new high school at the time.

7 Q Okay. I'm sorry to interrupt.

8 A I went to University of Missouri, undergrad in
9 political science. Graduate school at St. Louis University in
10 urban planning. I think I was couple of credits short of
11 finishing my master's and decided to go into law school. And I
12 went to Oklahoma City University School of Law for law. After
13 law school I came back to Las Vegas. My first job in
14 Las Vegas --

15 Q Well, before you go --

16 A Okay.

17 Q -- into your first job, so -- do you have your license
18 to practice law?

19 A I am currently licensed to practice law in Nevada,
20 Missouri, California, and Hawaii.

21 Q Okay. And are all those licenses in good standing?

22 A Yep. I continue to pay the bar dues and to my
23 continuing ed every year.

24 Q When were you originally licensed in the state of
25 Nevada, if you remember?

1 A '76, I believe.

2 Q Were you ever a practicing attorney in Clark County,
3 Nevada?

4 A Yes, sir.

5 Q All right. And could you tell us how -- what kind of
6 job you got, you had, and how you got that job?

7 A My first job after I came back here after law school,
8 Neil Galatz was just forming a firm and it was Neil Galatz,
9 Allan Earl, and Tom Biggar. And Allan Earl had interviewed me,
10 I guess Judge Earl to be correct, had interviewed me and offered
11 me a job working for Neil and him and Tom. And so I worked
12 there handling personal injury for them for awhile.

13 Q All right. So that was Galatz, Earl, and Biggar?

14 A Correct.

15 Q And when did you start working with the firm or
16 Galatz, Earl, and Biggar, if you remember?

17 A It was before I had got the results of the Bar, so
18 sometime in '76. I got out of law school in '75, so early part
19 of '76, I believe. And do you want me to continue beyond that?

20 Q And so you -- and so you practiced with the firm under
21 whose supervision primarily, or was it with all three?

22 A It was kind of all three because it was just the three
23 attorneys and myself. It was kind of fun because it was a small
24 firm. I learned a lot from Neil, and Allan, as well, Tom. I
25 did a lot of motion practice.

1 Q Where was your office located at that point?

2 A Neil had just moved in on South 4th to the new
3 building he had built. I believe it was 710 South 4th. I still
4 remember it because I put my name underneath them at the time.

5 Q How long did you practice law in the state of Nevada?

6 A Probably about four or five years.

7 Q And so you stopped practicing law in the state of
8 Nevada?

9 A In 1980.

10 Q Okay. Again, have you ever been suspended,
11 reprimanded, anything like that on any of your licenses?

12 A No, sir.

13 Q There's four different jurisdictions that you're
14 licensed.

15 A No, sir.

16 Q When did you get -- when did you become licensed in
17 these other jurisdictions?

18 A Missouri, I believe, was right before -- as soon as I
19 got out of law school in Oklahoma I believe I took the Missouri
20 bar so that was probably before the Nevada, so probably '75.
21 And then the California, back when I was a young attorney here
22 it seemed like -- I don't know if it's still the same, but
23 everybody used to go take the California Bar just to have it if
24 you were a Nevada practicing attorney. So I believe the
25 following year in '77 I took the California. And then I moved

1 to Hawaii in 1980 and I took the bar exam and got licensed there
2 in 1981.

3 Q How would you describe your current -- your current
4 business or your current activities?

5 A I do resort development in Hawaii. I lived in Hawaii
6 for 18 years, so I have an office in Maui.

7 Q Okay. And you've done that since 1980?

8 A In 1980, yeah. For a portion of the time I was doing
9 the same thing in Las Vegas. I believe I moved back to Vegas
10 around 1998 from Hawaii.

11 Q Now, Mr. Kaplan, I take it you know Lisa Johnson who
12 is sitting there with Mr. Koval at the counsel's table.

13 A Yes, sir.

14 Q And how long have you -- how and how long have you
15 known Ms. Johnson?

16 A This is where I can get in trouble if I get the wrong
17 date.

18 Q Absolutely.

19 A I believe 1998 is we met in New York. I used to go to
20 New York City every year for the U.S. Open tennis matches just
21 before Labor Day, and I had met her through a mutual friend of
22 hers and mine.

23 Q And did there come a point in time where your mutual
24 interest became serious?

25 A I think we spent a year -- it sounds like a movie. I

1 think we spent a year commuting back and forth. Friday evening
2 I would take an all night flight to New York, or she would take
3 a Friday afternoon flight from New York here, and we did that
4 for about a year.

5 Q Okay. And following that year did you -- what
6 happened? Did you guys decide to --

7 A She -- she was working for Eastman Kodak, and I guess
8 it was one of those things that happened, interesting. Eastman
9 Kodak was establishing an office out here for what she did,
10 commercial labs. And they needed somebody to represent them on
11 the West Coast, and they offered her a job in Las Vegas, so she
12 moved to Las Vegas.

13 Q About when did that occur?

14 A Probably a year after we met, 1999 or 2000, somewhere
15 in that time frame.

16 Q Okay. And have you guys been a couple ever since,
17 lived together ever since 1999?

18 A Yes, sir. I think for --

19 Q That's a question you better not mess up.

20 A Well, when she first moved here she had her own
21 apartment for about a year, I believe. So we officially started
22 living together in the beginning of 2001.

23 Q And you've continued -- you've continued to live
24 together since 2001?

25 A Yes, sir.

1 Q As up through the present date?

2 A Yes, sir.

3 Q Now, do you have -- you know what an asset pooling
4 agreement is, don't you?

5 A I believe I do. It's been a long time since I
6 practiced law, but I believe I do.

7 Q Okay. Do you and Ms. Johnson have an asset pooling
8 agreement in place while you -- while you've been living
9 together?

10 A No. Her assets are hers, and mine have remained mine
11 the whole time.

12 Q Mr. Kaplan, did there come a point in time where you
13 opened an account at Wells Fargo Bank where Ms. Johnson was an
14 additional signer on the account?

15 A Yes, sir.

16 Q If I could refer your attention to Exhibit 2 in the
17 skinny binder.

18 A Skinny? They both look rather thick.

19 MR. KISTLER: And, Judge, you know, I think that
20 probably the way this is going to play out is we're probably
21 only going to refer to the skinny binder and not the big thick
22 binder.

23 THE COURT: Okay. All right.

24 MR. KISTLER: We thought going in that 99.9 percent of
25 the exhibits would be in the skinny binder, and it's --

1 THE COURT: Okay.

2 MR. KISTLER: -- it's looking like the percentage may
3 be even a little higher.

4 BY MR. KISTLER:

5 Q So Exhibit 2, can you identify Exhibit 2 for the
6 Court?

7 A Let me put on my reading glasses to get an even better
8 look. Yes, sir.

9 Q And what is --

10 A I see my signature on there.

11 Q What is Exhibit 2?

12 A It says consumer account application Wells Fargo, and
13 it's got customer information, money.

14 Q On the second page of Exhibit 2 there are two names in
15 the lower left-hand quadrant of that page. It's WFB0002 Bates
16 number in the lower right-hand corner. Can you identify those
17 two names?

18 A It's Michael Kaplan and Lisa Johnson.

19 Q Okay. And so this was your account, but Ms. Johnson
20 was an additional signer on the account?

21 A Correct. I am almost positive I believe this even had
22 my social security number on it, although it appears to have
23 been deleted from this document. But I'm almost positive I used
24 to get -- I think it was a nominal interest that was paid. I
25 used to get a statement from the bank as far as taxes.

1 Q Okay. And when you say that you think the account
2 number had been --

3 A No, not the account number, sir. The social --

4 Q I'm sorry.

5 A -- security number.

6 Q The social security number. Is there a point -- is
7 there -- is there a part of this document that you're referring
8 to?

9 A Well, it looks like it's got identification number and
10 ID number. It looks like it's all scrolled through. And I
11 believe that that may be a social security number that would
12 have been there, but I don't know.

13 Q Okay. Now, and you said that the account application
14 was dated when?

15 A It says October 2, 2004.

16 Q Okay. Now, did there come a point in time when you
17 were notified that Wells Fargo Bank intended to close this
18 account?

19 A Yes, sir.

20 Q Could you refer your attention to Exhibit 6.

21 A Okay.

22 Q Okay. Have you seen that letter before?

23 A Yes, I have.

24 Q Can you tell us what that letter is?

25 A It was a letter that was sent to me and Lisa, the date

1 on it was August 18, 2011, saying they were closing that
2 account.

3 Q Sir, the first full paragraph of that document,
4 Exhibit 6, after the dear customers, it says Wells Fargo
5 performs ongoing reviews of its account relationships in
6 connection with the bank's responsibilities to oversee and
7 manage risks in its banking operations. Did I read that
8 correctly?

9 A Yes.

10 Q And it goes on to say that the bank has decided to
11 close the account?

12 A Correct, at the end of business on September 22, 2011.

13 Q To your knowledge had that account -- this account
14 that we're referring to, did it have a history of being
15 overdrawn or anything like that?

16 A No. As a matter of fact, when I originally opened the
17 account, Lisa was getting ready to open a yoga studio because
18 she's very much into yoga. And I was helping her establish her
19 first yoga studio. And so I used to fund that account to help
20 her with things, plus I ended up funding an account because it
21 was under both our names to help with normal day to day bills
22 and things that would come up that she would take care of for
23 the house.

24 Q Were you surprised when you received this -- this
25 letter from Wells Fargo saying they were going to close the

1 account?

2 A Very surprised because I usually would look at it -- I
3 can't say that I looked at the statement all the time, but I
4 know that I would always, you know, try to fund it or transfer
5 funds in there, which it used to be simple because there was a
6 link on my checking account at Wells Fargo where I could
7 transfer funds from my checking account to this account online
8 without even having to go to the bank.

9 Q Okay. Now, the last paragraph of Exhibit 6 says for
10 assistance or if you have questions, please call 1-888, do you
11 see that number?

12 A Yeah, 231-0757.

13 Q Did you make any effort following your receipt of this
14 letter to call that number or try to find out why the account
15 had been closed?

16 A Yes, sir, I called. It was the most frustrating
17 experience ever. You know, I called as it said to do. I said I
18 received this letter you closed my bank account. Can you tell
19 me why? They said, sorry, sir, we can't tell you anything. I
20 said, but it said to call this number if I had a question. I'm
21 calling the number. And they said, that's great, but we can't
22 tell you anything. I said, then why do you put a number on the
23 letter telling me to call an 800 number if you can't tell me
24 anything? And it was just something out of a comedy sketch.
25 Nobody could give an answer.

1 Q Okay.

2 A It was very frustrating.

3 Q And my question should have been prefaced with the
4 additional language did you make any attempts to call the number
5 prior to October of 2011. Was your testimony in response to my
6 question regarding that time?

7 A It was whenever this letter was received. It was
8 around that time that I picked up the phone. If somebody says
9 to call and they put an 800 number, I think that's what most
10 people do and I did that.

11 Q Okay. Now, Mr. Kaplan, directing your attention to
12 the date of October the 6th, 2011.

13 A Yes, sir.

14 Q Did you have the occasion to visit a Wells Fargo
15 branch, banking branch, on that day?

16 A Yes, sir.

17 Q And where was that banking branch?

18 A In Malibu, California. I bought a second house back
19 in '09, a vacation house that Lisa and I spend time in Malibu.
20 And on that day we were in Malibu we had secured tickets, front
21 row, that evening down at the Nokia theatre to see Glen Campbell
22 perform. And we had front row tickets. And so that afternoon I
23 had gone down to the bank to cash a check.

24 Q Do you recall approximately what time of the day you
25 went down?

1 A I'm going to say it was right around the noon hour,
2 between 12:00 and 1:00.

3 Q You said that you went to the branch to cash a check.
4 Was that the reason -- was that the only reason that you went to
5 the branch?

6 A Yes, sir. I knew I was going to need some money. We
7 were going to a concert. And anybody that's been to a concert,
8 next thing you're buying t-shirts, all kinds of other stuff, so
9 I needed some cash.

10 Q Did you have any interest or intent in discussing the
11 closure of the joint account in going to the bank that morning?

12 A No. It was -- you know, it was early that afternoon,
13 but, no, I didn't -- I really didn't have all the time in the
14 day. You know, I had gotten tied up at my house on a bunch of
15 phone calls and, you know, wanted to grab a quick bite to eat.
16 The bank is literally 15 to 18 minutes from our house in Malibu,
17 and, you know, I was going to cash a check. I had a check that
18 had been sitting my car probably a month. My insurance company
19 had sent me a refund because I had overpaid them. And rather
20 than applying it to future time they basically sent me a check.
21 It was for five or \$600 basically representing two months of
22 overpayment. And so I brought that check with me into the bank
23 to cash it.

24 Q Okay. And you did make an attempt to cash that check
25 at the bank?

1 A I went to the teller, I endorsed the check, and handed
2 her the check.

3 Q Okay. What happened thereafter?

4 A I did the typical thing. I gave my driver's license
5 and my Wells Fargo check cashing card. As I was standing there,
6 apparently I -- at this point I believe that she started looking
7 at my account because I guess it pops up there on the screen.
8 I'm not a banker. But next thing she says to me, Mr. Kaplan,
9 you're leaving way too much funds in your checking account. You
10 should open another account where you can have a little bit of
11 safety by moving these funds. And at that point I said to her
12 why would you ask me a question like that? Your bank just
13 closed one of my accounts. And at that point she said, well,
14 let me bring over my supervisor to have him talk to you. And at
15 that point she brought over another gentleman identified as
16 Arash Dounel and introduced me to him.

17 Q Now, did Mr. -- how did Mr. Dounel identify himself to
18 you?

19 A He -- he said he was basically in charge of things at
20 the bank. He gave me a business card with his title. Actually,
21 if I remember, his business card had two different titles, one
22 on the front of his card and one on the back, which I'm not sure
23 why, but he had a business card that had two titles. At that
24 point he said why don't you come over with me, Mr. Kaplan. He
25 brought me over to his desk that was kind of in a cubicle in the

1 bank.

2 Q Referring your attention to Exhibits 13 and 14, can
3 you identify those for the Court?

4 A Yes, sir. It looks like copies of the business card.
5 Yeah, it is kind of where I remembered. It says on one card
6 Arash Dounel, Premier Banker, and then it's got some numbers.
7 And then the back of the card, which I presume is how you
8 photocopied these, I don't know because I thought it was one
9 card, but the other one says Arash Dounel, Brokerage Associate,
10 California Insurance License Number, Wells Fargo Advisors, LLC.
11 Both of them are the Pacific Coast Highway 23361 Malibu, which
12 is the branch in Malibu.

13 Q So one of them says -- I think 13 says premier banker?

14 A That's correct, sir.

15 Q And the other one says brokerage associate?

16 A Correct.

17 Q Is there any doubt in your mind that you were speaking
18 on that afternoon with -- with a management level employee at
19 Wells Fargo Bank, that branch?

20 A No, the teller brought him over behind the counter.
21 You know, she's behind -- she brings him behind there. He had
22 on a suit jacket and she introduced me to him. And then he
23 brought me over to his desk which was in a cubicle on the floor
24 of Wells Fargo. It's a small branch in Malibu.

25 Q Okay. And what transpired thereafter?

1 A I said to him, I'm a little bit baffled, you know, of
2 the lady wanting me to open another account. You guys just got
3 through closing an account of mine. And then he started asking
4 me questions about it and I said, you know, I really don't have
5 a lot of time. We started talking. I told him, look, I'm going
6 to a concert this evening, you know, I don't have a lot of time
7 today. And we started -- he started asking me questions about
8 my background. I was telling him that, you know, we were
9 fortunate, we had sold my business in June of '07, and I was
10 very fortunate based on the timing of what happened to the world
11 economy.

12 And he said would you happen to have a copy of the
13 letter that Wells sent? And I said, I don't have it, but Lisa
14 is up at the house. I don't know if she's got it, but I can
15 find out. And he said can you get a hold of her? I pulled out
16 my cell phone and I'm almost positive what I did was I dialed
17 her on my cell phone because I have her on speed dial. And I
18 don't even believe that he talked to her.

19 I think what had happened is I talked on my phone to
20 Lisa and I said I'm down here at Wells. They're asking me
21 something about this -- the joint account, do you happen to have
22 the bank letters? I didn't even know if she did, but she's
23 always really organized and I figured, okay, maybe she's got all
24 of her stuff with her because she's always got her computers and
25 everything.

1 And she said just a minute. She said I think I got it
2 here and she says what would you like me to do? And I asked
3 Dounel how do I get it to you? And he said here's my email
4 address. So I gave Lisa the email address and apparently she
5 scanned it and emailed it to Dounel while I was sitting there.

6 Q Okay. And when you say scanned it, can you refer your
7 attention, again, to Exhibit 6 --

8 A Certainly.

9 Q -- that you talked about previously. Is Exhibit 6 the
10 "it" that you're talking about?

11 A Yes, sir, it's the August 18, 2011, letter that
12 Michael Kaplan and Lisa Johnson, with our address on Canyon Mesa
13 Drive, and the account number ending in 4164. I believe that is
14 the letter that she scanned. When I say scanned, she put it in
15 a scanner, attached it to an email, and sent it to him at his
16 email.

17 Q Now --

18 A Mr. Dounel's email.

19 Q Now, Mr. Kaplan, the bank, in its opening statement,
20 alleged, implied, however you want to characterize it, that you
21 went to the bank on the early afternoon of October 6, 2011, to
22 act as agent on behalf of Ms. Johnson in trying to come to an
23 understanding about her accounts. Is that an accurate
24 characterization of what you were doing on that day?

25 MR. HAIRE: Your Honor, just before the witness

1 answers let me just interpose the objection that it
2 mischaracterizes the nature of the argument or the statement, I
3 should say.

4 THE COURT: Okay. This is a question, so I'll allow
5 it.

6 THE WITNESS: You know, I don't think she -- I don't
7 even think Lisa knew I was going to the bank. You know, as I
8 said, it was during the noon hour. I went down -- there's a
9 little shopping complex where the bank is in Malibu and they've
10 got a favorite hotdog and hamburger joint of mine called Malibu
11 Mutts and I had gone down to get a hotdog or hamburger that day
12 and I stopped at the bank. But I don't think I even think I
13 told her I was going other than I was going to go grab a bite to
14 eat.

15 BY MR. KISTLER:

16 Q Did you ever identify yourself as Ms. Johnson's
17 attorney or agent or anything like that to Mr. Dounel that day?

18 A No. No, that never even came up. He was just focused
19 the whole time I was sitting, it was like he wanted more
20 business out of me because he was -- kept asking me questions
21 about who I banked with, where my funds -- this was before the
22 letter, you know, where my funds were, you know, who was I
23 banking with and, you know, gee, he could really provide great
24 service and I should bring some of my accounts to him.

25 Q Do you recall whether or not any -- any other

1 termination letters, say the letters for Guitarfile or anything
2 like that were sent by Ms. Johnson, or was it just Exhibit 6?

3 A I don't know if I can tell you whether anything else
4 was sent because I didn't see the actual email that came into
5 Dounel.

6 Q Okay. But what you requested was just Exhibit 6?

7 A That's correct.

8 Q So after Mr. Dounel received the email, Exhibit 6
9 termination letter of the account, what, if anything, happened
10 thereafter?

11 A He basically said, this is Mr. Dounel, he basically
12 said I've received the email from Lisa. And he -- his computer,
13 it's almost like where I'm positioned with the Judge. If
14 talking to him, I couldn't see his computer, but he started
15 looking at his computer. He said I've received it from Lisa,
16 and he started looking through it. And then he started asking
17 me about various checks that had been written and he started
18 naming payees.

19 So I guess to answer your other question, it had to be
20 the joint because these were people that I knew she must have
21 been writing out of the joint account. There were a couple of
22 checks, you know, the names of the parties I remembered at the
23 time because I was able to answer his question. Were -- you
24 know, we had bought the house in the Spring of '09 and I put
25 Lisa in charge of doing the decorations and everything, new

1 furniture for the house, and so a lot of the bills were just
2 paid out of this joint account.

3 So some of them I was able to say, yep, this was
4 somebody that did work on our house, yeah, this is somebody that
5 had to do with her book design, this was a publicist. I thought
6 it was strange that he was asking me all of these questions, but
7 I was answering him. And then after he finished, you know, I
8 figured, okay, he's going to tell me something.

9 And then he starts looking more at his computer. I
10 mean, I'm facing the -- you know, I know it's difficult what I'm
11 saying, the way the Judge's computer is to mine or where I'm
12 sitting, but that -- he had his back to where I couldn't see
13 what was on his screen. And then he looks and he says, you
14 know, Mr. Kaplan, you're a man of means, because as I said, we
15 had been discussing my business and companies. And he said, you
16 know, from everything I'm looking at, Ms. Johnson has arrest
17 warrants out or been in jail.

18 And I said, you've got to be mistaken, you know, we've
19 been together a lot of years, I met her in New York, you know,
20 what are you talking about? And he said I really can't tell
21 you. This is while he's sitting there staring at the computer.
22 It was the most -- I don't know if it was scary or frustrating
23 or both. And he said I really can't tell you, but you're a man
24 of means, Mr. Kaplan, you should hire a private investigator.

25 I said Lisa hasn't done anything wrong. You know,

1 occasionally a lead foot on speeding, but she's never done
2 anything wrong. I mean, this is the lady that I've known for
3 years. I've, you know, met her dad, her mom, I've been to their
4 houses in Canada where her dad and mom live, I've met her
5 sister. And I said you've got to be mistaken. And he said, no,
6 I can't tell you any more, Mr. Kaplan, but, you know, you should
7 probably just hire a private investigator.

8 Q Did he --

9 A And I live very -- I'm sorry. Go ahead, sir.

10 Q Did he -- in his answer did he give you any -- any
11 belief or any hope that he could have been mistaken and why he
12 was telling you that?

13 A He -- you know, he sounded so darn -- this was the
14 troubling part. He sounded so darn positive that I know
15 something I can't tell you, but if you hire a private
16 investigator, Mr. Kaplan, you're going to find out everything
17 you need to know about this lady and you should do that. You
18 know, I don't know what I was supposed to -- at that point I'm
19 sitting there like stunned. You know, I was looking forward to
20 going to a concert that night, and it's like the lady I'm living
21 with, you're telling me she was in jail?

22 And he basically said, look, Mr. Kaplan, I can't tell
23 you anything more, you know, but you should just go ahead.
24 You're a man of means, so hiring a private investigator should
25 not be a problem for you, that's what you should do. I didn't

1 ask him what I should do, quite frankly. I just said are you
2 positive of this? You know, because it was like, my God, you
3 know, it was just shocking.

4 And then after he told me that -- it was like he still
5 wanted my business accounts because a few minutes later he's
6 brining over another banker from Wells Fargo introducing her to
7 me.

8 Q Who was that, do you recall?

9 A It was a lady that -- she was supposedly private
10 wealth. She gave me her business card, and I know I've got the
11 business card in my files. You know, I can -- she said, look,
12 I'm private wealth here, you know -- and he introduces me.
13 She's standing there and I said, you know, I'm a little bit
14 shocked, you know. I just came here to cash a check. I got --
15 I think I called him Mr. Dounel, I don't think I called him
16 Arash, but I said I've got Mr. Dounel basically saying that Lisa
17 has been in jail or has arrest warrants, you're now telling me
18 to open accounts. I'm just totally feeling like what am I doing
19 here? You've guys got me to where I feel sick to my stomach.
20 And I literally did, you know. I did feel sick to my stomach.

21 Q Now, during the period of time that you had known Ms.
22 Johnson, the plaintiff in this case, had she ever, to your
23 knowledge, ever been anything other than a totally law-abiding
24 citizen?

25 A That's what I've known her as. I mean, when we met in

1 New York, you know, it was a mutual friend. We went out on the
2 Friday before Labor Day weekend, that evening with a friend of
3 hers. And I had met a lot of her friends, photo labs because
4 she worked for Eastman Kodak. And, as I said, met her family
5 and, you know -- you know, we lived together. And it was like
6 what the heck is going on? It was like a bad nightmare.

7 Q Mr. Kaplan, following that event, as you described it
8 for the Court on October 6, 2011, did you do anything to follow
9 up on either Mr. Dounel's statements about -- well, strike that.
10 Did Mr. Dounel make any connection between the criminal conduct
11 he alleged that Ms. Johnson was involved in and the account
12 closings?

13 A What he said was, Mr. Kaplan, there is no problem with
14 you. The account was not closed because of you, you know.
15 Because I kept stressing why are you trying to have me open
16 accounts? You're bringing your private wealth. Because this
17 was in front of the private wealth lady. I said why are you
18 trying to open -- you know, I got a letter that you guys closed
19 my account and I've been a customer of Wells Fargo. And I told
20 him this going back to when it was First National Bank of Nevada
21 back in the '70s when I came back after law school to Las Vegas.
22 I opened it in the First National Bank building. That's where I
23 first Neil Galatz and Allan Earl. They were just forming their
24 new partnership and leaving Louie Wiener.

25 And I had opened a bank account in that building, the

1 original First National Bank building. Then it became First
2 Interstate Bank, and then Wells Fargo. And I said I have been a
3 customer for over 35 years. You closed my account, and now you
4 want me to open an account because I've got some bucks. And he
5 said, Mr. Kaplan, it has nothing to do with you. It has to do
6 with Lisa Johnson.

7 Q Okay. And so you followed up to try to find out more
8 about what Mr. Dounel was referring to in his statements?

9 A Well, I tried to find out from -- I'm not sure which
10 happened next, but I had some further correspondence with Mr.
11 Dounel because he emailed me, we had some emails going back and
12 forth and a few phone calls after that where he basically said
13 -- this was strange because not long after that he sent me an
14 email or called me. I think both. And he said, you know, Mr.
15 Kaplan, I can reopen the accounts of you and Ms. Johnson here in
16 Malibu. And I said, then why are they closed? And he says I
17 can't answer that.

18 And I said, well, our main residence is in Las Vegas.
19 Any banking I do is based out of Las Vegas. That's my home. I
20 don't want to, you know, open accounts in California. I've got
21 a vacation house there, but it's not my -- where I live. And,
22 you know, then he called me one day and he said, Mr. Kaplan, I
23 need to apologize to you for what I said about Lisa.

24 Q Okay. And before -- when you get into that --

25 A Okay. Sorry.

1 Q -- would you refer your attention to -- well, were
2 there any emails regarding that subject with Mr. Dounel between
3 you yourself and Mr. Dounel? Mr. Dounel wanting to apologize
4 for what he said about Lisa?

5 A Yeah, because I was rather terse with him that day
6 because I started to tell him on the phone the havoc, I mean,
7 starting with when I got home that day. And I was looking
8 forward to that night because seeing Glen Campbell, we were in
9 the first row. It was like this is going to be cool. The man
10 has Alzheimer's and it was like he probably wasn't going to be
11 performing again, and yet on the way to the concert I'm sitting
12 there getting into a fight with Lisa over this crap.

13 And I told Dounel some of this on the phone. And he
14 said -- you know, he started to apologize. And I was a little
15 bit short with him and basically said, well, Mr. Dounel, if
16 you'd like to apologize to me, why don't you do it in writing
17 because I've been through hell since you had this conversation
18 with me. Excuse me language. But, you know, I said this has
19 just been the worst time. You know, when you tell me these
20 things, I don't know what to believe anymore. And he said,
21 well, let me do a letter of apology to you, and I said that
22 would be great, have a good day.

23 Q Okay.

24 A And I got off the phone with him that day.

25 Q Okay. Now, referring to Exhibit 20 in the skinny

1 binder, did you subsequently have an email conversation with Mr.
2 Dounel?

3 A Yes, I have. I've also got a copy of one of the last
4 emails in my pocket from him that I guess I've been saving.

5 Q Okay. We'll make it to that.

6 A It's kind of crumpled up, but --

7 Q I think that that particular document is one of the
8 premarked proposed exhibits. But in this email, is the -- is
9 the -- well, can you just explain the email chain to Her Honor,
10 and then the next question is is this apology that Mr. Dounel
11 offered regarding what he said about Lisa referenced in this
12 email chain. And if so --

13 A You want me to read it, sir?

14 Q I want you to explain it to the Court what's going on
15 in this email.

16 A I guess I should look at the whole thing before I --
17 that's right. It was -- it was strange, you know, because he
18 called me, as I said, saying he wanted to apologize for what he
19 had told me. And I sent him back an email after we got off the
20 phone saying could you just put it in writing. Then this was
21 strange because in one of the emails on here he even said,
22 what's your address? And I was like, okay, he had all my
23 banking files and history. I thought it was kind of strange
24 that he needed to know my address. And I sent him one of the
25 emails that said please send to the letter to me in Las Vegas at

1 9517 Canyon Mesa Drive, Las Vegas, Nevada, 89144.

2 And then he writes I would like to mail out your
3 letter priority mail. I can send it to your Las Vegas address
4 if you would like. Also, as per your request, I can also reopen
5 Lisa's accounts. The only problem with that is keeping the same
6 account numbers. I would have to change those different
7 numbers, is this okay? Because --

8 Q And are --

9 A -- quite -- I'm sorry.

10 Q And are you reading from Exhibit 20, Bates number in
11 the lower right hand corner, LISAJ0029, the lower half of that
12 page, is that what you're looking at?

13 A Yes, sir, it's page 4 of 6.

14 Q Okay. LISAJ0029, Mr. Kaplan, I would like to mail out
15 your letter priority mail. Is that -- is that what you're
16 referring to?

17 A Yes, sir.

18 Q Okay. Referring your attention to the next -- the
19 next earlier page which is Bates No. 0028 of Exhibit 20, the
20 lower bottom of that page, can you tell me what --

21 A Well, he --

22 Q -- that email was?

23 A I can read you because I remember receiving this, you
24 know, on Halloween, no less, that year. He wrote me a week ago
25 -- or this is, I guess, me writing back to him, you know. And I

1 wrote, A week ago you had called me to offer your apologies for
2 your comments regarding Lisa. I had asked you to send a written
3 apology. I have not heard back from you. In our phone call you
4 had told me that we could reopen the accounts that Wells Fargo
5 had closed under you at your branch. I am at my home in Nevada
6 and wanted to make sure that as you represented we could have
7 Wells Fargo reopen the accounts that they have closed. Please
8 advise.

9 Q All right. And what's the date of that email?

10 A October 31.

11 Q And that coming from --

12 A Halloween or admission of the state of Nevada.

13 Q And that's coming from -- that's coming from Mr.
14 Dounel?

15 A This one was from me to him because I still hadn't
16 received the apology that he promised me.

17 Q Okay. Can you refer your attention to Exhibit 21 in
18 the blue binder?

19 A Yes, sir.

20 Q And specifically referring your attention to the last
21 page of that exhibit, which is Bates No. LISAJ0045.

22 A That's the one that I had folded up in my pocket. I
23 can certainly -- I've almost got that one memorized without even
24 looking at it. It was so infuriating. It was December 5, 2011,
25 at 9:40 in the morning. He wrote, Hello, Mr. Kaplan, I regret

1 to inform you that I have sent the letter to my management and
2 our legal department cannot allow me to send an official letter
3 of apology. I hope the apology that I have given you thus far
4 verbally -- or thus far verbally can suffice and that in the
5 future we can help you meet all your financial needs as a bank
6 branch and a financial institution. I was a little bit outraged
7 when I got, quite frankly.

8 Q Okay. And that's Exhibit 21, page 0045?

9 A Yes, sir. And that was signed, Sincerely, Arash
10 Dounel, licensed banker, Malibu branch.

11 Q Based on your receipt of Exhibit 21, page 0045, that
12 email from Mr. Dounel, how did that strike you or did that
13 strike you in any way regarding the bank's position about the
14 closing of Ms. Johnson's accounts and the reason therefore?

15 A As I said to you before, I was shocked that day on
16 October 6th when I left the bank, you know, of what they said.
17 When he called me -- and I didn't get an apology. He's saying
18 that I hope the apology I offered you -- because the day he
19 called me and started to make an apology, I was so annoyed. And
20 I told him, you know, you have no idea what havoc you've caused
21 in my home. And if you want to apologize to me, put it in
22 writing.

23 Then to get an email from him that I've talked to my
24 boss, the attorneys, and I'm thinking to myself, wait a second,
25 your boss and your attorneys don't want this letter to go out.

1 You told me all these things about her, which, quite frankly, I
2 was hoping, okay, the man said he was going to send an apology,
3 at least I can go back to Lisa and basically say, oh, the man
4 said he's sorry, please don't be mad at me and hopefully we can
5 patch up. Because it had been like this. I have to tell you,
6 you know, if you went home to your wife and you confronted her
7 with something like that, it's not a pleasant experience. I get
8 sick almost thinking about it, you know.

9 And then when he's going to send you an apology, which
10 I figured this is great, I can now go to Lisa and basically say,
11 look, the man apologized, I'm sorry even questioning you or
12 doubting you, you know. And suddenly now he's got his boss and
13 Wells Fargo said no, and I'm -- now it's putting further, saying
14 what the heck is going on? There's got to be something, you
15 know, there or otherwise what are they afraid of just saying
16 we're sorry, we made a mistake. What's the fear, you know, if
17 she did nothing wrong? But that's almost setting off more red
18 flags to me. And I've got things -- I got to tell you, I've got
19 things worse going into that Christmas that year.

20 Q Mr. Kaplan, did there come a point in time where you
21 hired an attorney to contact Wells Fargo Bank to try to address
22 the closures, as well as the defamatory statements --

23 A Yes, sir.

24 Q -- of Mr. Dounel?

25 A Dirk Ravenholt, who I've known for quite awhile, he's

1 a sole practitioner. His dad was the coroner here forever, Otto
2 Ravenholt. And I asked him for some help. I told Lisa, I said,
3 look, I've known Dirk, you know, maybe we should have Dirk just
4 contact them. And Dirk says --

5 Q Well --

6 A Yeah, I'm sorry.

7 Q -- you don't have to go into what Dirk says.

8 A Okay.

9 Q There is a letter from Mr. Ravenholt or Ravenholt and
10 Associates, and that's Exhibit 18, I believe. If you could
11 refer your attention to that.

12 A Let me find that.

13 MR. KISTLER: And, Your Honor, I'll be offering all of
14 these exhibits at the conclusion of Mr. Kaplan's testimony.
15 This particular exhibit is being offered merely to show that the
16 bank was on notice as to the defamatory comments as alleged by
17 Mr. Kaplan as given in this letter.

18 BY MR. KISTLER:

19 Q What's the date of this letter?

20 A October 17, 2011, so --

21 Q And is this a letter that you had Mr. Ravenholt, an
22 attorney, send to Wells Fargo Bank?

23 A Yeah, I -- at that point where I was -- you know, what
24 I had asked Dirk, you know, I said I've really got to get this
25 squared away. You know, I'm in a relationship with somebody for

1 a lot of years. I've got Wells Fargo Bank -- and I guess I'm
2 old fashioned. I still have a lot of respect for banks, you
3 know. And I said, look, I've got a banker that's basically
4 saying this, you know. At least see if they'll tell you what
5 the heck is going on. Did they make a mistake, is this the
6 facts, what's wrong?

7 Q Okay. Specifically in the last paragraph of Exhibit
8 18, the first sentence, could you read that into the record,
9 please?

10 A The letters of closure and the conversations with bank
11 personnel may be considered defamation of Lisa Johnson to
12 unrelated third parties.

13 Q Okay. And was there a response that was generated by
14 Wells Fargo Bank that was brought to your attention by Mr.
15 Ravenholt?

16 A Yes, there was.

17 Q And if you could look at -- or if you could review
18 Exhibit 19, please.

19 A Yes, sir. Would you like me to read this, sir?

20 Q Well, what's the date of this letter?

21 A October 26, 2011.

22 Q And this appears to be a letter from Wells Fargo Bank,
23 Kate Wright, Vice President, Western Mountain District Manager.

24 A Correct, on Wells Fargo stationary.

25 Q Do you have an understanding or belief as to whether

1 or not this letter was the letter that was written in response
2 other than to Mr. Ravenholt's letter, Exhibit --

3 A That was --

4 Q -- 18?

5 A I think it's, you know, pretty clear because Mr.
6 Ravenholt wrote his letter on October 17th. That's the only
7 letter he wrote to Wells Fargo. And on October 26th, nine days
8 later, Kate Write, VP Western Mountain District Manager of Wells
9 Fargo wrote him back. Would you like me to read this, sir,
10 or --

11 Q No, but you can read it to yourself. In the bank's
12 response, particularly in the bank's response regarding Mr.
13 Ravenholt's allegation of defamation in Exhibit 18, is there any
14 response in the bank's letter that distanced the bank from Mr.
15 Dounel's defamatory statements?

16 A I've got to tell you. When Dirk Ravenholt provided me
17 a copy of that letter, I got more concerned. You know, he
18 writes a letter that Lisa was defamed, and Wells Fargo writes
19 back that we do ongoing review of account relationships, our
20 risk based assessment is confidential and as a result we are
21 unable to disclose specific information or details leading to
22 this decision. I mean, you couple that with what Arash Dounel
23 had told me, and you're sitting there saying, if you're me, what
24 the heck is going on?

25 Because Dounel was merely saying this is -- I mean,

1 excuse me, not Dounel, but Mr. Ravenholt was merely saying here
2 is what happened to this man at the bank. Instead of responding
3 to that they basically, you know, say risk assessment. Instead
4 of saying the man made a mistake when he accused you of all this
5 crap. You see risk assessment, okay, that ties in with Dounel
6 saying that she was in jail or had arrest warrants. That's what
7 went through my mind upon reading it.

8 Q Now, and there's some other documents and we'll go
9 through the other documents. There were emails, things of that,
10 you've had other conversations, as the Court will determine and
11 find out with other bank officials. Has there ever been any
12 point in time where you were informed by any bank official that
13 Mr. Dounel did not speak for and on behalf of the bank, that is
14 that whatever Mr. Dounel said, he did not express the position
15 of Wells Fargo Bank? Have you ever seen anything like that from
16 Wells Fargo Bank?

17 A No, sir. I think -- I read this as kind of going
18 along with what Dounel is saying. I mean, it kind of didn't
19 address the defamatory comments. Instead it's saying a risk
20 assessment and everybody is just in it together. I think the
21 last sentence --

22 Q There's no -- there's no pending question.

23 A Okay. I was just going to comment.

24 Q Do you know a name, the name I'm about to give you, a
25 Chad Maze?

1 A Yes, sir.

2 Q Does that ring a bell with you?

3 A Yes, sir.

4 Q And who is Chad Maze and how do you come to know that
5 name?

6 A I had a meeting one day with my estate attorney
7 Gregory Morris, and he handles my estate, my trust, and will.
8 And I told him what had happened with Wells, that they had
9 closed the account, and the comment that was made by Mr. Dounel
10 about Lisa. And Greg Morris says to me, Mike, I've got a friend
11 over in the private wealth department at Wells. Why don't you
12 sit down with him and at least talk to him? He said he's a
13 really good guy, and he gave me Chad Maze -- and Chad Maze also
14 and another gentleman Andrew Noll, they work together in the
15 private wealth department at Wells Fargo. And so I made contact
16 with both of them.

17 Q And did you have discussions with them?

18 A Yeah, they ended up saying --

19 Q And did you have -- did you have email discussions
20 with them?

21 A I had both email and personal. They invited me to
22 lunch and we had lunch. As a matter of fact, it was in Malibu
23 and they said can you meet us for lunch tomorrow? I said, well,
24 I'm in Malibu, but I guess I could fly in for the day to meet
25 you guys. I don't want to drive back and forth. So I flew in.

1 We had lunch over at the restaurant over by the Wells Fargo
2 Center. I can't think of the name of the restaurant, but it's
3 where everybody ends up meeting. And I sat across from Andrew
4 Noll and Chad Maze and we had about an hour, hour and a half
5 lunch to discuss they wanted my business. We talked about my
6 background, a lot of bankers that I've dealt with.

7 Q I'm sorry. And what was Mr. Maze's position? He
8 worked for Wells Fargo?

9 A Yes, he was --

10 Q Okay.

11 A -- in the wealth department. I believe Andrew Noll
12 was his boss. They both worked in the private wealth department
13 at Wells Fargo.

14 Q All right. And if you could refer your attention to
15 Exhibit 24, please. Can you identify for the Court what Exhibit
16 24 is.

17 A Let's see, the first is an email from Chad Maze to
18 Rachel Romijn at Wells Fargo, and it's cc to Andrew Noll

19 Q Well, stop right there. Who is Rachel Romijn, if you
20 know?

21 A I -- I had had some discussion with her at one point.
22 I don't know if I can tell you specifically her title. But I
23 had had some --

24 Q Was she -- was she Wells Fargo management?

25 A She was a Wells Fargo some type of executive. She and

1 I even had a phone conversation at one point because I was just
2 trying to get to the bottom. You know, first off, I was upset
3 that somebody closed my account because I always try to -- you
4 know, my personal accounts, it's like my credit -- my credit
5 score is, and I'm proud of it, 850 on one of them, and the other
6 one is 830. I don't know why. They're normally 50. But, you
7 know, I take pride in that, and suddenly somebody closed an
8 account. Then I coupled it with what Dounel had said, and I'm
9 getting -- what the heck is going on? Well, Dounel said, Mr.
10 Kaplan, you're not the problem. So I did my calls. At some
11 point I did have communications with Rachel -- I don't know how
12 you say the name, Romijn, I believe.

13 Q Now, so that's Mr. Maze, Ms. Romijn, both of whom were
14 management officials or executives at Wells Fargo?

15 A Yes, sir.

16 Q Did either one of those individuals or anyone else say
17 Mr. Dounel's statement to you concerning Lisa Johnson is not the
18 position of Wells Fargo Bank? Did you ever hear that statement
19 from any Wells Fargo executive or manager?

20 A That was -- that was something they never even
21 questions. You know, he was one of their managers. Nobody ever
22 said that he's not, and nobody ever -- you know, I told them
23 what he said, and nobody got indignant and basically said he had
24 no right saying. Nobody said that. I would have thought
25 somebody would have said that to me, that, hey, the man spoke

1 out of -- I was kind of almost hoping because then at least I
2 would have had a glimmer that, okay, maybe what this man said is
3 wrong and, you know, it's all a bunch of BS and everything is
4 fine, and nobody wanted to say that. I couldn't understand why.

5 Q Okay. So referring your attention to the second page
6 of Exhibit 24, specifically, and it looks like down at the
7 bottom it's WFB0468. And I'm kind of reading the cut-off
8 portion of the Bates stamp.

9 A Yes, sir, I see -- I see it.

10 Q About mid-page here there is a -- from Michael Kaplan
11 to Chad Maze, cc Andrew Noll dated November 30, 2011. Do you
12 see that?

13 A Yes, sir.

14 Q Do you know who Andrew Noll is?

15 A Andrew Noll, I believe, was Chad Maze's boss, both in
16 the private wealth department at Wells Fargo.

17 Q Okay. And could you read the -- is this an email from
18 you to Mr. Maze and Mr. Noll?

19 A Yes, sir.

20 Q All right. And what did you tell Mr. Maze and Mr.
21 Noll in that email?

22 A Well, it was a follow up from our luncheon where I
23 talked to him about opening some accounts with the private
24 wealth department. And so I had written to Chad Maze and cc'd
25 Andrew Noll on it. This is November 30, 2011. And I wrote, So

1 if I want to set up a multi-million dollar account with Lisa at
2 Wells Fargo they would refuse that, question mark.

3 Q And did you receive a response to -- to your question?

4 A Yes, I did. I think they had sent me an email prior
5 to that, but, yes, I don't see it here.

6 Q Okay. If you could refer your attention to the bottom
7 third of the page, the page previously which is WFB00 -- or,
8 excuse me, 0467.

9 A 467. Okay. Yes, sir.

10 Q Is that --

11 A Yeah, the bottom is the response I received from Mr.
12 Maze.

13 Q And what did Mr. Maze tell you about your opening a
14 multi-million dollar account for Lisa Johnson at Wells Fargo
15 Bank?

16 A Here is where -- this was also upsetting, I guess.
17 Mr. Kaplan, unfortunately, yes, the account would not be
18 accepted if Lisa was associated with it. Of course, you can
19 open an account in your name or the name of your trust, but
20 including Lisa could not be one of the options, signed Chad --
21 Chad W. Maze, VP Wells Fargo Private Bank.

22 Q Okay. Now, we're going to come back to that exhibit,
23 Exhibit 24, those two pages WFB0467 and 468 in just a few
24 minutes when -- when we talk -- when you inform the Court of the
25 impact of the defamatory statements on Lisa Johnson as a result

1 of their impact on you. But before we get to that, what I'd ask
2 you is to refer your attention to Exhibit 25.

3 A Yes, sir.

4 Q So is it fair to say that your dialogue with Wells
5 Fargo Bank concerning these events, the closure of the account,
6 the defamatory statement, didn't end with Exhibit 24 that we
7 just looked at?

8 A That's correct.

9 Q And Exhibit 25, what was Exhibit 25? First of all,
10 it's -- I would identify it quickly for the record. It's on
11 Kaplan Enterprises, LLC stationary dated December 16, 2011,
12 purportedly signed by you, purportedly addressed to Jennifer
13 Scafey or Scafe, S-C-A-F-E.

14 A Scafe, I think is how you say it.

15 Q Scafe. Is this a letter that you yourself wrote?

16 A Yes, I did.

17 Q And did you send this letter to Ms. Scafe?

18 A Scafe.

19 Q Scafe.

20 A I had emailed it to her. I scanned it and emailed it
21 to her.

22 Q Okay. And what was Ms. Scafe's position with Wells
23 Fargo Bank as far as you knew?

24 A It's how I had it directed, Senior Counsel at Wells
25 Fargo Law Department, 45 Fremont Street, 26th Floor, San

1 Francisco.

2 Q Okay. Sir, referring your attention to the second
3 page of Exhibit 25, specifically the last paragraph.

4 A Yes, sir. Would you like me to read that, sir?

5 Q The second sentence, can you read the second sentence
6 into the record for the Court?

7 A I am appalled at the defamatory comments from your
8 agent towards Lisa Johnson. Lisa has an outstanding background,
9 and contrary to the statements by your banker, she has never had
10 any legal problems.

11 Q Okay. And it's your testimony that you sent this to
12 legal counsel at Wells Fargo on or about December 16, 2011?

13 A Yes, sir.

14 Q Did you receive a response to your letter?

15 A I believe she emailed me something, and I don't recall
16 the exact nature, but something to the effect, yes, that she --
17 there was no reason to meet. I think -- I don't know whether it
18 was this one or whether it was an email to her where I basically
19 said that we were prepared at our own expense to fly up to San
20 Francisco just to sit down with her because it was that
21 important. And I think -- I don't know whether it was a phone
22 call because I think we may have spoken at one point. As a
23 matter of fact, I know we did speak at one point, you know, on a
24 telephone call.

25 Q During all of these contacts with Wells Fargo Bank

1 executives, legal counsel, senior management, were you ever told
2 that Mr. Dounel's statements regarding Lisa Johnson being in
3 jail or having an arrest warrant was not the position of Wells
4 Fargo Bank?

5 A No, sir. I was hoping that somebody would have said
6 that along the way. I probably would have felt a little bit
7 better and it probably would have eased a lot of strain that was
8 going on at home. But nobody -- nobody ever said that. I don't
9 know why.

10 Q With all of these contacts with senior management and
11 executives of Wells Fargo, did any of those individuals tell you
12 that Mr. Dounel's statements were false?

13 A No, sir.

14 Q I have an exhibit, Exhibit 23. There's a Jacinda
15 Freeman. Can you identify that for us?

16 A Yes, sir.

17 Q It's a business card.

18 A Yes, sir, I remember meeting with her.

19 Q Okay. And who -- who was Jacinda Freeman?

20 A Well, her business card says personal banker. I can
21 describe how I met her if you would like, sir.

22 Q How did you meet her?

23 A I had received an email from Arash Dounel where he had
24 basically written me that he could open up the bank accounts for
25 us in Malibu, and I told him we live in Las Vegas, I don't even

1 want to start opening bank accounts in California. And he said,
2 well, Mr. Kaplan, essentially you may walk into any branch of
3 Wells Fargo back in Las Vegas where you live and open an
4 account.

5 And so on this particular day, and I remember the day
6 specifically, it was November 8th of that year, that's the day
7 my mom had passed away a lot of years before that, but on
8 November 8th. And I went into the bank and I brought a copy of
9 the letter that they had sent to me on the closing of the joint
10 account. And I met with this lady. She's a very, very nice
11 lady. She really tried to help me. She basically looked at the
12 letter and she brought me into her office area and she said, Mr.
13 Kaplan, why don't we do this? Let's call the 800 number while
14 we're both sitting here. And I said that would be great.

15 So she called the 800 number on a speaker phone. And
16 it was frustrating because she got the same runaround with one
17 exception. She told them, you know, I have Mr. Kaplan here. He
18 wants to open a new account with himself and Ms. Johnson. The
19 lady said on the phone that answered the 800 number told myself
20 and Ms. Freeman Ms. Johnson is not eligible to open any accounts
21 at Wells Fargo.

22 And then Ms. Freeman went the next step and said,
23 well, what about Mr. Kaplan, he's here, if he wants to open
24 another account? And the lady on the 800 number said, nope, Mr.
25 Kaplan is not eligible to open any accounts, either. The only

1 reason we're leaving his one account is just because he's had it
2 for so many years, but he's not eligible to open any other
3 accounts, either.

4 Q Now, Mr. Kaplan, have Mr. Dounel's statements made to
5 you or did Mr. Dounel's statements that were made to you October
6 6, 2011, affected Lisa Johnson and your relationship with Lisa
7 Johnson?

8 A Oh, geez. It is -- you know, I'm not the expert on
9 relationships, but I guess the word trust is probably the most
10 important thing. And Wells Fargo basically tried to take the
11 word trust away from our relationship. It's caused a lot of
12 stress. You know --

13 Q Did --

14 A -- a lot of fights.

15 Q Did Ms. Johnson know -- when you say lack of trust,
16 that's lack of trust you for her?

17 A Yeah. When you have --

18 Q And did -- did Ms. Johnson -- did you make Ms. Johnson
19 aware of your lack of trust in her as a result of this?

20 A I told her, you know, it started that day on October
21 6th on the way to the Glen Campbell concert as we're sitting in
22 the car driving downtown L.A., you know, what he said. And I'm
23 basically saying what the heck is going on? I got this man --
24 you know, I was in business, you know, sold my business in 2007.
25 But I was always taught kind of when I got involved in business

1 and I was practicing law, a gentleman that I respected in my
2 industry, I remember his comment. He said, you know, if you
3 want to be successful in business, always be truthful to your
4 bankers and work closely with your bankers. And I always lived
5 by that. This gentleman was probably about 15 years older than
6 me, but he was very smart, he had a big business.

7 And now I had a banker telling me that the lady I'm
8 involved with has arrest warrants or been in jail. Well, I'm
9 believing that there's nothing, but there's something in the
10 back of your mind that, what's going on? I've tried every
11 avenue to get somebody -- I didn't want a thing out of anybody
12 at Wells Fargo, just, please, tell me that she didn't do
13 anything wrong or that Dounel is a crazy lunatic that works for
14 you guys. Somebody please tell me something so at least I can,
15 you know, put this behind me. Nobody would, you know.

16 Q Well, how is that -- how did that impact Lisa
17 Johnson --

18 A Well --

19 Q -- vis-à-vis your interaction --

20 A -- you know --

21 Q -- with Lisa Johnson?

22 A -- it's -- we've had discussions and I understand, you
23 know, her -- she wants some security. We're not married. She
24 always wanted security and I don't blame her, you know. My dad
25 died when I was five. He was 41, 42 years old. I understand

1 Lisa basically saying, hey, I don't want one day you drop dead,
2 the houses are all in your name, I don't have any money to pay
3 any bills, I can't do anything. And that was part of my
4 discussion the day that I had met with Greg Morris, my estate
5 attorney.

6 And I said, you know, in addition to trying to solve
7 this, I said, you know, I really need to give her some comfort.
8 And I understand if I drop dead at -- famous estate attorney, he
9 says, Mike, it's not if you drop dead, it's when you drop dead.
10 I said thanks for that great encouragement from the estate
11 attorney.

12 And I said, you know, I really need to get Lisa some
13 comfort because, look, if I drop dead, she needs to not to worry
14 while you're sitting there with everything being resolved,
15 whatever happens. I won't be here. You know, I'd like to put a
16 few million dollars in an account for her. And he said, hey,
17 Chad is the guy, he can help you with all that, he can help
18 solve what's going on and give you the comfort and do all of
19 this.

20 Q Okay. And you made -- and you had those discussions
21 prior to Mr. Dounel's defamatory statements to you on October 6,
22 2011?

23 A Yeah. I mean, you know --

24 Q Had you come to a decision regarding that concept
25 prior to that discussion?

1 A Yes, sir.

2 Q And what was your decision regarding the concept of
3 providing security for Lisa Johnson? What decision had you made
4 prior to October 6, 2011?

5 A Well, I wanted to set up an account for her. You
6 know, if I could just back up and give you the whole story, you
7 know, I worked for a lot of years building a business with my
8 former partner. We sold it in '07. And the bottom line, it was
9 the first time of really -- you know, it's one thing to have a
10 business, it's another thing, okay, they finally gave you a nice
11 big check, the money is in the bank, a little bit of security.

12 And then the following year the world went to heck and
13 I think -- I don't know if I was that different from a lot of
14 people to where it's like, gee, you're just worried about what's
15 happening to all your investments as the markets were crashing
16 every day. And it was probably not until '09 or '10 where,
17 okay, everything started stabilizing to where it's, okay, I now
18 feel comfortable where I'm at to where now I need to take care
19 of her, you know, that if I drop dead she doesn't have to worry.
20 Because I'll never know if I'm dead, but it's like I don't want
21 to leave somebody like that that I care about.

22 Q And what was the decision you had made prior to
23 October 6, 2011, regarding how Lisa was going to be taken care
24 of?

25 A Well, you know, I wanted to set up an account for her.

1 You know, I didn't --

2 Q What was the magnitude of that account?

3 A Somewhere in the three to \$4 million range, you know,
4 that I figured, okay, that'll at least take care of her. You
5 know, I had been very fortunate in life. I started out with
6 nothing and I've been very fortunate. And my mom raised my two
7 sisters and I. We basically had nothing. And as I said, I'll
8 never know if I'm dead, but it's like I don't want to have to,
9 at my final breath, realize, shit, she's got to stress.

10 Q Yeah, I would forget about the expletive. Did you
11 have the financial wherewithal to set up a three or \$4 million
12 account for Lisa prior to October 6, 2011?

13 A Yes, sir.

14 Q And as a result of your discussions with Mr. Dounel,
15 was there any impact on your decision to set up that account for
16 Ms. Johnson?

17 A You know, I was a little bit baffled and befuddled,
18 basically saying -- I was almost pleading for them to basically
19 tell me she's -- nothing wrong to where I had some comfort, but
20 they kept leaving me these doubts. I mean, from me contacting
21 different managers, from basically Dirk Ravenholt sending a
22 letter that they basically shoved aside. I'm sitting there
23 saying, I'm going to have to hire a private investigator. I
24 feel, you know, there's something wrong with that, but part of
25 me is like, is this guy right, is that what I should be doing?

1 You know --

2 Q Did you go forward with setting up an account for Ms.
3 Johnson?

4 A No, sir.

5 Q And was there any --

6 A This is -- this is even tough now sitting here, you
7 know, saying it, but I didn't because of that.

8 Q You didn't set up the account for Ms. Johnson because
9 of what?

10 A Well, because, you know, it started with Dounel making
11 these comments, then to meet with the private wealth department,
12 you know, and to have Chad Maze send an email back to me that we
13 won't take your money, Mr. Kaplan, if Lisa Johnson is associated
14 with it. I'm sitting there saying, I've never heard of this in
15 my life. A bank not taking money? I mean, what did I do? I
16 mean, I've worked hard all my life, you know. I consider myself
17 very honorable. I don't even have, knock on wood, I don't even
18 have speeding tickets. I try to, you know -- I don't think I've
19 ever even had a speeding ticket.

20 Q Okay. And when you say Chad Maze, is that -- were you
21 referring to Exhibit 24 that you testified about previously,
22 specifically the -- the second page and the first page?

23 A Yes, sir. You know, where he wrote on November 30th
24 of that year, unfortunately, yes, the account would not be
25 accepted if Lisa was associated with it. Of course, you could

1 open an account in your name or the name of your trust, but
2 including Lisa could not be one of the options.

3 Q And then the preceding page, however, halfway down
4 where you referring to a multi-million dollar account in Lisa's
5 name, were you referring to -- did -- did this interaction with
6 Mr. Maze and the lack of satisfaction there have any play in
7 your decision in connection with Mr. Dounel's defamatory
8 statements to not open the Lisa Johnson account?

9 A Yes, sir. I mean, you've got Dounel telling me on
10 October 6th after looking at the computer that she must have
11 arrest warrants, been in jail, then on November 30th of that
12 year, so six weeks, eight weeks later I get the head of private
13 wealth basically telling me we won't take an account if her name
14 is on it? I've never -- I got to tell, I've never heard of a
15 bank turning down a three or \$4 million account. That set off
16 such red flags, I can't even describe to you, you know.

17 I worked in my career as a public defender. I've
18 worked in the Attorney General's office. I represented bad
19 people. I prosecuted people in the AG's office. You know, for
20 a bank to say we won't take a three or \$4 million account if
21 Lisa Johnson is associated with it, what would any rational
22 persona say? I mean, if somebody were to go through Wells
23 Fargo, I guarantee they've probably had some really bad people
24 that are account holders there.

25 Q So I take it that Ms. Johnson has been deprived of the

1 use of the three to \$4 million from on or about October 6, 2011,
2 up through -- up through today's date since you didn't open the
3 account?

4 A I didn't open the account. And I've got to tell you,
5 this whole process has --

6 Q Sir, the question is and so Ms. Johnson has been
7 deprived of the use of the fund that you intended to set her up
8 as a result of the bank's actions?

9 A Yes, sir. I mean, I had every intention with private
10 wealth because, to me, that was -- especially after Greg Morris
11 who, as I said, he's my estate guy who basically drafted my
12 trusts, my will. You know, he recommended these guys. I
13 figured, okay -- because I looked at Wells Fargo, okay, they're
14 a bank I've been dealing with for a lot of years, they've got
15 offices all over California, all over Nevada, that's the perfect
16 way to handle it with them. Look, even the joint account --

17 Q Okay.

18 A I'm sorry. I'm sorry.

19 Q I think you answered my question.

20 MR. KISTLER: Your Honor, I have no further questions
21 of Mr. Kaplan. I would at this point, Your Honor, move for the
22 admission of Exhibits 2, 6, 13, 14, 20, 21, 18, 19, 24, and 25.

23 THE COURT: Okay.

24 MR. HAIRE: No objection, Your Honor. I believe those
25 were stipulated to via the joint pretrial memo.

1 THE COURT: Okay.

2 THE CLERK: You mentioned 23.

3 MR. KISTLER: That's 2, 6, 13, 14, 20, 21, 18, 19 --

4 THE COURT: 23 is Ms. Freeman.

5 MR. HAIRE: The business card.

6 THE COURT: 23 is Freeman.

7 MR. KISTLER: I'm sorry, and 23.

8 THE CLERK: And 23?

9 THE COURT: Yeah. Okay. They're admitted --

10 MR. KISTLER: 23, 24, and 25.

11 THE COURT: -- by stipulation.

12 (Exhibits 2, 6, 13-14, 18-19, 20-21, 23-25 admitted)

13 THE COURT: Okay. All right. Cross-examination, Mr.

14 Haire.

15 MR. HAIRE: I do have cross-examination, Your Honor.

16 I wonder if everyone involved would like a break.

17 THE COURT: Okay. We can take a break.

18 MR. HAIRE: Thank you.

19 THE COURT: Just like ten minutes.

20 (Court recessed at 3:19 p.m., until 3:32 p.m.)

21 CROSS-EXAMINATION

22 BY MR. HAIRE:

23 Q -- the joint owner of the joint account as we've been

24 referring to that here today in the courtroom?

25 A I'm not sure what you mean, sir.

1 Q Let me ask it differently. Was Lisa a joint owner of
2 the joint account that you talked about Mr. Dounel?

3 A I don't know how to characterize it because I guess
4 even though it had her name on it, my understanding is they look
5 to me because it was under my social security number, I'm the
6 one that -- as I said earlier in my testimony, it produced
7 negligible interest, but I used to get a -- I guess it's a 1099
8 of interest every year on that account and it came to me, not
9 Lisa. We don't file -- well, we're not married, so there's no
10 joint returns and everything is under my name.

11 Q Your answer is you don't know?

12 A I don't know, sir.

13 Q All right. Turn with me in whatever binder you have
14 up there to Exhibit 2.

15 A Exhibit 2, sir?

16 Q Yes. I think you're familiar with this. Mr. Kistler
17 talked about it with you and I believe it has been offered into
18 evidence. Do you have that in front of you there?

19 A Yes, sir.

20 Q All right. You see both of your names in the --
21 towards the upper left hand corner of that document, Bates No.
22 WFB2?

23 A I'm just looking at 1, let me go to 2.

24 Q Now, I -- I apologize. I'm referring only to WFB2.
25 This is the --

1 A Yes, sir. I see it, sir.

2 Q All right. You see your names Michael Kaplan and Lisa
3 Johnson there; right?

4 A Yes, sir.

5 Q All right. If you go over, move to the right over
6 from Lisa's name. You will see under new relationship the term
7 -- the words SEC JNTOR.

8 A Yes, sir.

9 Q Do you have any idea what that might refer to?

10 A Not really. I don't know that I ever paid attention
11 to it, so I couldn't tell you.

12 Q Would you agree with me that it's possible that might
13 mean secondary joint owner?

14 A I'd be --

15 MR. KISTLER: I'm going to object --

16 THE WITNESS: -- speculating.

17 MR. KISTLER: -- to the question, Your Honor.

18 THE WITNESS: I'd be speculating.

19 MR. KISTLER: I'm going to --

20 THE WITNESS: I'm not sure what --

21 MR. KISTLER: I'm going to object to the question,
22 Your Honor. It calls for speculation. He said he doesn't know
23 what it means.

24 THE COURT: Overruled.

25 MR. HAIRE: I'm sorry. I didn't hear the Court's --

1 THE COURT: I said it's overruled.

2 BY MR. HAIRE:

3 Q All right. Would you -- would you agree with me, Mr.
4 Kaplan, that secondary joint owner is maybe a reasonable
5 interpretation of that -- that denomination?

6 A I never thought of it that way. I don't think I would
7 have. Because, as I said before, if that was the case, wouldn't
8 they have wanted both of our social security numbers and
9 wouldn't both of us be liable for the taxes on it?

10 Q Down below that the same nomenclature is used. That's
11 maybe an inch below that, it says additional relationship and
12 there we see the SEC JNTOR.

13 A Hang on. I'm looking for it, sir.

14 Q All right. I'm sorry.

15 A Where do I look?

16 Q Go directly down from that reference I just made.

17 A Uh-huh.

18 Q Down about an inch.

19 A Okay.

20 Q And do you see that that term is repeated again next
21 to the terms additional relationship?

22 A Yes, sir.

23 Q All right. Is -- and back up to my original
24 reference, is that -- that's Linda's [sic] signature next to
25 that; correct?

1 A Linda? I don't know Linda.

2 Q Lisa. My apologies.

3 A Yes, that appears to be Lisa's signature.

4 Q And that's her signature at the bottom; correct?

5 A Yes.

6 Q All right. Are you familiar with the -- the consumer

7 account agreement that related to your joint account at Wells

8 Fargo?

9 A I'm not sure what you mean, sir.

10 Q When you opened that account in 2004, were you given a

11 copy of an account agreement that explained to you what the

12 terms and conditions governing the account were?

13 A I'm sure I was. I don't know that anybody that's ever

14 read those, so I couldn't tell you, sir.

15 Q Well, let's go to Exhibit 34. That's in the big --

16 are we calling that the fat binder.

17 A Oh, okay. So put this one --

18 Q If the other one is the skinny binder, this must be

19 the fat one.

20 A No, this is the heavy one.

21 Q Heavy one. All right. And that, I believe, begins

22 with WFB3.

23 A Okay, sir.

24 Q All right. And you'll see the title in this document

25 is consumer account agreement and safety deposit box lease

1 terms. Do you have any reason -- and you'll see that the
2 effective date on this is April 1, 2003; correct?

3 A That's what it says on here, yes, sir.

4 Q All right. Do you have any reason to believe that
5 this was not a consumer account agreement that related to the
6 joint account you had with Lisa Johnson in 2011?

7 A I'd be speculating to say it is or it isn't, sir. You
8 know, I mean, it's a lengthy document. I don't know that I've
9 ever seen this before, quite frankly.

10 Q All right. Well, let's go -- let's go through it. If
11 you'll turn with me to WFB6.

12 A Hang on one second. Yes, sir.

13 Q All right. If you'll go down to, oh, maybe two-thirds
14 of the way down the page, there's a paragraph that begins
15 together, comma.

16 A Yes, sir.

17 Q Together these terms and conditions form a binding
18 contract and make up the entire agreement between you and us
19 regarding your deposit account and supersede all prior
20 agreements governing your account. Do you see that there?

21 A Yes, sir.

22 Q All right. Turn over to page -- the next page WFB7.
23 The second paragraph from the top begins "our relationship."

24 A Yes, sir.

25 Q Our relationship with you concerning your deposit

1 account is that of debtor and creditor. No fiduciary,
2 quasi-fiduciary, or special relationship exists between you and
3 the bank. Do you see that there, sir?

4 A Yes, sir.

5 Q Now, you have -- you testified extensively about your
6 background as an attorney. As I understand it, you're not
7 currently actively practicing as an attorney, but those -- that
8 -- that provision that I just read to you and those terms, you
9 know what those mean, don't you?

10 A Not in this context. As I said, I stopped practicing
11 law in 1980. I never did banking law. I did personal injury
12 with Neil Galatz, I did Public Defender's office with Morgan
13 Harris, I did the Attorney General's office with Bob --

14 Q Sir, I appreciate --

15 A Okay.

16 Q I appreciate you --

17 A But I never did banking.

18 Q -- giving us a full explanation, but I think your
19 answer is, no, you don't understand these terms?

20 A Yeah, that's correct, sir.

21 Q All right. You don't know what a debtor and creditor
22 is?

23 A Oh, I understand what a debtor and creditor is.

24 Q All right. You know what a fiduciary is?

25 A Yes, sir.

1 Q All right. And I take it, then, special relationship
2 is unfamiliar to you?

3 A I suppose my -- I would not understand that the
4 relationship is debtor and creditor. I've never -- you know, as
5 I said, I've never read these before. And it seems kind of
6 strange to think of your bank as a debtor/creditor if you have a
7 bank account.

8 Q Nevertheless, that's what the account agreement says;
9 correct?

10 A Yeah, you were asking me if I understood it and I said
11 no.

12 Q WFB19.

13 A Okay.

14 Q Go over there. And before I ask you a question about
15 WFB19, you -- you've -- you've testified here today and
16 previously in your deposition that you've opened many accounts.
17 Is that a fair statement to say that you've opened many demand
18 deposit accounts at banks?

19 A No, sir, not many.

20 Q Several?

21 A Yes, sir.

22 Q All right. And so -- and each of those instances,
23 when you opened an account, you were given an account agreement,
24 were you not?

25 A I -- as I sit here today on the stand, I couldn't tell

1 you. I mean, in that respect I'm probably like most consumers.
2 I don't know if somebody -- quite frankly, I don't think most of
3 the time --

4 Q Your answer is --

5 A -- somebody gives --

6 Q -- you don't know?

7 A That's correct.

8 Q You don't remember.

9 A I don't know, sir.

10 Q Thank you. All right. Page 19, WFB19, third
11 paragraph down.

12 A Okay.

13 Q Instructions of co-owners and their representatives.
14 We may act on the instructions of any co-owner or a co-owner's
15 legal representative, including instructions to withdraw or
16 transfer funds, make payments, or close the account. Do you see
17 that there, sir?

18 A Yes, sir.

19 Q All right. Do you understand that to mean that the
20 bank can discuss with either -- any co-owner of a jointly held
21 account matters related to that account?

22 A It seems to --

23 MR. KISTLER: Your Honor, I'm going to object. One,
24 the document speaks for itself, and, two, it calls for a legal
25 conclusion. Three, there's been no determination that this is

1 even the -- an agreement that was in effect regarding this
2 account, and this witness has said that he doesn't believe he's
3 ever seen it before.

4 THE COURT: Okay. Well, it may be somewhat
5 speculative, and the witness may not be able to answer the
6 question based on it, but I'll allow you -- it to be asked.

7 So you can answer if you can, Mr. Kaplan.

8 THE WITNESS: I'm sorry. I forgot the question again.

9 MR. HAIRE: So have I, Your Honor.

10 THE COURT: Okay.

11 MR. HAIRE: And I think with that I'll let Mr.
12 Kaplan's answer stand in response to my -- my question. And I
13 acknowledge Mr. Kistler's statement that the document speaks for
14 itself, as it were.

15 BY MR. HAIRE:

16 Q WFB26, there's a title there at the top, closing or
17 freezing your account. Are you with me, sir?

18 A I see what you're referring to, yes, sir.

19 Q You or we in our sole discretion may close your
20 account any time. If we close your account, we may send the
21 balance on deposited in your account by ordinary mail and your
22 most recent address shown on our account records. Before we
23 close your account, we will give you any notice required by law.
24 Now, do you understand that statement to mean that the bank can
25 close the account any time it wants?

1 A I guess that's what it says. I mean, as I stated to
2 you before, I don't recall ever seeing this. You know, my
3 original account at Wells Fargo was opened -- I don't even think
4 I got one because my original checking account I opened at First
5 National Bank of Nevada. It became First Interstate Bank, and
6 then Wells Fargo. I don't know that anybody bothered to send me
7 any -- if they sent it, I sure don't recall ever seeing it.

8 Q All right. And so you don't recall receiving an
9 account agreement like this when you opened the joint account
10 with Lisa?

11 A I probably would have remembered. I mean, this is a
12 pretty thick document, but I don't recall ever seeing this. I
13 think the day we opened the account the only thing I walked out
14 of the bank is there were some temporary joint checks and a
15 receipt for, I believe, it was 60 grand that I originally placed
16 into the joint account.

17 Q Isn't it fair to say, sir, that it's -- that you had
18 no reason to believe you did not receive an account agreement in
19 conjunction with your opening a joint account with Lisa?

20 A Quite factually, I don't recall leaving with the bank
21 -- I do recall the temporary checks they gave us when we opened
22 it because I remember the branch we went to on Easter. As a
23 matter of fact, my office -- I met Lisa during my lunch hour
24 that day. She was on that part of town and my office was on the
25 west side of town. And I met her at that branch on Eastern at

1 Wells Fargo to open the account that day.

2 And to my recollection the only thing I left with is
3 we had temporary joint checks and there was a receipt because I
4 brought in a check for \$60,000 to fund the original joint
5 account. And that was all that we walked out that day with. I
6 mean, I -- I would tell you, sir, but I don't recall that there
7 was every any document like this. I mean, this is a pretty
8 heavy document. But we walked out with just -- there was like a
9 book of little temporary checks.

10 Q All right. Mr. Kaplan, let's turn to page 0019,
11 WFB0019.

12 A 0019, sir?

13 MR. KISTLER: Same exhibit?

14 MR. HAIRE: Same exhibit, yes.

15 THE WITNESS: Okay. It was 0019, sir?

16 BY MR. HAIRE:

17 Q Yes.

18 A Okay.

19 Q The heading at the top is reliance on bank records to
20 determine ownership. Do you see that?

21 A Yes, sir.

22 Q It states we may rely solely on our records to
23 determine the form of ownership of your account. We may presume
24 that any person named in addition to you in our records for your
25 account owns the funds in your account with you as a co-owner

1 unless our records indicate that the person is an authorized
2 signer. Do you see that, sir?

3 A Yes, sir.

4 Q All right. Very good.

5 A Can I comment on that, sir?

6 Q You may want to, and you may have an opportunity
7 later --

8 A Okay.

9 Q -- in response to a question I may ask you, but --

10 A Okay.

11 Q -- you responded to my question.

12 A Okay, sir.

13 Q And let's go now to Exhibit 6.

14 A 6?

15 Q Yeah, we're back to the skinny binder.

16 A Oh, back to the lightweight book. Okay. I have it,
17 sir.

18 Q Can you identify -- you previously identified that as
19 the account closure letter, is it not, that relates to the
20 closure of the joint account that you've been describing here
21 this afternoon?

22 A That's correct, sir.

23 Q All right. And that's dated August 18, 2011?

24 A Yes, sir.

25 Q It's addressed to both you and Lisa.

1 A Yes, sir.

2 Q Did you receive a copy of this?

3 A I believe I'm the one that opened it.

4 Q All right. Lisa, of course, saw it so far as you

5 know, as well?

6 A Absolutely.

7 Q All right. The second paragraph of that -- that

8 correspondence reads as follows. The bank's risk assessment

9 process and the results of this process are confidential and the

10 bank's decision to close your account is final. Now, this is a

11 document that is Bates numbered LISAJ006. I'll represent to

12 you, sir, that this -- a copy of this letter was provided in the

13 litigation in its current form by -- by Lisa's attorneys. The

14 original letter did not have the term confidential underlined,

15 did it?

16 A I couldn't tell you for sure.

17 Q Did you --

18 A There appears to be another pen mark in the center of

19 this page, too, or at the top just to the right of our names and

20 address. I don't know if that's on all the copies or just the

21 copy I'm looking at.

22 Q Yeah, but right now we're just talking about the word

23 confidential.

24 A I couldn't tell you, sir.

25 Q You didn't make that underline?

1 A I don't -- don't believe so, no, sir.

2 Q Did Lisa make that underline?

3 A I couldn't tell you.

4 Q All right. Needless to say, you were on -- you and
5 Lisa had been told on or about August 18, 2011, that the bank's
6 risk assessment process was confidential; correct?

7 A That's what this letter says, yes, sir.

8 Q Did you ever demand that Wells Fargo Bank disclose to
9 you the reasons for opening the account -- strike that question.
10 Did you ever challenge with Wells Fargo Bank their indication
11 that the risk assessment process was confidential?

12 A I'm not sure I understand what you mean challenge
13 them.

14 Q Well, did you say that information can't be
15 confidential? Did you say anything like that to them?

16 A No. I think if you're asking me what I did is I
17 called the phone number at the bottom as I testified earlier,
18 the 888 number, and I basically said I'm calling regarding this
19 letter. It says for assistance, if you have questions, please
20 call us. And I have questions. I'm asking you and nobody could
21 give me a straight answer. So it kind of made no sense to have
22 an 800 number there.

23 Q So you were -- you took -- you called the 800 number
24 to get more information, but you knew when you made that call,
25 based upon what was the contents of the letter, that the risk

1 assessment process was confidential.

2 A No, I -- I don't think I read it that way, sir.

3 Q So you didn't believe the --

4 A No.

5 Q -- the process was confidential?

6 A That's not what I said, sir. I think what I, if you'd
7 let me finish, the way this was worded, how I understood it is
8 we can tell you, but we're not going to tell a third party, you
9 know, what our findings were. The bank's risk assessment
10 process and the results of this process are confidential and the
11 bank's decision to close your account is final. Because I had
12 no way of squaring the two issues if it was never to be spoken
13 to anybody, then why have an 800 number on it and say if you --
14 and to be correct, an 88 number. But why have an 888 number at
15 the bottom to call with questions if nobody was going to tell
16 you anything and everything was hush-hush? It makes no sense,
17 does it?

18 Q So your answer to my question is that you didn't
19 believe the term confidential applied to the account holders.
20 The term confidential related to people other than Michael
21 Kaplan and Lisa Johnson?

22 A Yes, sir.

23 Q Mr. Kistler was asking you some questions about
24 Exhibits 20 and 21. Let's start with 20. These are the emails
25 between you and Arash Dounel that you testified previously --

1 A Yes, sir.

2 Q -- correct?

3 A Yes, sir.

4 Q 21 is similarly emails back and forth between you and
5 Mr. Dounel?

6 A Yes, sir.

7 Q All right. My question is related to both of those
8 exhibits, sir. Is it your testimony that these emails confirm
9 that you had a discussion with -- that you -- that you
10 communicated in writing with Mr. Dounel about what he said about
11 Lisa on October 6, 2011? In other words, the alleged defamatory
12 comments?

13 A I'm not sure I understand your question, sir.

14 Q Yeah, that was a really bad question. Let me see if I
15 can rephrase. My recollection or understanding of your
16 testimony in response to Mr. Kistler's questions regarding these
17 exhibits was that these -- these emails evidence a -- your
18 conversations or your communications with Mr. Dounel after your
19 October 6, 2011, encounter with him, and that these were --
20 these related to the statements that he allegedly made about
21 Lisa on October 6th. Is that what -- is that what these
22 evidence?

23 A Well, I think what -- you're asking me to draw a
24 conclusion of what the evidence, but they were basically
25 exchanges with he and I that happened after that where we were

1 following up on discussion that had taken place on October 6th.

2 Q And following up and memorializing, perhaps, the --
3 the conversations that you had about his comments regarding
4 Lisa?

5 A I don't know what you mean memorializing. I was
6 trying to get some straight answers. I told you I left the bank
7 that day just totally befuddled by what he said. And part of me
8 didn't want to speak to him. It's like the man --

9 Q Mr. Kaplan.

10 A -- made terrible comments.

11 Q I'm sorry. I don't want to be rude.

12 A Oh, I'm sorry. I was just trying to answer you. I'm
13 sorry.

14 Q I know you're trying to answer, and that may be
15 because I'm trying to ask you questions and not succeeding. Do
16 Exhibits 20 and 21 in your mind prove that Mr. Dounel made those
17 defamatory statements about Lisa on October 6th?

18 A I don't know when you say do they prove. He made the
19 statements. We had further discussions about it. I think where
20 he said -- what was really troubling, if you'd like me to point
21 that out --

22 Q Well, here's what I want you to point out, Mr. Kaplan.

23 A Okay.

24 Q On 0028 --

25 A 0028?

1 Q Exhibit 20.

2 A Wait a second. Let me get back to that one. Yes,
3 sir.

4 Q At the bottom of the page, this is your email of
5 October 31, 2011, from you to Arash Dounel; correct?

6 A Yes, sir.

7 Q It reads, a week ago you had called me to offer your
8 apology for your comments regarding Lisa; right?

9 A Yes, sir.

10 Q So you believe Exhibit 20, particularly this page,
11 evidences that Mr. Dounel had, in fact, made those defamatory
12 statements about Lisa?

13 A Yes. I think it was basically my writing back to Mr.
14 Dounel basically saying exactly what had happened. He called
15 attempting to apologize for the terrible things he said. And I
16 was short with him that day saying, look, if you've got
17 something to say, please put it in writing, you've caused havoc
18 in my household, at least put it in writing. And that was a
19 professional way of writing back to the man and saying, you
20 know, could you please memorialize what it is you're saying.

21 Q And there's references in these emails to an apology;
22 correct?

23 A Yes, sir.

24 Q What is it that Mr. Dounel says in these emails he is
25 apologizing for?

1 A Well, what he said, sir, if you're asking me --
2 Q No, no, I'm asking you what these emails --
3 A Oh.
4 Q -- state.
5 A Oh. The terrible things he said about Lisa. When he
6 went on to say I would like to mail out your letter priority
7 mail. I can send it to your Las Vegas address, if you would
8 like. Also, as per your request, I can reopen Lisa's account.
9 The only problem with it is keeping the same account numbers.
10 Those were addressing the comments he made about Lisa Johnson
11 where he basically said she must have had arrest warrants and
12 been in jail. And he was now basically saying, hey, I misspoke,
13 I want to apologize to you. And I basically said, look, we've
14 had fights over this, you've caused havoc. Put your write --
15 apologize to me --
16 Q Mr. Kaplan --
17 A -- so I can show it to Lisa what --
18 Q Mr. Kaplan, I know you want to talk --
19 A No, I'm just --
20 Q -- about what happened.
21 A -- trying to answer your questions. I'm sorry.
22 Q And my question was simple. Where can I look to in
23 these emails to know exactly what he's apologizing for?
24 A Where he basically said -- let me just find it for
25 you, sir.

1 Q Show me the email, if you would.

2 A Hang on, sir. I'm just trying -- oh, here. I'm
3 trying to -- what number you have it because I have it on this
4 -- on my -- the one that I carried with me, and so if you could
5 help me find it in there where he wrote -- writes -- and I guess
6 if I can offer this to you guys. That's what I had --

7 Q I would prefer that you not, sir, because it --

8 A If you could help me find it in here. It says, Hello,
9 Mr. Kaplan, I regret to inform you that I sent the letter to my
10 management and our legal department cannot allow me to send an
11 official letter of apology. I hope the apology that I have
12 given you thus far verbally can suffice. In the future we can
13 help you meet all of your financial needs as a bank branch and a
14 financial institution.

15 Q All right. And that's Exhibit 20, Bates No.
16 LISAJ0045.

17 A Okay. Let me find --

18 Q 21. I apologize. 21.

19 A Okay. Let me find it, sir.

20 Q Are you there?

21 A I'm trying to locate it in here, sir. Oh, yes, sir,
22 it's in 0045. Yes, sir.

23 Q All right. So does that -- is that email what we can
24 look to to identify that he was apologizing for the statements
25 that he made about Lisa?

1 A Yes, sir. I mean, he was attempting to and for some
2 reason somebody at Wells senior basically saying to him you
3 can't send that apologizing for what you said.

4 Q So -- so you -- you want the Court to understand that
5 this email at LISAJ0045 evidences the fact that Mr. Dounel was
6 apologizing for the statements that he made about Lisa?

7 A Well, if Mr. Dounel would have sent what he promised
8 me, I guess the Court would see that. Well, I guess there
9 possibly wouldn't be a whole proceeding if he would have
10 followed through because it probably would have helped rectify
11 the problems that had been caused between Lisa and I. So to
12 this day I still don't understand why he didn't send it, but,
13 yes, that and what I'm telling the Court. I didn't make this
14 stuff up. I don't go around lying, you know.

15 Q Mr. Kaplan, these emails, is there any other -- let me
16 direct your attention. As an example, the LISAJ41 as part of
17 Exhibit 21.

18 A 41, sir?

19 Q Yes.

20 A I have it, sir.

21 Q This is on November 2, 2011, this is near the top.

22 A Okay.

23 Q This is from Arash Dounel to you; correct?

24 A Yes, sir.

25 Q It begins, I would like to mail out your letter

1 priority mail.

2 A Yes, sir.

3 Q All right. I can send it to your Las Vegas address if
4 you would like. Also, as per your request, I can also reopen
5 Lisa's accounts, the only problem with that is keeping the same
6 account numbers. Now, you testified that you -- you were later
7 told you could not reopen that joint account with Lisa; correct?

8 A I believe, sir, if you read through here, this was
9 November 2nd. In some of these emails I had told Mr. Dounel we
10 reside in Las Vegas, I need to have the accounts opened in Las
11 Vegas, and that's when he wrote to me essentially, Mr. Kaplan, I
12 have checked on everything, and you may walk into any Wells
13 Fargo Bank and reopen the accounts with Lisa no problem. And
14 that's when I said on November 8th I walked into the Wells Fargo
15 branch on Sahara and Rainbow and attempted to reopen accounts
16 with Lisa.

17 Q So what Mr. Dounel led you to believe about reopening
18 accounts was wrong?

19 A Apparently someone at Wells Fargo had decided they
20 wouldn't let us open accounts.

21 Q Is it possible, Mr. Kaplan, that the apology that Mr.
22 Dounel was referring to related to him telling you that you
23 could reopen the account when, in fact, you would not be allowed
24 to reopen?

25 A Not at all because when he called me there were not

1 discussions about reopening the account. We never discussed
2 that when he had the phone call with me and basically started to
3 apologize. That was not about opening accounts. I mean, that's
4 -- that was not even part of the concern at that point. It was
5 the things he's said about Lisa.

6 Q Would you agree with me, sir, that the emails
7 contained in Exhibits 20 and 21, all references to statements
8 made about Lisa are in your emails to him?

9 A I'm not sure I understand.

10 Q Well, let me -- let's go to Exhibit 20, very --

11 A 20?

12 Q 20, LISAJ28.

13 A I have it, sir.

14 Q A week ago you had called me to offer your apology for
15 your comments regarding Lisa. You made that statement; correct?

16 A That's correct.

17 Q And then Exhibit 21 -- also Exhibit -- pardon me,
18 Exhibit 21, LISAJ41.

19 A I'm sorry. Which one again?

20 Q 41.

21 A 41? Exhibit 41 or number --

22 Q LISAJ41 --

23 A 41. Okay.

24 Q -- under Exhibit --

25 A Hang on one second.

1 Q -- 21.

2 A One second. Let me flip to that. Okay. I have that,

3 sir.

4 Q At the very bottom, this is your email from -- to

5 Arash Dounel on October 31, 2011. A week ago you had called me

6 to offer your apology for your comments regarding Lisa.

7 A That's the same one you just looked at on 28.

8 Q Is it?

9 A Yes, sir.

10 Q All right. So there's only one reference to the

11 remarks that --

12 A I believe it's the same. I don't know. It looks like

13 the same, yes.

14 Q All right.

15 A Because then he said he was going to send it to me,

16 needed my address --

17 Q Thank you, Mr. Kaplan. You've --

18 A Okay.

19 Q -- answered my --

20 A I'm just --

21 Q -- question.

22 A -- trying to answer.

23 Q I'm not trying to be rude, I'm just -- all right. Mr.

24 Dounel, from the time you learned the joint account was being

25 closed, you contacted people inside Wells Fargo demanding to

1 know why the account was closed, didn't you?

2 A I believe you just called me Mr. Dounel.

3 Q I meant to call you Mr. Kaplan.

4 A That's probably why --

5 Q I apologize. My tongue sometimes works faster than my
6 brain. Let me reask the question. From the time you learned
7 the joint account was being closed you contacted people inside
8 Wells Fargo demanding to know why the account was closed.

9 A Is that a statement or are you asking me a question?

10 Q Well, I can put "didn't you" on the end of it if you
11 would like, but it's intended to be a question.

12 A Okay. I contacted certain people, yes.

13 Q All right. You wrote letters to Wells Fargo demanding
14 answers for why the joint account was closed; correct?

15 A I don't recall. You know, we can refer to the letters
16 that I sent as to which ones I sent.

17 Q Well, we know you sent letters to Ms. Scafe.

18 A That's why I'm saying, you know, if you're asking me
19 generally --

20 Q So the answer to my questions is, yes, I did?

21 A Yes, I did speak to people.

22 Q And you also sent emails to people?

23 A Yes, but if you also look at Scafe, it was not just
24 about the --

25 Q The answer --

1 A -- account closure --
2 Q -- to my question --
3 A -- it was about --
4 Q -- Mr. Kaplan, is, yes, I sent letters and emails to
5 Wells Fargo Bank demanding to know why the accounts were -- the
6 account was closed.
7 A I don't know that that's a fair characterization of
8 the letter to Ms. Scafe.
9 Q Is it a true statement, Mr. Kaplan?
10 A The letter to Ms. Scafe addressed a number of things,
11 including the defamatory comments.
12 Q We're going to talk about Ms. Scafe's --
13 A Okay.
14 Q -- letter in just a moment.
15 A Thank you.
16 Q Lisa knew you were talking to people and writing
17 correspondence trying to find out why the joint account was
18 closed, didn't she?
19 A I can't tell you that she knew everybody I talked to.
20 Q That wasn't my question. She knew you were contacting
21 people, did she not?
22 A Not necessarily everybody.
23 Q You didn't -- well, I --
24 A No, I did not -- I did not specifically say to her I'm
25 going to contact Jennifer Scafe, I'm going to contact Romijn or

1 Jacinda Freeman or any of these people. I did not specifically
2 go to her and say --

3 Q Lisa had no idea you were contacting people, is that
4 what -- what you're saying?

5 A No, I'm saying -- I'm saying I can't specifically
6 state that I told her every person I was speaking to or going to
7 speak to.

8 Q Lisa --

9 A I mean, if you --

10 Q Lisa never told you to not contact people to try to
11 find out why the account was closed, did she?

12 A Never, and she never told me not to.

13 Q From the get go you also wanted to know why Lisa's
14 separate accounts or business accounts were closed, didn't you?

15 A I suppose in my mind it all started going into one.
16 When you couple that with what Dounel said to me on October 6th,
17 that it's her and they closed the accounts that I wasn't on, and
18 suddenly it's like, okay. But then, again, I got mixed signals
19 from Wells Fargo when I walked in on the 8th of November, they
20 told me I couldn't open any accounts.

21 Q You wanted to know why her separate accounts were
22 closed, didn't you, sir?

23 A I don't know that I was really that bothered until
24 Dounel basically said it's not you, Mr. Kaplan, it's Lisa. I
25 think that set off an alarm.

1 Q Didn't you ask people at Wells Fargo why both the
2 joint account was closed and why Lisa's separate accounts were
3 closed?

4 A I might have lumped them together because all of the
5 closure letters came at the same time. And so it's like having
6 the three letters here, if that's what I said, we have three
7 letters, what's going on.

8 Q It was you who first threatened to sue Wells Fargo,
9 wasn't it?

10 A When you say threaten to sue them, I did tell Jennifer
11 Scafe that legal action would be taken if nobody wants to even
12 talk.

13 Q Well, it was earlier than that, wasn't it? Let's go
14 to Exhibit 18.

15 A Okay.

16 Q Let me know when you're there.

17 A I'm here, sir.

18 Q Exhibit 18 is the letter that Mr. Kistler referred to
19 from Dirk Ravenholt to Kirk Clausen who is the Nevada Regional
20 President for Wells Fargo Bank.

21 A That's correct, sir.

22 Q This is dated October 17, 2011, so this is, what, just
23 a few days -- what, about ten days or so after Dounel made his
24 statement?

25 A Yep.

1 Q In the middle of that -- the second paragraph of that
2 letter, Mr. Ravenholt writes clearly -- strike that. Did you --
3 did you see this letter before it went out?

4 A Did I see it? I believe I did. I'm 99 percent
5 positive that Dirk had emailed me a draft.

6 Q All of the information in this letter relating to what
7 happened at Wells Fargo Bank came from you, did it not?

8 A Yes. Dirk and I had discussions about what happened
9 with Mr. Dounel. That's correct, sir.

10 Q And Mr. Dounel -- or Mr. Ravenholt writes in the
11 second paragraph, clearly, if Wells Fargo Bank took issue with
12 Lisa Johnson for unknown reasons, then the proper method to
13 handle this issue would be to close Lisa Johnson from further
14 associations with your bank.

15 A Okay.

16 Q You agree with me that Mr. Ravenholt characterizes
17 Wells Fargo's action for unknown reasons to be a proper method?

18 A I mean, I don't know what -- when he wrote it. I
19 mean, obviously he probably sent me a draft. I don't know that
20 I analyzed it to death, but that's what it says on here.

21 Q Do you disagree with that statement?

22 A For unknown reasons, the proper method to handle the
23 issue would be to close Lisa Johnson from further associations
24 with your bank. I don't have any reason to argue with it.

25 Q All right. What -- what was going on here at this

1 time, Mr. Kaplan, is that you wanted to reestablish the joint
2 account; correct?

3 A Very much so.

4 Q And you wanted Lisa to be on that account just like
5 before; correct?

6 A Yes, sir.

7 Q All right. And Wells Fargo Bank would not let you do
8 that; correct?

9 A Yes, sir.

10 Q And Mr. Ravenholt indicates that Wells Fargo Bank can
11 open an account in your name. That would be a proper method to
12 just leave Lisa off the account; correct?

13 A I'll have to look at it again. I don't know that he
14 -- I don't think it says that in there. It says the contrary --
15 Lisa Johnson's alleged risk assessment issues have been
16 communicated to Michael Kaplan have damaged her reputation with
17 him and damaged him directly by closing his account that is
18 under his personal social security number.

19 Q All right.

20 A And then it goes on, one of the bank representatives
21 have even suggested to our millionaire client that he's rich
22 enough to hire his own private investigator to find out
23 information on Lisa Johnson.

24 Q Sir, we're going to get -- we're going to get to that.

25 A Okay. I'm sorry.

1 Q I appreciate you wanting to jump ahead --

2 A Okay. I'm sorry.

3 Q -- but let's take this in steps. I appreciate that
4 you've read part of that letter because would you agree with me
5 that the gist of this letter is that Mr. Ravenholt is trying to
6 reestablish the account at Wells Fargo that you lost -- strike
7 that. That Mr. Ravenholt is suggesting to Kirk Clausen that
8 your account be reopened and that Lisa be left off?

9 A I don't think that's what he was suggesting at all. I
10 don't think so.

11 Q Well, the discussion is about your account, closing
12 his account --

13 A I understand.

14 Q -- that is under his personal social security number.

15 A I understand.

16 Q The concern here, sir, was the fact that you could not
17 open an account, was it not?

18 A No, if you really read his letter, what he was talking
19 about was the comments that Mr. Dounel had made to me about
20 Lisa. I think that's where he was -- if you really read the
21 whole letter, you're focusing on one portion of it, but you're
22 not focusing on where he said, you know, we're therefore
23 requesting the reasoning behind your decision and clarification
24 in regards to Michael Kaplan relationship. And then it goes on
25 to say about the defamation information through discovery

1 process and a defamation suit should legal action be required.

2 Q Yeah, the concern is the Michael Kaplan's relationship
3 with Wells Fargo. You just read that for us; correct?

4 A Yes.

5 Q All right. Now, let's talk about the -- the part that
6 you've already read in the second paragraph where the sentence
7 begins one of the bank representatives even suggested. Do you
8 see that?

9 A Hang on, sir.

10 Q One of the bank representatives even suggested to our
11 millionaire client that he is rich enough to hire his own
12 private investigator to find out information on Lisa Johnson.

13 A Okay.

14 Q See that?

15 A Yes, sir.

16 Q I am presuming that the millionaire client would be
17 you.

18 A Well, it goes on to say it is unacceptable reasoning
19 when Michael Kaplan is not the target of the investigations.

20 Q You are the millionaire being referred to in that
21 letter; correct?

22 A I believe so, yes, sir.

23 Q All right. You are a millionaire, are you not?

24 A Yes, sir.

25 Q When you met with -- wasn't -- wasn't the intent of

1 this letter and your going to Mr. Ravenholt to convey to Wells
2 Fargo your dissatisfaction, your anger, your response to Mr.
3 Dounel's comments?

4 A I mean, I was outraged by Mr. Dounel's comments, but
5 I'm not sure what you're asking me.

6 Q Well, that's what I am asking you is where's the
7 outrage? In other words, where in the statements, where --
8 where is it referenced that Mr. Dounel or anybody at Wells Fargo
9 Bank said that Lisa had been involved in criminal activity or
10 had outstanding warrants, so forth and so on, as you testified?

11 A Because Mr. Ravenholt, his own reasoning of not
12 wanting to put everything in there, quite frankly, when he got
13 the letter he got from this, I asked him are you prepared to
14 proceed on Lisa's behalf as far as Wells Fargo? And his comment
15 to me, this I remember specifically, he said, Michael, I'm a
16 sole practitioner. I can't afford to take on Wells Fargo and
17 lose potential clients and business in this small town.

18 Q Thank you for --

19 A No, you're asking as to why he didn't say a lot of
20 other things, and I'm just trying to explain his rationale.

21 Q Well, he did leave out the word defamation in the --

22 A I understand.

23 Q -- letter.

24 A But -- but for a man to tell me that he was afraid to
25 take on Wells Fargo beyond that, I can't tell you what happened

1 in the interim.

2 Q So it's because he didn't want to take on Wells Fargo
3 Bank that he left out the part where Mr. Dounel told you that
4 Lisa was involved in criminal activity and had outstanding
5 warrants?

6 A You know, you'd have to ask him. I can't tell you why
7 he put -- I didn't write the letter, so I can't tell you why he
8 put things in or didn't put things in, you know. I couldn't
9 answer that.

10 Q This -- this correspondence, Exhibit 18, represents
11 that both you, Lisa, and her company Guitarfile, LLC were Mr.
12 Ravenholt's clients; correct?

13 A That's what it says, correct, sir.

14 Q You haven't sued Wells Fargo; right?

15 A I haven't because they haven't -- to my knowledge, at
16 least, they haven't told somebody that I have --

17 Q The answer to my question, Mr. Kaplan, is, no, I have
18 not sued Wells Fargo.

19 A I understand. I was just trying to tell you why I
20 haven't if you'd like to hear. If not, I'll just say, no, I
21 haven't.

22 Q Only Lisa has sued Wells Fargo; correct?

23 A That's correct.

24 Q But you're paying her legal bills, though; right?

25 A No, sir.

1 Q You're not paying her legal fees?

2 A I am lending her the money to pay it. Hopefully her
3 book ends up producing enough money to pay me back, but, no, I'm
4 not --

5 Q Isn't that a distinction without a difference?

6 A I'm sorry?

7 Q You're lending her the money to pay her legal fees in
8 this case; correct?

9 A I'm lending her the money, yes, sir.

10 Q And she's going to pay you back is what you're saying?

11 A I don't know. I hope so.

12 Q All right. It's true, sir, that you've met with
13 Lisa's attorneys in this case; correct?

14 A Yes, sir.

15 Q You've talked with them about what -- what is required
16 for Lisa to win her lawsuit?

17 A I don't know what you mean what's required. I have
18 talked to them.

19 Q All right. You assisted with the information
20 contained in the, for example, the complaint that was filed in
21 this case. And you know what a complaint is, don't you?

22 A Yeah, but I'm not sure when you say I assisted. I
23 didn't draft the darn thing if that's what you're asking.

24 Q You're the only one that was present of -- between you
25 and Lisa, you were the only one present with Mr. Dounel. So the

1 person who has the information about what Mr. Dounel said --

2 A Oh, yeah. No, I --

3 Q -- had to have come from you; right?

4 A Oh, no question I conveyed the information. And Lisa
5 certainly has heard it from me enough times, even as recently as
6 being on vacation over the holidays where I made the mistake of
7 throwing it up again and saying at least nobody has told me to
8 go get a private investigator on me or say I was in jail. You
9 know, so it is something that has not gone away.

10 Q You assisted in -- you assisted Lisa in responding to
11 the interrogatories in this case, didn't you?

12 A You know, when you say I assisted, you know, I may
13 have told her, you know, from my vantage point of different
14 things, but I don't know what you mean by assisted. No, I did
15 not answer them for her --

16 Q You --

17 A -- but --

18 Q Sorry. I didn't mean to cut you off.

19 A Okay. It's fine.

20 Q But it's fair to say, though, that you provided the
21 information relative to the -- to the statements in the
22 interrogatory responses that relate to what Mr. Dounel said.

23 A Whether it was just in her answer to interrogatories,
24 or whether she had heard it from me starting the evening of
25 October 6th on the way to a concern in downtown L.A. for an hour

1 in the car, and while we were sitting waiting for the concert I
2 think she had heard it verbatim to where she's probably -- if I
3 were her, I'd probably be just fuming about it.

4 Q You supplied the information about what Mr. Dounel
5 said for both the complaint and for the -- Lisa's amended
6 response to interrogatories in this case, didn't you?

7 A You know, when you say that, I've had discussions with
8 her as to what happened the day on October 6th when Mr. Dounel
9 said I should hire a private investigator, that she must have
10 been in jail or prison or have arrest warrants out. I have told
11 her that. Yes, I did relay my conversations to the attorney. I
12 did relay my conversations to Mr. Fitts, you know, one day out
13 here in the courthouse of what had happened --

14 Q Mr. Kaplan --

15 A I'm just trying to answer you.

16 Q -- I just asked you about the -- no, you're not
17 trying. What you're doing is answering questions I don't ask.
18 I just asked you about interrogatories and the compliant.

19 A Okay. Then ask, and I'll try to answer.

20 Q All right. No, Exhibit 28.

21 A Exhibit 28.

22 Q I think that's the fat binder or the non-skinny
23 binder.

24 A Okay. It's not this book.

25 Q Well, I apologize, it is the small binder.