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15	Wells Fargo Bank's Opposition to Plaintiff's Objection to Discovery Commissioner's October 19, 2012 Report and Recommendation, filed 01/28/13	II-III	AA000454-000602
16	Plaintiff's Reply in Support of Her Objection to Discovery Commissioner's October 19, 2012 Report and Recommendations, filed 01/31/13	III	AA000603-000613
17	Order Granting Plaintiff's Motion for Reconsideration, filed 02/07/13	III	AA000614-000615
18	Transcript of Proceedings re: Evidentiary Hearing held on February 8, 2013, filed 03/27/13	III	AA000616-000710
19	Order Affirming Discovery Commissioner's October 19, 2012 Report and Recommendations and Remand to Determine Privilege Log Requirement, filed 03/07/13	IV	AA000711-000712
20	Transcript of Proceedings re: Discovery Conference held on March 12, 2013, filed 09/19/14	IV	AA000713-000731
21	Letter dated March 26, 2013 from Stewart C. Fitts to Discovery Commissioner Bonnie Bulla, with attachment referenced therein.	IV	AA000732-000738
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29	Plaintiff's Pre-Trial Memorandum, filed 12/13/13	V	AA001031-001040
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34	Transcript of Proceedings, Bench Trial, Day 1, held on February 5, 2014, filed 10/28/14	V-VI	AA001106-001252
35	Transcript of Proceedings, Bench Trial Day 2, held on February 6, 2014, filed 10/28/14	VI	AA001253-001458
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37	Recorder's Transcript of Proceedings, Bench Trial Day 3, Judge's Verdict held on February 7, 2014, filed 02/13/14	VII	AA001519-001530
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1 CERTIFICATE OF SERVICE

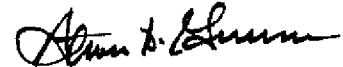
2 I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this
3 date **APPELLANT'S APPENDIX** was filed electronically with the Clerk of the Nevada
4 Supreme Court, and therefore electronic service was made in accordance with the master
5 service list as follows:

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

11 *Attorneys for Defendants*

12
13
14 DATED this 26th day May, 2014.
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19 
20 An employee of Hutchison & Steffen, LLC
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON,

Plaintiff,

vs.

WELLS FARGO BANK NATIONAL
ASSOCIATION,

Defendant.

CASE NO. A-12-655393-C

DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 7, 2014

PARTIAL TRANSCRIPT OF PROCEEDINGS

**BENCH TRIAL - DAY 3
CLOSING ARGUMENTS**

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

1 Friday, February 7, 2014 at 1:34 p.m.

2
3 THE COURT: Record should reflect the presence of counsel with their
4 respective clients. And I think we're just here for closing arguments.

5 Was there anything further, Mr. Kistler, that you wanted to --

6 MR. KISTLER: Your Honor, we discussed the rebuttal document yesterday
7 afternoon.

8 THE COURT: Right.

9 MR. KISTLER: And lo and behold, my memory did not fail me. Your Honor,
10 we marked the document as Plaintiff's Exhibit 44 for identification. And specifically,
11 I'm asking for the Court to admit Plaintiff's Exhibit 44. The third page --

12 MR. HAIRE: Your Honor, before -- I apologize for the interruption, but what
13 Mr. Kistler is about to do is to tell you what in that document he would like to have
14 admitted and it's a particular statement -- this is a 16.1 disclosure document, it's not
15 evidence, shouldn't come in, and he shouldn't have the opportunity to tell you
16 what's in it, even in the event that you admit it before you admit it.

17 THE COURT: Okay. All right, well let him tell me why he thinks it's
18 admissible.

19 MR. KISTLER: Your Honor, this a -- this is a document signed by the Bank's
20 counsel. We would offer a portion of this document as a statement by a party or an
21 agent authorized to speak for and on behalf of a party as Mr. Larson and Mr. Fitts in
22 this document so state on the first page that they are the attorneys for defendant,
23 Wells Fargo Bank.

24 Specifically, Your Honor, I'm seeking the admission under page 3 and I
25 believe Your Honor may have a copy of the document in front of you, if you do.

-2-

1 THE COURT: Yes.

2 MR. KISTLER: Page 3 under Roman Numeral III, Documents, we have
3 subparagraph A: Wells Fargo identifies and discloses the following documents:
4 Consumer account agreement re account ending in 4164, Michael Kaplan, owner,
5 Lisa Johnson, authorized signor. We're offering that statement as a judicial
6 admission by an agent of an opposing party in direct rebuttal to the testimony given
7 yesterday regarding the characterization of the ownership of this account given by
8 the Bank's witness.

9 THE COURT: Okay.

10 MR. HAIRE: Your Honor, this is highly improper. This is --

11 THE COURT: I agree. Okay. I'm not going to -- I don't believe it's proper
12 rebuttal.

13 MR. KISTLER: Okay. Well I did mark it as a proposed exhibit so it will be
14 attached to the transcript --

15 THE COURT: Right, yeah, it'll be as a proposed exhibit which the Court
16 refuses to consider as rebuttal. Okay.

17 MR. KISTLER: I have nothing further --

18 THE COURT: Anything further?

19 MR. KISTLER: -- on rebuttal, Your Honor.

20 THE COURT: No further witnesses then. Okay.

21 MR. HAIRE: Your Honor --

22 THE COURT: Anything --

23 MR. HAIRE: Yeah, if the rebuttal case is closed, it has become my practice
24 -- it's probably unnecessary, but I typically renew the 50(a) motion at the close of
25 the rebuttal case.

1 THE COURT: Okay.

2 MR. HAIRE: So I would simply renew my 50(a) motion that judgment as a
3 matter of law be entered in the case.

4 THE COURT: Okay. All right. So part of my interest yesterday in hearing
5 the rest of the case was that we -- primarily the biggest part of the defense was the
6 deposition testimony of Mr. Dounel which at the time the Court had not read and
7 had not been read into record. I have read it, as you can see from the little tabs, so
8 that was part of why I wanted to consider whether I could for myself come to some
9 sort of a conclusion as to what I believe the facts to be based on reviewing that
10 testimony and taking it in light of other testimony that was here in court.

11 So the -- I guess the significant factor for me was is it possible to
12 determine what was said and the -- and exactly how it was said, because one of
13 Mr. Haire's arguments was the argument that some implication I -- I guess some
14 phraseology as there must be outstanding warrants, there must be a criminal
15 history, something along those lines was the language and, you know, the problem
16 that I have here is that Mr. Dounel doesn't come right out and say here is what I
17 said, but the interesting thing about what he testifies to is context that -- that his
18 recollection of this was in the context of Mr. Kaplan who we all heard was emotional
19 and -- well it's not Mr. Dounel's word -- sort of importuning; give me an explanation,
20 I need an explanation, explain this to me, could it be this, could it be that. That's
21 kind of how I took Mr. Dounel's testimony.

22 Whether Mr. Dounel actually stated a fact or was simply agreeing with
23 Mr. Kaplan is the problem I have here. And I think that under those circumstances,
24 I have to give the plaintiff the benefit of the doubt because they're actually here, I'm
25 able to observe them and their testimony, and something was said that day that

1 clearly caused some upset that Mr. Kaplan interpreted in a certain way and I don't
2 have Mr. Dounel able to say I did not say that, that is not what I said, I said this
3 other thing. He didn't -- he doesn't come out and say that. And he equivocates, he
4 doesn't recall, it's not his usual character, it wouldn't be his usual practice, it's not
5 his -- how he does things. So for me, I can't come to a conclusion that Mr. Dounel
6 specifically denies having said something.

7 He does -- it does assist somewhat to put in context that maybe what
8 is said was in the context of agreeing with Mr. Kaplan in that Mr. Kaplan was saying
9 could it be this, could it be that, and Mr. Dounel saying well you're the attorney, you
10 have the ability to investigate this, you go do this, you should do this.

11 So I can sort of see how in that context Mr. Kaplan asking his
12 questions, not giving up, not stopping with his inquiries, that Mr. Dounel in the
13 course of trying to respond and trying to provide customer service to this individual
14 could have, for lack of a better term, said something that was not -- he may not
15 have intended to say, may not -- in the context of agreeing to something proposed
16 by Mr. Kaplan.

17 Is that defamation? Well if it's stated as a fact, it would be. If it's
18 stated as I don't know, you're going to have to do your own investigation, maybe it
19 wouldn't be. And that's the problem that I have here is the -- that when we have a
20 witness in here being very definite and very specific this is what was said to me and
21 Mr. Dounel's testimony not being quite as specific and not really having a lot of
22 recollection but putting it in the context that I can sort of understand what happened
23 that Mr. Kaplan struck me as a person who once he got his teeth into something
24 wouldn't let go.

25 So I think in that context, Mr. Dounel could have been placed in a

1 position where he agreed or said something that was in essence as Mr. Kaplan has
2 described it to us, yes, there must be criminal activity; yes, you should hire an
3 investigator. I can understand how that could have been said. And the question is,
4 is that defamation. So that's where I think we have to go next so I, again, would
5 respectfully deny the motion because I think we have to discuss the whole context
6 of the case and, you know, do we get to a finding that there was a unprivileged
7 statement of fact made that was defamatory and -- I mean because that's the one
8 thing, there is no evidence here that there is in fact any criminal record, any
9 evidence of any criminal record on the part of Ms. Johnson. That's one part.

10 The other part of the motion was the declaratory relief. And that for me
11 is a bigger problem and I -- I don't see what this Court can do for Ms. Johnson in
12 the way of declaratory relief.

13 MR. HAIRE: Well, Your Honor, I --

14 THE COURT: The Court cannot force a bank to do business with somebody
15 they choose not to do business with. I cannot force parties to contract with
16 individuals they wish to not be associated with. Can't do it.

17 The unfortunate thing about these regulations, these statutes is that
18 they place an organization in a position where they have to take certain action and
19 they can't explain it. It's like if you go to the airport, they don't let you on the
20 airplane, they can't tell you why they aren't letting you on the airplane. That's the
21 law. They have to live with it, they have to abide by it. So same thing with the
22 Bank. We aren't going to do business with you, we can't tell you why we're not
23 doing business with you. So I'm not sure what declaratory relief this Court could
24 offer.

25 I just -- I don't know, Mr. Kistler, what there possibly is that would

1 satisfy Ms. Johnson that is actually within the realm of something the Court can do.

2 MR. KISTLER: Your Honor, so I take it that Your Honor denied the motion
3 vis-à-vis the defamation claim?

4 THE COURT: Correct.

5 MR. KISTLER: Okay, and considering the --

6 THE COURT: But I'm having a more difficult time with the declaratory relief.
7 I just -- I don't see, Mr. Kistler, that there's relief available there.

8 MR. KISTLER: Concerning the declaratory relief action, Your Honor, first of
9 all, we didn't ask the Court and we didn't think it was appropriate to ask the Court to
10 mandatorily enjoin the Bank and reopen the accounts. That's not what we asked
11 for in any cause of action that we alleged in our complaint. So we're not asking the
12 Court to compel Wells Fargo Bank to reopen the accounts. We understand that the
13 Court may very well -- even though the Court's powers are broad, the Court, given
14 the state of the law, may not have -- that may not be the most justiciable result
15 here, even if it's available and it may not be available.

16 However, Your Honor, we ask for the Court to declare certain things
17 about the closing of the account and what we do know and what our rules provide
18 is that I'm entitled -- my client is entitled to any relief that is proved at trial and an
19 amendment should be granted to conform to the evidence presented at trial. And
20 what we know here, beyond any doubt that we made a criminal burden of proof
21 beyond a reasonable doubt, is that there was no criminal conduct involving Ms.
22 Johnson. There was no evidence of that that was presented at trial.

23 And in fact, depending upon -- as you'll hear later in my closing
24 argument, depending upon what part of Mr. Dounel's internally inconsistent
25 deposition transcript Your Honor decides to believe, Mr. Dounel states that he was

1 not aware of any evidence -- any criminal misconduct on behalf of Ms. Johnson at
2 the date that I took his deposition which was in April --

3 THE COURT: October.

4 MR. KISTLER: -- excuse me, August of 2014 --

5 THE COURT: October.

6 MR. KISTLER: -- and I asked the additional question and that same
7 statement is true as of October the 6th, 2011.

8 So we know that according to Mr. Dounel, if you choose to believe him
9 on this point and we would urge that you not believe him on some other points. If
10 you choose to believe him on this point, we know that as of the date the statement
11 was made, he was not aware of any evidence of criminal conduct on behalf of Ms.
12 Johnson. We are simply asking the Court to declare that to be the case, and that
13 is, that there was no evidence presented at this trial -- to declare that there was no
14 evidence presented at this trial to support the conclusion that Ms. Johnson's
15 accounts and the joint account were closed as a result of her criminal conduct.

16 THE COURT: Oh but that's taking a leap I'm not sure I can make, so I -- you
17 have to look at -- looking at the -- and it's kind of in the same context of what's in
18 your request for declaratory relief in the complaint. We have an actual controversy
19 to -- that -- Wells Fargo to its obligation to Johnson to disclose the reasons for
20 closing her account in the accompanying statement and/or innuendo that she is or
21 was involved in criminal activity. And, you know, I'll hear what Mr. Haire has to say
22 on this, but I'm -- I don't think there is an -- that obligation exists. I don't think as a
23 matter of law that the Bank is obligated to disclose reasons for closing the account.
24 I just don't. I've seen nothing that tells me that there is that burden on a financial
25 institution to make that kind of a disclosure to a banking customer. If there is

1 something I'm missing, let me know.

2 Number -- next paragraph 45: Johnson's entitled to know why her
3 accounts with Wells Fargo were closed, as well as the basis for its defamatory
4 statements against her. You know, that's two things. The first thing is, is she
5 entitled to know why her accounts were closed. Again, I don't believe she is. The
6 second I think is a totally different issue, and that is, is she entitled to know the
7 basis for defamatory statements. If you assume there's a defamatory statement, is
8 she entitled to know what it's based on.

9 Well, if they were still going forward on truth, then yeah, guess so,
10 because that would be part of having to defend it on the basis of truth. If we're not
11 going forward on that it's true, then is it sufficient that Mr. Dounel testifies I know of
12 no evidence today or a year ago that would support the fact that Ms. Johnson either
13 does or has had in the past criminal warrants, whatever -- however it was Mr.
14 Kaplan termed it. And so I don't know that we can -- you know, again I just -- I'm
15 not sure that we can go there.

16 And then the next one is finally that Johnson's entitled to a declaration
17 by this Court that Wells Fargo must provide Johnson a detailed explanation as to
18 why the Bank decided to close her accounts. Can't go there.

19 MR. KISTLER: I understand the Court's position on that.

20 THE COURT: Next, why she -- why it was alleged she was involved in
21 criminal activities. Again, if we assume that that's -- that that is in fact the
22 statement that was made, Mr. Dounel says I know of no basis for it. I don't know
23 what more the Bank is or has to do, because I don't think you can make that next
24 leap that the Court makes a declaration that there's nothing in the Bank's records
25 because we don't know what is in the records and, you know, we can't know.

1 MR. KISTLER: Well Your Honor knows what's in the court's records.

2 THE COURT: Right. There's nothing in the court's records --

3 MR. KISTLER: And we're asking -- we're asking the Court for a declaration
4 that the court's records do not disclose any criminal activity that resulted in the
5 closure of this account.

6 THE COURT: Okay, that's a little different from --

7 MR. KISTLER: That's what I'm asking.

8 THE COURT: -- what you said the first time.

9 MR. KISTLER: All the Court can do is say what the Court is aware of, and
10 the Court is imminently aware of the fact that there was no criminal conduct that
11 was proffered by any party, certainly by the defendant and certainly not by us, of
12 any criminal misconduct on behalf of Ms. Johnson that resulted -- no evidence
13 whatsoever was submitted for the Court's consideration that resulted in the closure
14 of the account. That's the declaration we seek.

15 THE COURT: Okay.

16 MR. KISTLER: This is not even a preponderance -- this is not even a
17 preponderance, Your Honor. Your Honor is merely stating the 100 percent
18 certainty that we all know and that Mr. Haire cannot dispute, and that is, that there
19 was not one chinchilla, as my daughter would say, or one scintilla of evidence that
20 was presented before Your Honor that would support a claim in this court that the
21 account was closed as a result of Ms. Johnson's criminal conduct. That's what
22 we're asking for.

23 THE COURT: Okay. So -- and Mr. Kistler, I think that that last part gets into
24 what I'm saying is why I can't grant the declaration as it was originally drafted
25 because -- you know, we've got two different things here. Why was it alleged that

1 she was involved. That's one thing. But why were the bank -- the accounts closed
2 and that's just the thing that where I've said I don't know that there's any legal basis
3 on which this Court can say I've made a determination that the accounts weren't
4 closed because of her criminal activity. I don't know that.

5 MR. KISTLER: You can certainly state however, Your Honor, that no
6 evidence was presented in your courtroom supporting a claim that criminal conduct
7 resulted in closure of the account.

8 THE COURT: Okay.

9 MR. KISTLER: No evidence was --

10 THE COURT: See I think that the -- yeah, I just think that if you're -- it's -- I
11 can -- I could certainly say that no evidence was presented that Lisa Johnson has
12 any record of criminal conduct. I would agree with you --

13 MR. KISTLER: Then we'd ask for that declaration from the Court.

14 THE COURT: I would agree with you on that. It's that next step that --

15 MR. KISTLER: Then we'd ask --

16 THE COURT: -- resulted in closure of her accounts.

17 MR. KISTLER: Then we'd ask for that --

18 THE COURT: We don't know.

19 MR. KISTLER: Then we'd ask for that declaration from the Court.

20 THE COURT: Okay.

21 So let's discuss that, Mr. Haire. Do you understand what my problem
22 is with it --

23 MR. HAIRE: Well --

24 THE COURT: -- is that I just -- I -- as it was originally drafted in the original
25 complaint, the request was always in the context of two things, closing -- what was

1 the cause of the closure and/or -- and what was the cause of this allegation
2 innuendo statement that she was involved in criminal activity. They're two
3 completely different things in my view, and I just -- I know of no basis that this Court
4 could make a legal determination about closure. I think I've already said I can't.
5 And we have no evidence here of any criminal activity -- that she has any criminal
6 record. I don't have any evidence that she's got a criminal record. Okay.

7 MR. HAIRE: I read the Court's comments to suggest that it is inclined to
8 deny all declaratory relief that has been requested pursuant to the complaint and
9 pursuant to the most recent request. Is that an accurate statement?

10 THE COURT: Well --

11 MR. HAIRE: Because if it is --

12 THE COURT: But Mr. --

13 MR. HAIRE: -- I will agree with the Court wholeheartedly.

14 THE COURT: Mr. Kistler has restated his request and it appears now that
15 his request is less broad than it was when he initially made it, because I think any
16 request that would link the evidence in -- at trial to closure of the account I can't do
17 because I specifically said we weren't going to try that. This Court can't -- the Bank
18 cannot be compelled to disclose that information. So we don't know why -- what's
19 in the Bank's records. We don't know what led to the closure. We can't inquire into
20 that. Our hands are tied there. I'm not saying I think it's right or wrong, it just -- it is
21 what it is and as a legal basis can't do that.

22 But as I understood what Mr. Kistler said is well then we'll back off from
23 a request that says there's no evidence of criminal activity leading to closure of her
24 account. We'll back off from that and simply request a finding that there has been
25 no evidence that Ms. -- no evidence presented in court that Ms. Johnson has any

1 history of criminal activity.

2 MR. HAIRE: Well that --

3 THE COURT: If I understood that --

4 MR. HAIRE: Well, if that's what he's requesting, then there's a few problems.
5 Essentially what he's -- what Mr. Kistler is asking this Court to do is to declare that
6 his client is not a criminal and -- based upon the evidence that's presented in the
7 case, and he's doing that by saying -- telling -- saying well they've abandoned truth
8 as a defense, therefore why not just declare her to not be a criminal. That's totally
9 different things.

10 We may abandon a defense because we're not able to present
11 sufficient or -- you know, there's all kinds of reasons why we would abandon an
12 affirmative defense in a case, but to use that withdraw or abandonment of a
13 defense to support a request for declaratory relief that until five minutes ago had
14 never been presented as an option in this -- their original complaint states that
15 contrary to Dounel statements, the plaintiff has no criminal background. Why was
16 that not presented as an alternative request for relief at the time? We would have
17 had this discussion a long time ago, but I think it's a little late and there's nothing
18 been presented in this case that would compel the Court to hear yet another issue
19 about what it can declare or what it can't declare.

20 The pleadings are closed in this case, Your Honor, and to preface or
21 premise a finding that the plaintiff is not a criminal based upon the abandonment of
22 an affirmative defense I think is improper.

23 THE COURT: Thank you. Okay. All right. You know, that's --

24 MR. KISTLER: Your Honor, it's not just the abandonment of the affirmative
25 defense. It was no evidence was presented; zero evidence was presented. Even

1 the Bank's own witness -- the Bank's own employee stated that there was no
2 evidence that he was aware of.

3 Your Honor, we're not saying to say we're -- we're not asking the Court
4 to declare that there was no criminal conduct presented before the Court because
5 of abandonment of the defense. We think they have other problems concerning
6 abandonment of the defense at this late, late, late, late, late date. Above and
7 beyond that, what we know is there was no evidence whatsoever of any criminal
8 activity.

9 The defamatory statements were she's been in jail or she has arrest
10 warrants. If that had been true, Your Honor, then we would have seen that
11 information from the Bank in court without any reference to any internal bank
12 records. What we have is we have Ms. Johnson, as a law abiding citizen, whose
13 reputation has been disrespected and besmirched by the Bank through its agent
14 acting in the scope and course of his employment and presenting nothing, nothing
15 to show that this woman is anything other than a law abiding citizen.

16 THE COURT: Okay. Well I just am not -- because there we're getting into
17 this whole point of what's the Court's jurisdiction under Chapter 30 to enter
18 declaratory relief. To say the Court should declare that Ms. Johnson has no
19 criminal record, I don't see that that falls within declaratory relief. That's not a
20 controversy that I can tell between the Bank and Ms. Johnson that this Court has
21 jurisdiction to enter any findings on and it is in part because we are barred by
22 federal law from inquiring into certain things. As result, they've dropped the
23 defense. I just -- I don't see that there's -- that this was really something that was in
24 controversy in this case. It's entirely separate from the whole issue of defamation.

25 So I just -- I don't see that there's anything that the Court can declare

1 as a matter of fact and law having listened to this other than the other cause of
2 action which is -- what we have to talk about next which is was there in fact a
3 defamation, so I just -- I think that I have to grant the motion with respect to
4 declaratory relief. I do not think that there is anything under Chapter 30 that the
5 Court can enter a declaration as to a dispute between these parties other than
6 there's this defamation case that's going on over here separate -- it's a tort case.

7 So that's -- I just don't see that there's anything with respect to the
8 relationship between the parties that I can enter a declaration about. So I'm going
9 to grant the motion as to declaratory relief, deny the motion as to the other claims
10 for relief, and that's what we need to talk about now, which is defamation in false
11 light. Okay. So --

12 MR. HAIRE: I'm sorry --

13 MR. KISTLER: Your Honor, false light has been --

14 MR. HAIRE: Dismissed.

15 MR. KISTLER: -- is out of the case as well.

16 THE COURT: It's been previously dismissed, so yeah, we'll just do the
17 defamation, just looking at your complaint. Okay. All right, so defamation.

18 MR. KISTLER: Ready to go?

19 THE COURT: Yes.

20 CLOSING ARGUMENT BY THE PLAINTIFF

21 BY MR. KISTLER:

22 Excellent. Your Honor, on October the 6th, 2011, Arash Dounel, acting
23 within the scope and course of his Wells Fargo employment, committed the civil
24 wrong of slander per se by telling Michael Kaplan that Lisa Johnson had been jailed
25 or was subject to outstanding arrest warrants. Dounel's statements were not

1 privileged. Wells Fargo management, through his actions and words, ratified the
2 defamatory statements, and at the end of my argument, Your Honor, we'll be
3 asking for return of a verdict in the plaintiff's favor to include special, general and
4 punitive damages against the defendant, Wells Fargo Bank.

5 The first issue, Your Honor, that I'd like to discuss is were the
6 statements made. Were the statements made -- particularly were the statements
7 made as alleged by Ms. Johnson and by my law firm.

8 Now, what I would suggest, Your Honor, and what I would argue to the
9 Court is Your Honor heard Mr. Kaplan's testimony. You were able to observe his
10 demeanor while he was on the stand. His testimony was totally internally
11 consistent insofar as the material facts that should determine the Court's ruling on
12 the was-the-statement-made issue. And that is, that he went to the Malibu branch
13 on October the 6th, 2011. He was solicited for additional business by the bank
14 teller. He was introduced to Mr. Dounel and Mr. Dounel made affirmative
15 statements of fact to him that Ms. Johnson had been or must have been in jail, had
16 outstanding warrants, and that was the reason that the account had been closed;
17 the joint account.

18 Following his meeting with Mr. Dounel, Mr. Kaplan saw Lisa Johnson
19 and immediately, immediately that say day, according to both witnesses, confronted
20 her about Dounel's claims.

21 Thereafter, Your Honor, the statements have -- were reported to the
22 Bank, had remained consistent throughout. They were stated by Mr. Kaplan to be
23 absolutely pure assertions of fact rather than any type of guessing or opinion. We
24 established through the testimony of Ms. Johnson that Mr. Dounel had never met,
25 never talked to, never spoken with, never socialized with, did not run in the same

1 circle of -- is friends with and had no basis whatsoever for having a personal
2 opinion concerning Ms. Johnson having gone to jail or Ms. Johnson having
3 outstanding warrants.

4 Now after the mighty buildup of seeing through Mr. Haire's opening
5 statement of well we dispute these statements were made, we now know that the
6 statements were made, and we know that for a couple of different reasons. We
7 know that because of the testimony that Your Honor received and also the
8 deposition testimony that Your Honor has now reviewed.

9 And as Your Honor stated, unfortunately, on the day before trial started
10 -- as I had the Court take judicial notice of out of the joint pretrial memo, on the day
11 before trial started, the penultimate witness on behalf of Bank of America or excuse
12 me, Wells Fargo that was going to come in and set the record straight -- the day
13 before the trial started, the Bank says oh, you know, he doesn't work for us
14 anymore, he lives in California, we can't compel his attendance and we're not going
15 to assist you, Mr. Kistler, in compelling his attendance either.

16 If Your Honor will review all of the pretrial pleadings that were filed in
17 the case, it was clear that Dounel was going to be called, he was going to be called,
18 he was going to put us in a swearing contest in this case, and the day before trial
19 we were notified by the Bank that their employee, their guy that would set the
20 record straight was not going to be called.

21 We would suggest the reason he wasn't called, Your Honor, is
22 because his testimony would have been even worse than his deposition, and his
23 deposition was pretty darn bad.

24 I'd like to talk about Mr. Dounel's deposition just briefly, Your Honor,
25 from a macro sense and then from a micro sense. From a macro sense, the

1 reason we put his direct examination in as a statement made by a party opponent
2 in our case in chief was that Your Honor would be exposed to the testimony
3 chronologically correctly. That is, that Your Honor would read my cross-
4 examination and then Your Honor -- presumably as part of the defendant's case in
5 chief, they would request and they did request that Your Honor review his direct
6 examination that was performed by Mr. Fitts.

7 Your Honor should notice and we would ask for the Court to pay
8 attention to the dynamics of the deposition process itself. That is, I did my cross-
9 examination. We took a break. Mr. Fitts then inquired of Mr. Dounel and Mr. Fitts's
10 questions -- virtually each and every one of them were leading questions that I
11 objected to and I've not waived those objections.

12 Now, I understand, and a Judge will in trial, unless the question is way
13 out of bounds, then perhaps letting counsel lead his own witness even on matters
14 that are central to the case is something that the Court may very well overrule and
15 consider in weighing the testimony presented. But from a macro sense, Your
16 Honor, I objected properly to leading question after leading question after leading
17 question by Mr. Fitts. It was -- as Your Honor could easily see, it was the attorney
18 testifying, not his client, the penultimate witness in this case from the Bank's
19 standpoint. And we would ask for the Court, from a macro standpoint, to take that
20 into consideration when you weigh what Mr. Dounel said.

21 That being said, Your Honor, what we know from Mr. Dounel in
22 contrast to the crisp, precise, unequivocal, in-court testimony of Mr. Kaplan -- what
23 we know from Mr. Dounel is that he met Mr. Kaplan -- this is found on page 29 --
24 while he was working -- I was working, he was a customer at the bank and our lives
25 were aligned. That's page 29, lines 1 through 3.

1 Were you introduced to him? Continuing on page 29. Not sure. Did
2 you introduce yourself? Not sure. I did not understand -- I did not have an
3 understanding of what the purpose of the meeting with Mr. Kaplan was. That was
4 continued on page 29.

5 He does admit that there was a conversation, but he time after time
6 after time says I don't recall, I don't recall what was said, I don't recall where in the
7 branch it occurred, I don't recall going into a private area. That's on pages 31 and
8 36.

9 I don't recall being at my desk with Mr. Kaplan. What do you -- what
10 do -- what did you -- what do you recall? Well I remember -- on page 38, I
11 remember Mr. Kaplan, it started out pleasantly and there was a conversation about
12 a closed account. I don't recall my response. That's Mr. Dounel's testimony, page
13 38, lines 7 through 8.

14 I don't recall what I said to Mr. Kaplan. Page 38, page 39.

15 I don't have a specific recollection that Mr. Kaplan had a question
16 about a closed account. That's page 40.

17 But Mr. Kaplan's account -- Mr. Kaplan's account -- Mr. Kaplan's
18 account was closed. That's on page 41, lines 1 through 7.

19 And you know the interesting thing is, Your Honor, and you're going to
20 -- I want Your Honor to give me the benefit of remembering that statement. Mr.
21 Kaplan's account was closed. All this agency stuff and Mr. Dounel thought that he
22 was an agent of Ms. Johnson and gee, you're talking to an agent for principal and
23 you can't defame principal by talking to -- that's all hooley. It's all hooley even
24 insofar as what Mr. Dounel says and the testimony that he gave.

25 Mr. Kaplan's account was closed, page 41, lines 1 through 7.

1 He goes on and he talks about a conversation he had with a banker
2 connection. Mr. Kaplan doesn't remember any of that or didn't testify about that.

3 And then on page 44, Mr. Dounel -- lines 22 through 23 he says: I told
4 Kaplan that the account was closed due to an investigation. That's what he says in
5 his deposition under oath.

6 Now, Your Honor, if you recall the testimony -- and again his testimony
7 is clear. I told Mr. Kaplan it was closed because of an -- due to an investigation.
8 And I went through the lawyer thing of do you remember anything else. I don't want
9 you changing your story later. Do you recall telling him anything else? I remember
10 I gave him a 1-800 number. Anything else you remember, page 50, lines 17
11 through 19. No, I don't recall anything else.

12 Now the interesting thing about Mr. Dounel's testimony in his
13 deposition, I told him that there was -- it was closed due to investigation. The
14 interesting point there is, Your Honor, as to who -- who are you going to believe.
15 Are you going to believe -- and I'm just block -- I'm just -- I can't remember the
16 name. Mrs?

17 MS. GARVIN: Garvin.

18 MR. KISTLER: Mrs. Garvin. Mrs. Garvin from yesterday. Mrs. Garvin
19 yesterday came in and said well, you know, these computer screens that are there
20 in the bank, you know, all they say is the account was opened, the account was
21 closed, says nothing else. Didn't say anything about an investigation. She didn't
22 say that. But she said says nothing else.

23 So if it says nothing else as Ms. Garvin said, or that's her -- she wasn't
24 there at the time, she didn't see what Mr. Dounel was looking at, but if Ms. Garvin is
25 correct, then what's this about an investigation that Mr. Dounel said? It was closed

1 due to an investigation.

2 Makes no sense. So I mean he's not -- he can't be telling the truth
3 about that if Ms. Garvin is telling the truth and I don't doubt Ms. Garvin was telling
4 the truth yesterday. So what's he doing? I don't recall what I told Mr. Kaplan, but I
5 told him it was closed due to investigation. I don't remember anything about why I
6 was there, but I told him it was closed due to investigation.

7 And then we have the strongest denial, if you will, by Mr. Dounel and
8 any portion of his testimony that is remotely credible and it's not leading by Mr.
9 Fitts: Do you recall telling Mr. Kaplan Ms. Johnson must have some type of
10 criminal background? No, I don't recall that. I don't believe I would say that. I don't
11 believe I would say that. You don't hear the, you know, I don't remember what I
12 told him, but I can tell you I didn't say that because I've never said that to one
13 person ever in the past, on that day or in the future, I would never ever say that.
14 That's what you would expect. That's not what we got. Gee, that doesn't sound
15 like something I would say. That is a non-denial denial, Judge.

16 I believe I would not say about -- anything about getting a client hiring
17 a private investigator. I don't recall saying words to that effect. That's on page 51.

18 Did you -- page 52, lines 3 through 5: Did you tell Mr. Kaplan that Ms.
19 Johnson must have outstanding -- must have arrest warrants outstanding? And of
20 course I'm quoting from this and I'm quoting his answer: I don't recall. I don't
21 believe I would talk like that. Do you recall anything else about the conversation?
22 No. And I went through the admonishments again. Anything else, anything else
23 you recall? No. Nothing else.

24 Then we talk about -- in the deposition starting on page 57, we talk
25 about the apology. And Mr. Dounel says well I wanted to apologize about the

1 misunderstanding of the investigation. Well now, it's not only closed due to an
2 investigation, it's closed supposedly based on misunderstanding about the
3 investigation. And again, even Ms. Garvin would say that that's not -- can be
4 factually based.

5 I told him I would send a written apology. And of course we knew that
6 he didn't.

7 Now, then we launch into, you know, again just T.S. Lawrence (sic)
8 stuff about sending the letter that he had prepared that was not produced, by the
9 way, and I even went through the lack of production; what happened to the letter,
10 where is the letter, why hasn't it been produced, et cetera, et cetera, et cetera.
11 Don't know, don't know, don't know, don't know. Don't have it. Left my computer
12 there, et cetera, et cetera.

13 But he says that he sent the apology and you saw the email from Mr.
14 Dounel to Mr. Kaplan saying, you know, management and legal will not let me
15 submit a written apology. Management and legal. That's the email that we saw,
16 management and legal, when in fact in his deposition he says, well, you know, legal
17 is just kind of something my boss and I kind of made up. I don't really know if it
18 went to legal or not, but we said that anyway because then it kind of sounds more
19 official, sounds more effective, or words to that effect. Your Honor can rely upon
20 her own memory and also review the transcript, but a submission that they lied or
21 he lied in this email saying management and the legal department won't let me
22 send it, he had no idea if the legal department, whatever that is, reviewed it. But he
23 did say management, management, management wouldn't let me send the
24 apology, management would not let me withdraw the statement.

25 And then of course we have the statement on page 106, lines 1

1 through 25: Question -- with no objection and no privilege or no anything directly
2 going to the reasons for the account closure: Do you have any information -- and
3 I'll quote it. That's lines -- lines really 5 through 21. I mean the answers were so -- I
4 mean it's one of those moments, Your Honor, where you want to make sure that
5 the transcript is crisp because the answers are important.

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

8 Answer: None.

9 And that's true today?

10 That's true today.

11 And it was true as of October 2011?

12 Correct.

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

15 Answer: No.

16 Okay. And that's true today?

17 Correct.

18 And that was true in October 2011; is that right?

19 Correct.

20 Lines 21 -- that's lines 5 through 21.

21 Now, Your Honor, despite the fact that the Bank's employee has said
22 that he had no information upon which to make these defamatory statements and
23 he admitted that in the deposition in October of 2012, the Bank maintained their
24 truthfulness defense for his defamatory statements for another 18 months. Well
25 maybe 15 months.

1 They formally stated that they were going to withdraw or not present
2 evidence on their affirmative defense of truthfulness of Mr. Dounel's statement in
3 the joint pretrial memo the day before trial. They did, in fairness, allude to that in a
4 pleading approximately three weeks later or four weeks later that was discussed at
5 the summary judgment hearing. So after -- again, after their employee tells them
6 that the statement that he doesn't recall but he kind of thinks yeah, I don't think I
7 would say -- I'm not -- it doesn't sound like me, that that statement is absolutely
8 false, they maintain that defense for another 15 months.

9 We know that the statements are undeniably false. The statement that
10 was crisply testified to by Mr. Kaplan, we know that statement is undeniably,
11 irrevokely (sic), unretrievably without any doubt false.

12 Ms. Johnson, law abiding citizen, federal security clearance early in
13 her life, never been arrested, never been in jail, no warrants, no evidence
14 whatsoever to the contrary. And Mr. Kaplan who relayed this story, successfully
15 businessman, never been in trouble with the law whatsoever, a member of four
16 State Bars, still in good standing, that was hired for his first job here in Clark
17 County, Nevada by Neil Galatz and presently sitting Judge Allan Earl to work with
18 them. People that are successfully, people that are law abiding and a truth defense
19 maintained 15 months after their own employee had jettisoned any possibly belief
20 that that defense could be well-founded or well-pled.

21 Your Honor, not just the preponderance of the evidence but the
22 overwhelming evidence that's been presented in this case is that the statements
23 were made by Mr. Dounel just as Mr. Kaplan testified before Your Honor and that
24 the statements were absolutely beyond any doubt untrue at the time that the
25 statements were made.

1 Now, what do you do if you're the Bank in a situation like that? Okay,
2 well we have -- we have a defamatory statement that was made by one of our
3 employees, according to Ms. Garvin, acting within the scope and course of his
4 employment, her testimony yesterday. All the conversations that Mr. Dounel had
5 with Mr. Kaplan, according to Ms. Garvin, within the scope and course of his
6 employment for the Bank.

7 What do you do? Well, what you do is time to manufacture a loophole
8 defense, and that's what they've tried -- that's what they've attempted to do.

9 And the loophole defense, Your Honor, is well, you know, we can't
10 defame Ms. Johnson because the defamatory comments were made to her agent.
11 Factually, that's incorrect. Mr. Kaplan didn't go there on behalf of Ms. Johnson. He
12 didn't go there to talk about closed accounts at all at Malibu on October the 6th,
13 2011.

14 He didn't go for that purpose. He was solicited for additional business.
15 Dounel didn't approach him, according to the testimony that he gave me and my
16 cross-examination in his deposition. He came there to talk about his accounts. His
17 accounts. Not her accounts.

18 And we have this whole façade, well, at least there was apparent
19 authority, Your Honor. That was Mr. Haire's opening statement, apparent authority.
20 No one has said that. If that was true, Mr. Dounel would have said, gee, I thought I
21 was talking to Mr. Kaplan as Ms. Johnson's agent. You don't -- you didn't hear that.
22 That's not the evidence. That's not what was presented in this courtroom.

23 The agency defense of gee, you know, we can't defame Ms. Johnson
24 because the communications were to her agent simply does not exist factually and
25 the facts don't even allege that they exist. Mr. Dounel doesn't even suggest that

1 that's the case. There's nothing there concerning agency.

2 And interestingly enough, Your Honor in Your Honor's -- yesterday
3 about well, you know, let's -- there's been some changes in the law, the Simpson
4 case, and we -- and so we looked at the *Simpson* case. And under the *Simpson*
5 case, on a different point but in the *Simpson* case, the Supreme Court, at least
6 subsilneal (phonetic) if not de facto, reverses an earlier Nevada Supreme Court
7 cases and adopts the Restatement Second of Torts Section 577(1) that, quote,
8 publication of a defamatory -- of defamatory material to anyone other than the
9 person defamed, even to an agent, is publication for the purpose of making a prima
10 facie case of defamation, with cites thereafter. That's found -- I can't tell you what
11 page it's on, but it's in the case at headnote 5 of the case.

12 So *Simpson* -- the *Simpson* Nevada Supreme Court rejects this gee,
13 agent, publication, there's no publication at all by adopting the Restatement
14 (Second) of Torts saying publication to a third party, even an agent, is sufficient to
15 establish prima facie case publication for defamation. So this whole idea of, you
16 know, agency, principal, it just -- it doesn't make any difference, it's a sham. It's not
17 a defense to Mr. Dounel's statements.

18 So then we have the next contrived defense and that is, well, we have
19 this joint privilege defense. Or joint interest. I'm sorry, joint interest defense. And
20 we're going to establish that joint interest defense -- if I could have Exhibit 36.

21 The joint interest defense is based on Exhibit 36, at least in part and --
22 and that's Wells Fargo Bank 0264 through Wells Fargo 0335, so it's about 61 -- 61
23 or 71 pages, one of the two. And that's the important legal information the business
24 account -- and you'll -- it's interesting, Your Honor, the establishment of that is -- the
25 establishment of that defense is well, Mr. Kaplan, you got this when you opened the

1 account. And Mr. Kaplan's testimony was well, you know, if I got something this fat
2 from the Bank when I opened the account, I think I would have remembered it. I
3 don't remember ever getting anything like this. I don't remember getting this big,
4 fat, thick packet of papers, 71 pages or 61, whichever is correct given my
5 arithmetic.

6 [Colloquy between counsel]

7 MR. KISTLER: I'm sorry. Exhibit 34, Your Honor. Exhibit 34. I apologize.
8 Exhibit 34.

9 THE COURT: I thought that was wrong, but I wasn't sure. Thanks.

10 MR. KISTLER: And then Mr. Kaplan says well, you know, I didn't get that
11 big, fat, thick, you know, stack of papers, I think I would have remembered that.
12 Ms. Johnson said the same thing. And so Ms. Garvin came in and clarified that
13 well you know what, it's not really a big, fat, thick thing, it's a little brochure. The
14 questions were on the big, fat, thick thing in the book and that's not even what the
15 Bank's witness said, if they got something or if they should have gotten something,
16 that's what they would have gotten.

17 So, you know, did they get it, did they not get it, does it really make any
18 difference? Is there anywhere in that document that says we as the bank have the
19 right to commit slander per se against a joint accountholder on an account that
20 you're on? I would dare say not. I haven't found it. And it would be -- it would
21 be inconceivable that that would be -- that that would be the case, although small
22 print -- small print could in fact include -- I guess bank small print could in fact
23 include virtually anything.

24 Now, concerning this manufactured defense, Your Honor, of the joint
25 interest privilege, according to the Nevada case of *Lubin versus Kunin*, L-u-b-i-n

1 versus Kunin, K-u-n-i-n, a 2001 case, that a qualified privilege can exist if there's
2 evidence that's brought forth by the defendant initially to show that there is such a
3 privilege and then -- and then it's incumbent upon me to overcome their initial
4 burden, their initial showing that such a privilege attaches.

5 Your Honor, the qualified privilege, as given by the *Kunin* case,
6 protects defamatory statements made, quote, in good faith. On any subject matter
7 which a person communicating has an interest or in reference to which he has a
8 right or duty, the person communicating has an interest if it's made to a person with
9 a corresponding interest or duty.

10 So the qualified privilege may very well be not applicable whatsoever
11 given the *Kunin* case, but even given the *Kunin* case, we know that the initial
12 requirement of a defamatory statement made in good faith is not present in this
13 case. Cannot be. Cannot be. Dounel told us cannot be made in good faith. The
14 statement was made, as Mr. Kaplan said, Dounel says yeah, don't know of any jail
15 time and any arrest warrants, nothing. Impossible for the statement to have been
16 made in good faith.

17 The other side of that coin is the statements were made therefore with
18 malice. They had to be with malice. They had to be with a conscious disregard of
19 the rights of others at a minimum.

20 Under the Restatement, a person -- Restatement (Second) of Torts,
21 Section 596, a person may not avail himself of the privilege -- the qualified privilege
22 if he abuses it through his knowledge or reckless disregard as to the falsity of the
23 defamatory matter. Here, Dounel admits the statement was false. Admits at the
24 time the statement was made it had to be false. So this qualified privilege simply
25 does not exist. It's a manufactured defense that does not comport with the facts of

1 this case.

2 Now, Your Honor, as Your Honor will hear in my argument concerning
3 appropriate damages in this case, we are seeking punitive damages against Wells
4 Fargo Bank. And we know pursuant to NRS 42.007, exemplary or punitive
5 damages that result from an employer for the wrongful act of his or her employee
6 must meet one of three different tests. The second and third tests really are I think
7 what's important here. The employer expressly authorized or ratified the wrongful
8 act of the employee for which the damages are awarded, or the employer is
9 personally guilty of oppression, fraud or malice, express or implied. And we would
10 say that both of those apply. We would say the Bank -- that Wells Fargo Bank
11 showed conscious disregard for the rights of others in its actions in this case. We
12 also believe and we also believe the evidence is overwhelming that management --
13 management as defined by Ms. Garvin yesterday, management authorized and
14 ratified the statements that Mr. Dounel made.

15 And of course I'm referring really to the following facts: I'm referring,
16 first of all, to Mr. Dounel's email regarding the apology, stating that management
17 would not permit him to send a formal apology. We know that he was probably not
18 telling the truth regarding legal department pursuant to his deposition, but we know
19 that he did say management will not let me send out this letter of apology.

20 We know in Exhibit 17 and Exhibit 18 where Mr. Ravenhoff (sic) in
21 Exhibit 17 says the Bank's actions constitute defamation of Lisa Johnson, and we
22 have management, according to Ms. Garvin, the Vice President, Western Region,
23 Wells Fargo Bank, the Bank acted appropriately in this case.

24 We know that throughout this litigation the Bank maintained that Mr.
25 Dounel's statements were truthful, that thereby, at least from a litigation standpoint,

1 they were backing their man up until the day before trial or if you will, as they've
2 alluded to, a few weeks before trial pursuant to their summary judgment motion
3 practice.

4 We know that never did the Bank distance themselves from Dounel's
5 statement. They never said anything like Mr. Dounel's statements -- he didn't know
6 what he was talking about, Mr. Dounel's statements were not made, Mr. Dounel's
7 statements whatever -- whatever Mr. Dounel said does not express the opinion or
8 position of Wells Fargo Bank NA.

9 Now, Your Honor, we're not going to -- in this or any other case, Your
10 Honor is never going to see a ratification by the board of directors of a national
11 bank saying we hereby ratify our employees' defamatory -- per se defamatory
12 statements. Never going to see that. So saying okay, well, we don't have a formal
13 written ratification by the board of directors of Wells Fargo Bank, well you're never
14 going to see that in this or any other case. But what you can see is words and
15 actions by the Bank which backup their man, backup Dounel, never distance
16 themselves from the allegations of what Dounel said, and never distance
17 themselves from those allegations because the allegations of what Mr. Dounel said
18 were true. That's what he said.

19 And then finally, Your Honor, I'd like to -- at least on the liability aspect
20 of this case, I'd like to talk briefly about the federal statutory scheme that we've
21 heard about both in discovery and we also heard about at trial here today from Mr.
22 Haire. And that is, oh my goodness, we would breach -- we would break federal
23 law if we defended ourselves. And that's hooey as well, Judge.

24 There are two federal statutes that have been brought up by the Bank
25 to hide behind in this case. One of the federal statutes is the Patriot Act. The

1 Patriot Act says that suspicious activity reports and information that is included in a
2 specific -- suspicious activity report is not releasable to members of the general
3 public if you will; that there is a federal prohibition of releasing SARs and
4 information contained in SARs releasing that.

5 Now, there's never been alleged in this case -- the Bank has taken the
6 position that not only is an SAR or any information contained in an SAR not
7 releasable, even admitting or confirming -- confirming or denying, excuse me, the
8 existence of an SAR is not permitted. So there's never been alleged that there was
9 an SAR in this case. Never. It's we say we can neither confirm nor deny that there
10 is an SAR in this case so -- so it's not that there's a document out there that exists
11 that pursuant to federal law they can't disclose. There's been no articulation and
12 they say they can't articulate whether even if such a document exists.

13 The bottom line from my client's standpoint is don't assume there's an
14 SAR. There's nothing out there that would state that there is an SAR. But we
15 agree that an SAR, if it exists in this case and we have no idea if it does or doesn't
16 -- that's not releasable. That probably would be a violation of federal law for that to
17 be released.

18 The other federal statute, however, Your Honor, is a privilege statute.
19 Bank privacy act -- bank cannot be compelled to say why they close accounts, to
20 say why they do certain things. Bank cannot be compelled to do so. There's no
21 violation of federal law if the bank voluntarily waives that privilege and as long as it
22 doesn't violate the Patriot Act if there's -- if there is an SAR, there's no violation of
23 federal law there.

24 In fact, that's the way the Court and the Discovery Commissioner --
25 excuse me, the Discovery Commissioner and the Court analyzed this because the

1 Court and the Discovery Commissioner said okay, well give me a privilege log.
2 What items are you claiming are privileged that you're unwilling to waive the
3 privilege for.

4 The Bank Secrecy Act, the privilege, if there is one -- and of course, it's
5 well known, Your Honor, that we disagree with the Court's interpretation of the
6 statute, but to the extent that there is one, it's waivable. Not so Patriot Act. Yes
7 indeed Bank Secrecy Act. And then I chose to exercise the privilege that the Court
8 found exists under the Bank Secrecy Act. They can do that. But they can't use that
9 as a sword and say oh, well then we're immune from having to explain our actions,
10 we're immune from having to address or be held accountable for the defamatory
11 statements of our employees.

12 If you were to believe -- if the Court were to believe that somehow
13 these federal statutes that again the Bank has chosen to exercise their privilege
14 under, the Bank Secrecy Act, and not present evidence in their defense, that
15 somehow that thwarts my client's right to seek civil redress for this civil wrong, then
16 Your Honor would be de facto granting blanket transactional immunity for
17 defamatory comments, defamatory statements of fact made by the Bank's
18 employee. It's one of those things where if it doesn't make sense, that can't be the
19 law and we know that's just not the law.

20 Now I said that the Bank's actions here really throughout have been
21 outrageous and I stick by that characterization. The Bank's actions initially by
22 defaming Ms. Johnson through their agent were outrageous and showed a
23 conscious disregard of the rights of my client.

24 There's been no evidence of any training program or anything like that
25 to avoid the Bank's obligation to monitor and supervise its employees. To compare

1 the *Countrywide* case that we cited to you earlier -- and I'll cite it to you again,
2 *Countrywide Homes*, 192 P.3d 243. And that was a case under NRS 42.007 where
3 punitive damages against the employer were affirmed by the Nevada Supreme
4 Court.

5 So what else did the Bank do that was so outrageous here? Well, the
6 Bank didn't give their client any straight answers that the Bank didn't distance
7 themselves from the defamatory statements of their employee. The Bank did
8 maintain a truthfulness defense to the defamatory statements for an absurdly long
9 period of time after there was no good faith basis for doing so, at least as of Mr.
10 Dounel's deposition testimony. And the way the Bank treated Mr. Kaplan and Ms.
11 Johnson in the trial of this case. They treated them like criminals. They treated her
12 like a criminal.

13 Why did you divorce your first husband 20 years ago, Ms. Johnson?
14 That's oppressive. Well, Mr. Kaplan, after these statements were made, you're still
15 sleeping with her. That's oppressive, that's improper, and that's the defense that
16 we've had from the Bank in this case, Your Honor.

17 So what are we asking for based on this defamation? Your Honor, it's
18 -- it make take me a second to find my notes. It's black letter law that this
19 statement made or the series of statements made by Mr. Dounel are slander per
20 se. There can be no other characterization of she's been in jail, she has arrest
21 warrants outstanding, hire a private investigator and find out for yourself. There's
22 no interpretation of -- no reasonable interpretation of that, we would say, other than
23 impugning criminal conduct to a totally innocent woman. That's slander per se.

24 Now, again black letter law we know slander per se or any -- any
25 slander case we know that there are three types of damages that are available for

1 slander per se. There's general damages. And again, black letter law we know
2 that any slander per se case general damages are presumed. You -- there needn't
3 be specific monetary proof of general damages because of the very heinous nature
4 of the statement itself impugning criminal conduct to an innocent person. The
5 damages flows that there will be harm to reputation, there will be angst, there will
6 be impact by such a serious unfounded allegation.

7 So in a slander per se case, general damages are presumed and Your
8 Honor is required to, upon finding slander per se, determine an appropriate amount
9 of monetary compensation to recompense the injured party, Ms. Johnson, for the
10 general damages that are presumed. And Your Honor, that's -- it's not pain and
11 suffering, but the yardstick, the looking at it is as an exact. And we will leave that to
12 the Court's good discretion to determine what the harm is for general damages to
13 Ms. Johnson as a result of her partner, her lifeline being told that your mate is a
14 criminal.

15 I'm not going to give you a dollar number there. We're going to trust
16 the Court's good discretion to fully compensate (sic) Ms. Johnson for the general
17 damages that have sustained, and we would suggest that there has been -- and we
18 would argue that there has been stress, there has been strain, and there would be
19 stress and strain in a relationship if in fact one member was told by a bank official
20 after accounts were closed that your partner is a criminal and then not explain why
21 he said that; that there would be general damages that would affect the slandered
22 person in that and that general damages do not depend on whether or not Mr.
23 Kaplan continues to sleep with Ms. Johnson or not, despite Mr. Haire's questioning
24 on that point.

25 And Your Honor, slander per se and the general damages that are

1 presumed in that respect, because they were committed -- because the slander
2 was committed by a Wells Fargo employee operating within the scope and course
3 of his employment, those damages are payable by Wells Fargo. 47.00 -- 42.007
4 only applies to punitive damages. Damages -- under respondeat superior theory,
5 special damages and general damages for slander per se flow to the employer.

6 Special damages are recoverable to the extent that they've been
7 proved. Special damages in this case are twofold, in our view. This was an
8 intentional tort that was committed. It was an intentional tort that was committed by
9 a national bank employee operating within the scope and course of his
10 employment. This litigation, while we sought to avoid it, necessarily had to be filed.
11 We believe that special damages are appropriate for this intentional tort in the
12 amount of attorney's fees and costs that have been incurred.

13 When I say incurred, incurred and owed by Ms. Johnson. And we
14 know that Mr. Kaplan paid and Mr. Kaplan expects to be repaid from Ms. Johnson.
15 And Ms. Johnson testified that the amount of fees and costs incurred to date, not
16 through trial, are approximately \$85,000. In our trial brief, we ask the Court for that
17 award and then to have a hearing after the trial to determine the exact amount that
18 the Court would determine as part of its special damage award in this case.

19 We also believe that special damages are recoverable for the loss of
20 the account that Ms. Johnson did not gain as a result of Mr. Dounel's statements to
21 Mr. Kaplan. And here's our position on that, Your Honor. The testimony was clear
22 and unequivocal both from Mr. Kaplan and from Ms. Johnson that they had agreed
23 that Mr. Kaplan would fund -- and Mr. Kaplan's testimony un rebutted was that he
24 had the wherewithal and ability monetarily to fund a \$3 million account to make
25 sure that she was taken care of and because of Dounel's statements, doubt

1 occurred in his mind and he has not done so. And the doubt remains. And we're
2 hopeful that the Court can do something to address the doubt and to give this
3 couple peace.

4 But be that as it may, we're not asking for \$3 million. We're not asking
5 for the amount of the account that was going to be setup but for Mr. Dounel's
6 defamatory statements. What we're asking for is loss of use of that money for the
7 period of time from October the 6th, 2011 up to and through the date of trial. And
8 loss of use typically -- whatever the Court's best formula would be, whatever -- but
9 typically loss of use is based on the Nevada statutory interest rate.

10 So we're not asking for \$3 million. We're asking for loss of use of the
11 \$3 million that Ms. Johnson would have had but for Mr. Dounel's defamatory
12 statements on October the 6th, 2011.

13 And again as I stated, slander by an employee during a -- during the
14 course and scope of his employment, special damages are payable by the
15 employer. General damages are payable by the employer, special damages are
16 payable by the employer. There's no additional requirement that is placed on
17 plaintiff or me to establish anything else other than defamation per se, scope and
18 course of employment, presumed general damages, special damages that we can
19 prove. Those flow to Wells Fargo.

20 What doesn't automatically flow to Wells Fargo is punitive damages.
21 And I've outlined why we believe punitive damages against Wells Fargo Bank in
22 this particular case are totally appropriate.

23 Under 47 -- excuse me, 42.007, there is adequate evidence, if not
24 overwhelming evidence, of the ratification by management members -- according to
25 Ms. Garvin, members of management that Mr. Dounel's false and defamatory

1 statements were ratified by them. There is a -- lacking of any evidence of Wells
2 Fargo Bank distancing themselves from them and it could have been so easy and it
3 wouldn't have done any harm to their sword federal statute claim.

4 Whatever Mr. Dounel says, it does not express the opinions, position
5 or interest of Wells Fargo Bank. That would have insulated them from punitive
6 damages. We don't have that. We do not have that. Rather, we have every action
7 right down the line up until three weeks or the day before trial truthfulness is in play.
8 Dounel is in play. Up until right before trial, everything the Bank did was consistent
9 with backing their man, ratifying his actions.

10 We believe -- in addition to ratification, we think the Bank's actions, as
11 I've outlined both before trial and after trial, show a conscious disregard for the
12 rights and interest of Ms. Johnson in this case. And the shield that they have
13 attempted to erect simply doesn't protect them from that inescapable fact.

14 Your Honor, what's the amount of punitive damage? Similarly I'm
15 going to chicken out and not give that to you. We're not going to say -- I mean,
16 punitive damages are designed to punish the offender. Well, you know, if you want
17 to punish Bank of America, then damage award should be a gazillion dollars.
18 We're not suggesting that. But we would ask the Court to render a decision to
19 award punitive damages in an amount that will get their attention. Whatever the
20 Court's discretion is or whatever the Court believes to be appropriate to get their
21 attention because they ought not to treat people this way.

22 They did Ms. Johnson wrong. They consistently did Ms. Johnson
23 wrong. We will leave it up to your good judgment, Your Honor, to award an amount
24 of punitive damages which are not limited by three times, but not -- do not
25 necessarily need to be three times specials. Whatever the Court believes is

1 appropriate to get their attention so that they -- so they understand what they did
2 was wrong and that they don't do it again.

3 With that, Your Honor, I'll yield the floor to Mr. Haire.

4 THE COURT: Thank you.

5 Okay. Mr. Haire, ready to go forward or you want a break or?

6 MR. HAIRE: I'm sorry, I didn't hear you.

7 THE COURT: Do you want to go forward now or you want to break or?

8 MR. HAIRE: May take maybe just five minutes?

9 THE COURT: Okay. We'll take a brief recess. We'll be in recess for five
10 minutes.

11 [Off the record at 3:02 p.m.]

12 [Proceedings resumed at 3:19 p.m.]

13 THE COURT: Mr. Haire.

14 CLOSING ARGUMENT BY THE DEFENDANT

15 BY MR. HAIRE:

16 Your Honor, thank you for your time you've given the parties here.
17 Throughout the entirety of the case, the Court has been patient, thoughtful,
18 attentive and accommodating to both parties at every turn and I'm sure I speak for
19 Mr. Kistler when I say thank you.

20 On multiple occasions, both in writing and orally, the Court has been
21 presented with Wells Fargo's legal arguments concerning certain of the prima facie
22 elements of plaintiff's defamation cause of action which, as the Court has
23 determined before our closing arguments today, is all that remains in this case.
24 While I may not address all of those legal arguments again this afternoon, Wells
25 Fargo stands behind each of the legal arguments it has presented throughout the

1 case and does not believe this trial has diminished or marginalized those legal
2 arguments in the least. Wells Fargo Bank is, of course, aware of the Court's
3 commitment to examining those issues in conjunction with examining the totality of
4 the facts presented in the case in determining whether the plaintiff is entitled to
5 relief and we know the Court will do so.

6 There are a couple of things, Your Honor, that I would like the Court to
7 keep in mind throughout my remarks. One is a statement, one is a question. One
8 is a statement: The plaintiff and Michael Kaplan are nothing if not persistent. The
9 question: What is the plaintiff really upset about?

10 Is it the fact that a man she's never met, may or may not have spoken
11 on the phone for 30 seconds or more -- or about that, something short, somebody
12 that Mr. Kaplan had never met prior to October 6, 2011, said some inartful, ill-
13 advised, stupid things? Is that what has upset her or is it the fact that they -- they --
14 she is unable to get past the idea that the rules do apply to her? That is, Wells
15 Fargo's contractual right to close her accounts whenever they want for whatever
16 reason in their sole discretion and they're not obligated by law or internally to tell
17 her why just doesn't sit well with her.

18 The persistence of she and Mr. Kaplan have what led to whatever
19 stress, whatever anxiety, whatever damages, if you will, that she would like this
20 Court to award her. Wells Fargo Bank would suggest to you it's the fact that she
21 cannot get past the fact that the rules do apply to her that she has brought this
22 claim and seeks the damages that she does, so that's what I would ask the Court to
23 keep in mind.

24 Now initially the Court must make a determination of whether Mr.
25 Dounel made the statements Mr. Kaplan claims he made. Your Honor has read the

1 transcript of Mr. Dounel, has heard the evidence presented in this case at this trial,
2 and the Court is well worthy of determining whether it believes the statements were
3 made. I'll leave that in the Court's worthy hands.

4 What I want to address is whether the plaintiff -- whether the -- whether
5 these statements were defamatory, whether this is an actionable claim, whether
6 Ms. Johnson is entitled to the damages that her counsel just outlined. Part of the
7 mix in that, of course, is this concept of malice, which I'll also discuss. But as with
8 every issue for the Court's consideration in this case, we would urge you to draw on
9 common sensibilities, consider the credibility of the parties, witnesses and evidence
10 in determining whether the statements were made, whether they were defamatory,
11 and whether the context within which they were made supports an award for
12 damages.

13 Now I didn't know until Mr. Kistler spoke that a party is ostensibly
14 limited in how it's to defend itself in a case. I didn't realize that there were
15 limitations on me and my partners in how we chose to defend our client. And in
16 fact, we as lawyers have even been roped in with Wells Fargo suggesting that we --
17 that we have offended the plaintiff in this case. I don't need to remind the Court
18 that this fight was brought by this plaintiff and the law allows every defendant to
19 defend itself within the bounds of the law, and what that law is, is what we'll
20 address as I go through what I believe the evidence shows in this case and what I
21 believe are fair and reasonable inferences that can be drawn from the evidence in
22 this case.

23 As the Court knows, in mid-August 2011, Wells Fargo Bank notified
24 both Mr. Kaplan and the plaintiff that it had decided to close three accounts. For
25 nearly the next two months, both Mr. Kaplan and the plaintiff made repeated

1 attempts to find out why. Multiple contacts, excuse me, both within and without the
2 Bank were made. The plaintiff admits that Mr. Kaplan had her full authority and
3 consent to inquire about the closure of any of her accounts, separate or joint.

4 Now, was it reasonable for Mr. Kaplan and plaintiff to want to know
5 why the accounts were closed? Well of course it was. Of course it was. Any of us
6 would want to know. Any of us would be at least curious. This curiosity, this
7 wanting to know why is acknowledged by the responses to their request. The Court
8 will remember that every response by Wells Fargo Bank to their request that we
9 have record of was prefaced with an apology. We're sorry, but we cannot discuss
10 the reasons with you.

11 So the matter was not one of won't discuss it but one of can't discuss
12 it. There were rules. These -- there were rules that the plaintiff consented to upon
13 her joinder to the account, rules that Mr. Kaplan is subject to, and the Court has
14 already acknowledged by the information could not be discussed even with those
15 directly affected by its actions. Court has also appropriately acknowledged the
16 banking other laws that prevented disclosure of the information.

17 In addition to that, both Mr. Kaplan and the plaintiff knew or certainly
18 should have known, had they read the closure letter, that the information was
19 confidential. Said so in the letters. Both Kaplan -- Mr. Kaplan and the plaintiff knew
20 or should have known that the Bank, in its sole discretion, can close accounts any
21 time. It says so in the account agreement. Fundamentally, like any business or
22 individual, Wells Fargo Bank is at liberty to choose who it wants to do business
23 with. That is fundamental to this case. But as I stated, both Mr. Kaplan and the
24 plaintiff are nothing if not persistent.

25 October 6th, 2011. An opportunity to find out why the accounts may

1 have been closed presents itself. Now it may not have been Mr. Kaplan's intent in
2 walking into the Malibu branch to discuss the closure of the accounts. He and the
3 plaintiff may not have sat down and discussed Mr. Kaplan going to the Malibu
4 branch to try to find out why the accounts were closed, but it doesn't matter. He
5 was there and the opportunity to inquire yet again about the closure of the accounts
6 presented itself.

7 As was the case in all of his previous attempts to learn the reasons for
8 the closures, Mr. Kaplan was there already ensconced in the authority of the
9 plaintiff to stand in her shoes, to inquire for her as well, to act in her place and
10 stead, to be her agent as we've argued throughout this case. The plaintiff
11 expressly admitted this in her deposition, but you'll note that the -- that the plaintiff
12 walked that back in her declaration offered in support of her opposition to the
13 Bank's summary judgment motion. She walked it back again at trial, suggesting
14 that Mr. Kaplan -- excuse me, suggesting that Mr. Kaplan may have been her alter
15 ego, for lack of a better term, for every contact he made, both inside and outside
16 the bank, to find out why the accounts were closed except this one.

17 On October 6th, 2011, oh no, didn't have my authority. On that date,
18 Mr. Kaplan went rogue apparently. And Your Honor, she has to make that
19 suggestion. Plaintiff has to have you believe her when she says that on that day
20 Mr. Kaplan was not my agent, not my alter ego, because what she did not know
21 then but certainly knows now is that to exact money from Wells Fargo Bank
22 pursuant to this lawsuit, she's got to prove that Mr. Dounel made his statements to
23 a third party, and Mr. Kaplan's not a third party if he's acting as her agent.

24 Plaintiff has presented no evidence that Mr. Dounel made those
25 statements to anyone other than Michael Kaplan. He's it. He better qualify as a

1 third party or there's a problem. Wells Fargo would urge the Court to see the
2 plaintiff's arguments for what they are, a machination conjured to avoid the third
3 person publication requirement for a defamation claim.

4 In addition to rejecting the facts plaintiff uses to support her meeting
5 the publication requirement, Wells Fargo would urge the Court to examine the
6 authority Mr. Dounel would have reasonably recognized as based upon the
7 evidence and the reasonable inferences that can be drawn upon it. Mr. Kaplan and
8 the plaintiff were co-owners of the joint account. That is clear from Exhibit 2. We
9 know they don't want to be co-owners of that account for purposes of this trial, but
10 that is what they were. It says so on the account application. In addition, a
11 telephone call is made to the plaintiff while Mr. Kaplan and Mr. Dounel are talking,
12 and as per Mr. Kaplan's declaration, he and Mr. Dounel called the plaintiff together.

13 Now, there was -- now there's some disputed evidence about whether
14 they called together. Now the story is no, it was just Mr. Kaplan called me. There
15 wasn't anybody else on the line. But nevertheless, that was his declaration. Mr.
16 Kaplan tried to walk that back as well during the trial.

17 Plaintiff in her deposition stated as much that she believed, then at
18 least, that she was on the phone with both Mr. Dounel and Mr. Kaplan. Now
19 though the true facts, or at least the ones that the plaintiff wants you to believe, are
20 that only Mr. Kaplan and the plaintiff spoke on the phone. Why the change?

21 Well, Your Honor, the plaintiff does not want you to determine that Mr.
22 Kaplan was acting as plaintiff's agent. She cannot take a chance that you might.
23 She and Mr. Kaplan would rather take a chance of contradicting prior sworn
24 testimony to do so. In any event, the fact remains that the plaintiff emailed the
25 closure letter to Mr. Dounel.

1 Now what is reasonable for him to presume by that and the telephone
2 call? I'm able to discuss the joint account with Kaplan. Of course the account
3 agreement gives him that authority anyway, but based on the plaintiff's actions, it
4 would be reasonable for him to presume that Mr. Kaplan possessed all the authority
5 that the plaintiff had if she were seated at his desk. In other words, Mr. Dounel, I'm
6 not there, but you have my implied authority to discuss the joint account and its
7 closure with my agent, Mr. Kaplan. It is within this framework that the allegedly
8 nefarious statements were made and we believe the law of countenance is our
9 position that within that framework, the plaintiff has no defamation case. Kaplan
10 was not -- Mr. Kaplan was not a third person.

11 So what really happened here? Your Honor, the evidence in this case
12 would suggest this: Mr. Kaplan walked into the Malibu branch, went there to cash a
13 check, somebody asked him about all the money he's got in his accounts,
14 suggested he meet with somebody about putting it in another, he agrees, he and
15 Mr. Dounel sit down, and true to form, Mr. Kaplan begins to -- at some point begins
16 with hey, why are -- why do you want me to open more accounts when you just
17 closed this one, or this other one? Mr. Dounel wants to help. Mr. Kaplan views it
18 as an opportunity to perhaps find out why the accounts were closed, something that
19 he had been thwarted for two months now, and presses Mr. Dounel. Mr. Dounel, in
20 an effort to assuage Mr. Kaplan, may have made an ill-advised comment.

21 But there is no evidence that it was based upon anything on a
22 computer except what? Well, Mr. Kaplan tells us that he was looking at his
23 computer when he said it. And then you'll recall the part in the trial, Your Honor,
24 where Mr. Kaplan thought it would be a good idea to tell us all for the first time
25 about Mr. Dounel's comment to him in response to Mr. Kaplan saying you must be

1 mistaken and Mr. Dounel now all of a sudden says to Mr. Kaplan, that's not what I
2 see.

3 Well we know from Sue Garvin's testimony that he couldn't have seen
4 that. But more to the point, Your Honor, Mr. Kaplan, seated at that stand, told me
5 he was the source of information for the complaint, he was the source of
6 information for the answers to interrogatories, what is Exhibit 30 in this case. He
7 was deposed. He was subjected to a direct examination by Mr. Kistler and in none
8 of those instances did he disclose what I would suggest is quite material to this
9 case, that he uttered the words it doesn't look like that from what I'm looking at.

10 Now, Your Honor, this would be the time if this were a jury trial that I
11 might remind the jury of one of the instructions they receive. I'll read it. Court's
12 familiar with it. The credibility or believability of a witness should be determined by
13 his or her manner upon the stand, his or her relationship to the parties, his or her
14 fears, motives, interests or feelings, his or her opportunity to observe the matter to
15 which he or she testified, the reasonableness of his or her statements, and the
16 strength or weakness of his or her recollections.

17 Now, it is not unusual to see that instruction coupled with what is an
18 old Nevada jury instruction that goes like this: If you believe that a witness has lied
19 about any material fact in the case, you may disregard the entire testimony of that
20 witness or any portion of his testimony which is not proved by other evidence.

21 The plaintiff has made the information upon which Mr. Dounel relied in
22 making the statements of material fact in this case. It pains me to say this, Your
23 Honor, but Mr. Kaplan's believability is suspect. The credibility and reasonableness
24 of his statements about what transpired with Mr. Dounel are and should be in peril.

25 All right. So Mr. Dounel says whatever he allegedly said and now we

1 -- he doesn't storm out of the room. He doesn't -- by his account at least, he
2 doesn't get in Dounel's face, he just says oh you must be mistaken.

3 And then what happens? Well somebody else at Wells Fargo Bank
4 joins the meeting and Mr. Kaplan sticks around to have a little discussion about
5 opening some more accounts. Obviously he is really exercised about these
6 horrible statements that have been made about his girlfriend of 15 or so years. Out
7 the door he goes.

8 Gets homes and the plaintiff is there. We know she's there because
9 she emailed that closure letter down to Mr. Dounel. They get home and this is
10 where Mr. Kaplan of course confronts Ms. Johnson.

11 What does Mr. Johnson do in response? I didn't do -- do any -- I didn't
12 do anything. She knows she's not a criminal. She knows she hasn't been in jail.
13 She knows she doesn't have any outstanding warrants. She explains this and what
14 the -- and what the plaintiff would like for you to believe is that this person that she's
15 lived with for all these years that she -- that knows her more -- probably as
16 intimately as anybody doubted her.

17 Suggest to the Court that that's rather incredible. He may have
18 doubted her for, you know, a few minutes, but unless their trust is built on
19 something that no other long-term relationship that I'm aware of is built on, there
20 would be no cause for him to just say I don't know, I don't believe you. He told us in
21 this trial what their relationship is built on. It's built on trust. He trusts her
22 apparently for -- with -- for everything but this.

23 Now, Your Honor, before I leave the third party publication issue, I'm
24 compelled to talk about the *Simpson* case, because I've sensed that the Court has
25 issues with this case and Mr. Kistler raised it in his opening statement, or his

1 closing argument.

2 The *Simpson* case is inapposite to this case. In *Simpson* the plaintiff
3 alleged that some unnamed coworkers of hers published to other coworkers that
4 she, the plaintiff, had sexually harassed them and that plaintiff had been fired for
5 sexual harassment. Plaintiff sued her employer for defamation. Her employer
6 argued it could not be held liable for defamatory statements its employees make
7 between each other. Specifically the employer argued that the plaintiff could not
8 satisfy the publication to a third party element of a defamation claim since the
9 defamatory statements were, quote, made only to agents and employees of the
10 defendant employer who are not third persons for defamation purposes. The court
11 disagreed, of course, with the employer, essentially holding that the publication of
12 defamatory material between coworkers -- that is between agents of the corporation
13 -- is publication to a third party, but that's not our case here. That's different than
14 our case. The agency is the other way around in our case.

15 In our case, Wells Fargo is not arguing that there's no publication to a
16 third party because the only communication of the defamatory material was by and
17 between coworkers or agents of the Bank. Wells Fargo's arguing that there is no
18 publication to a third party because the material was published only to the plaintiff
19 herself via her interested and authorized agent. If the communication is only to the
20 plaintiff, then there is no claim for defamation. The *Simpson* case does no violence
21 to Wells Fargo's argument.

22 So back to our story. Now -- before we get back to the story, Your
23 Honor, with its argument relative to the third party publication, Wells Fargo would
24 add its arguments relative to the common interest privilege. Mr. Kistler tried to
25 diminish the force of that argument, but here's the bottom line. The common

1 interest was established by the joint account itself. So there's a common interest
2 among these parties.

3 The good faith element in this case is based upon how the Court views
4 the context in which this conversation between Mr. Kaplan and Mr. Dounel
5 occurred. Reasonable inferences from the evidence might suggest that Mr. Dounel
6 felt pressured to respond and in a good faith effort offered a possibility for why the
7 account may have been closed.

8 That's why I've been saying all along, Your Honor, the words must
9 have and must be are important here. He didn't say the account was closed
10 because Lisa Johnson's a criminal. He didn't say the account was closed because
11 Lisa Johnson has outstanding arrest warrants. He said to -- and we have only Mr.
12 Kaplan's words, must have. She must have done this, she must have -- must be
13 this. Those are equivocal statements. Those are highly suggestive that he doesn't
14 know the facts, he's simply trying to help Mr. Kaplan with a possibility for what
15 occurred in this case.

16 We've argued from the outset that that's not defamatory, that's a
17 statement of evaluative opinion. It's not a statement of fact. There's too many
18 qualifiers in that statement to put a reasonable person on notice that what Mr.
19 Dounel was really saying is your girlfriend of -- that you know better than anybody is
20 a criminal. It's not what he said. It may have been how Mr. Kaplan interpreted it --
21 and that may be important in this case in all fairness, but let's remember who Mr.
22 Kaplan is. In addition to being the companion for many years of Ms. Johnson, he's
23 also the person that had his joint account closed and for the better part of two
24 months was also very engaged in trying to find out why, apparently not appreciating
25 that the rules don't apply to him. He would not take no for an answer.

1 You'll recall yesterday, Your Honor, that I walked Mr. Kaplan through a
2 chronological overview of what at least the documentary evidence suggested in this
3 case. It begins with the closure letters, August 2011. The phone calls by Mr.
4 Kaplan and the plaintiff herself to find out why begin. By their own admission, there
5 are multiple attempts. They could not get the response they wanted.

6 Enter lawyer, Dirk Ravenholt. Mr. Ravenholt, according to the exhibit
7 that's in evidence, tell -- tell us, Wells Fargo Bank, why the accounts were closed.
8 Read that letter carefully. Mr. Kaplan wants to be able to open accounts. If Lisa's
9 the problem, fine, leave her off the accounts, but assure us that Kaplan can still do
10 business with Wells Fargo. Oh, and by the way, one of your employees defamed
11 Kaplan's girlfriend. We may have to sue you for defamation. So again, tell us why
12 the accounts were closed.

13 No -- not the response that they wanted. Did not get the response they
14 wanted. Now they're beginning to think we're going to have to sue. So back to Mr.
15 Dounel.

16 The email transmissions back and forth between Mr. Kaplan and Mr.
17 Dounel, this is the whole apology thing. It is only one reference in those emails by
18 Mr. Kaplan that even makes reference to some nefarious statements that may have
19 been made about his girlfriend. There's nothing in Mr. Dounel's responses that
20 suggest that the apology that he was intending to make had anything to do with
21 defamatory statements and I think a fair reading of those emails would suggest the
22 apology related to him misleading or miscommunicating with Mr. Kaplan about his
23 ability to open further accounts at Wells Fargo Bank.

24 But here's the strange part. Maybe it's not so strange, but it is curious.
25 That apology you gave me, Mr. Dounel, not good enough. I need it in writing. In

1 other words, send me something in writing that acknowledges you made
2 defamatory statements because you remember we didn't get the response we
3 wanted from Mr. Ravenholt's letter.

4 Enter Wells Fargo Bank's legal department according to Mr. Kaplan.
5 No chance. No written apology. May I suggest to the Court we see where this is
6 going. They could not get what they needed from Dounel. They're upset. The
7 fundamental and real issue here is they can't find out why the accounts were closed
8 and they're not happy about it.

9 Let's try meeting with others at Wells Fargo Bank to get what we really
10 want; that is, the reasons why the accounts were closed. This is where we get Mr.
11 Maze and Mr. Noll, Ms. Scoffel -- Scafe, sorry. Looks like the legal department is
12 the problem. Let's go directly to them. Enter Ms. Scafe. Please tell us why the
13 accounts were closed. Can't do it. Okay. Well, me, Mr. Kaplan, I'm now going to
14 write you a letter that says I'm going to have to sue you for defamation then.

15 What I'm suggesting to the Court is if you look at the documentary
16 evidence in this case, this is a shakedown because they could not get what they
17 really wanted in this case and that is somebody was telling them we can't -- we're
18 not going to tell you why your accounts were closed. That was not going to sit well
19 with these people. So an attempt to create a paper trail in an effort to preserve a
20 defamation case was put in the works beginning with Mr. Ravenholt.

21 Mr. Dounel's defamatory statements, if they happened at all and were
22 as egregious as Mr. Kaplan makes them out to be, were an afterthought, a move
23 designed to get what these folks have always wanted but simply cannot obtain, the
24 reasons why Wells Fargo closed their accounts. Again it pains me to say, Your
25 Honor, but this is a shakedown.

1 That's where Lisa Johnson's mental distress is coming from. Not from
2 some ill-advised, inartful comment by a guy they didn't know, didn't know them,
3 especially when they both knew what the real facts were. She's not a criminal.
4 Didn't have any outstanding warrants.

5 So let's talk about the damages now. And quite frankly, we were a little
6 taken aback by Mr. Kistler's argument on some of the elements of damages in this
7 case.

8 Before I do that, Your Honor, let me just take a moment to see if
9 there's something else I want to mention before I conclude with the damages
10 argument. Let me just speak to the issue of malice both in its -- as an element to
11 void the common interest privilege as well as the degree of malice that has to be
12 shown in support of punitive damages.

13 Of course the Court is well aware that we believe 42.007 bars any
14 claim of punitive damages in this case, but it's clear that Mr. Dounel did not
15 possess enough information to know why the accounts were closed. This is why
16 we've insisted the statements were not defamatory. If Mr. Dounel did not know why
17 the accounts were closed, he could only have been offering an opinion about why
18 the accounts may have been closed and because he did not have it, could not have
19 had it, he sure could not have acted in conscious disregard of it. Therefore, there is
20 insufficient proof of malice to support either a waiver of the common interest
21 privilege or for support of a punitive damages award.

22 Now, as a sideline to plaintiff's punitive damages arguments as it
23 relates to NRS 42.007, the statute requires express ratification of Dounel's
24 statements. Plaintiff's argument, if I understand, is that express ratification is found
25 in Wells Fargo Bank's failure to memorialize in any writing its repudiation of a

1 statement.

2 I don't have to tell the -- I don't have to remind the Court of this, but I
3 will. Punitive damages are serious business. They're so serious that the U.S.
4 Supreme Court has addressed them repeatedly in the vein of their constitutionality.

5 Wells Fargo Bank urges the Court to not infer its ratification of Dounel's
6 statements. An inference does not equate with the statute's requirement that there
7 be express ratification.

8 Think about this. If plaintiff's standard for imposing vicarious punitive
9 damages liability on employer is correct, one could only imagine the impact. Every
10 plaintiff in this courthouse could hold an employer liable for things its employee said
11 or did that were untoward simply by saying well they didn't repudiate the alleged
12 conduct, or they were silent about it, and because they didn't do that or they were
13 silent, they must agree it happened and agree that the conduct was appropriate.
14 Because they did not do anything, they have expressly ratified the conduct and
15 therefore are liable for punitive damages. Respectfully, Your Honor, that is an
16 absurd construction of the boundaries of NRS 42.007.

17 Now, damages. Mr. Kistler provided what I believe is an accurate
18 overview of what damages the plaintiff may be entitled to in this case. It is
19 fundamental that to be defamatory a statement must harm the plaintiff's
20 reputational interest. Communication is defamatory -- in other words, it's a prima
21 facie element to prove defamation that you actually have damages to your
22 reputation. Communication is defamatory if it tends so to harm the reputation of
23 another as to lower him or her in the estimation of the community or to deter third
24 persons from associating or dealing with him or her.

25 Well, the evidence in this case is that the statement was only made to

1 one person, so even if the Court disagrees that Mr. Kaplan is not a third person for
2 the second element of make -- for making that a prima facie case, the damages are
3 affected by his role in the case. He's the only one the statement was made to. Any
4 other dissemination of those statements came by whom? Came by the plaintiff or
5 came by her boyfriend, Mr. Kaplan. Wells Fargo cannot be held liable for the
6 republication of these alleged defamatory statements by the plaintiff and her
7 boyfriend.

8 So what reputational interest has been affected by this alleged
9 defamatory conduct? Well it's the reputation that she has with Mr. Kaplan. Now if
10 you're to believe the plaintiff and Mr. Kaplan, their relationship is so weak and so
11 built on -- is built on so little that to this day he still doubts. I don't know, I still got
12 doubts. And that this is somehow still affecting their relationship.

13 The damage to her reputational interest is limited to whatever this
14 Court believes Mr. Kaplan believed for a brief period of time. Well how long was
15 that time? Well I -- I've argued and will argue again that it was short lived. As soon
16 as she said hey I didn't do any of this stuff, that guy's crazy, it ended there; should
17 have ended there.

18 But we know when in fact it did end because we've got that confirmed
19 in writing for us, December -- I may be wrong on the date. December 15. This is
20 the letter that Mr. Kaplan writes back to Ms. Scafe when -- or writes to her -- I'm
21 sorry, writes so her when his continued efforts to find out why the accounts were
22 closed are thwarted. And at the end of that letter, Mr. Kaplan tells us he doesn't
23 have any more damages associated with this -- with these statements.

24 What does he say? He says plaintiff's an outstanding person. And to
25 the contrary -- and that contrary to any statements to the contrary, she had never

1 had any legal problems.

2 Your Honor, I would submit to you that certainly by December 15th --
3 December 16th is the date -- 2011, there aren't any more -- is anymore damage to
4 her reputational interest. So at best, at best what we have here is damage to a
5 reputational interest that lasted from October 16 to December 16.

6 What's the value of that? You'll have to decide, Your Honor. You'll
7 have to decide about whether that reputational interest was so weak -- or excuse
8 me, that her reputation with Mr. Kaplan was so weak that he -- that she's entitled to
9 some damages for what Mr. Dounel might have said.

10 Now, Ms. Johnson may be awarded special damages only upon proof
11 of actual injury or loss. Special damages are quantifiable monetary losses that flow
12 directly from the injury to reputation caused by the defamation. Well now this is the
13 part that I found Mr. Kistler's comments kind of curious.

14 First of all, monetary losses have to flow directly from the injury to
15 reputation. All right. As I've argued, this case is about being told no to why your
16 accounts were closed and less about the real damages to reputation that may have
17 been caused by Mr. Dounel's ill-advised statements.

18 So the quantifiable monetary losses that flow directly from the injury to
19 reputation are, according to Mr. Kistler, plaintiff's attorney's fees and costs of
20 \$85,000. Your Honor, the time for proof of the attorney's fees and costs was
21 yesterday or the day before. I didn't make a best evidence objection, but it was --
22 would probably have been appropriate. She could have said anything.

23 Now if the Court's wanting to entertain special damages that are
24 associated with what Mr. Kistler's law firm has billed to the plaintiff, then we're going
25 to have to decide whether they were reasonable and necessary. And to do that,

1 we're going to have to have Mr. Kistler's records so that we can find out and have
2 the Court agree about whether this was reasonable and necessary. And I might
3 suggest, Your Honor, that Hutchison & Steffen might want to talk to their client
4 about the waiver of that attorney-client privilege before they assert that they're
5 entitled to \$85,000 in attorney's fees in this case.

6 The second element of their special damages, \$3 million joint account
7 that Mr. Kaplan was going to supposedly set up for Lisa. Now they don't want the
8 \$3 million. They understand that there's no insufficient evidence of that. They want
9 the loss of use of the \$3 million.

10 Well what is that? I thought I heard something about something to do
11 with interest. There's been no proof of a loss of use of \$3 million that's been
12 presented in this case. There isn't one iota of evidence that says well I couldn't pay
13 for this because I didn't have \$3 million in a joint account with Mr. Kaplan. There's
14 no evidence -- there are no special damages in this case, Your Honor.

15 General damages. Mr. Kistler is right. If the Court finds that the
16 statements were made -- if the Court finds they were defamatory; in other words,
17 has found that all the other elements of a prima facie case have been met, general
18 damages must be awarded, because I'll admit that these statements could be
19 construed as defamation per se.

20 The law assumes Ms. Johnson suffered some such harm. Ms.
21 Johnson may receive compensation for the assumed harm in an amount that is
22 reasonable and commensurate with the circumstances.

23 Now Mr. Kistler, he -- you know, he left a lot up to the Court's discretion
24 and that's absolutely appropriate. We'll do the same thing. We'll say, you know,
25 make -- if you believe that this happened, you believe that there -- that she's made

1 out a case and believe that she satisfied the third person publication requirement
2 and is not subject to the common interest privilege, then an award that is
3 reasonable and commensurate with the circumstances ought to be made.

4 Now the law compels you to make an award, but it doesn't compel you
5 to make any certain award. All the law says is that you got to award at least one
6 dollar.

7 Now why might you award a dollar in this case? Well, that's because
8 in determining the amount of general damages that you award, it's appropriate to
9 consider Ms. Johnson's reputation with Mr. Kaplan. There's nothing to suggest in
10 earnest that this -- that Ms. Johnson's reputation has really been affected. Her
11 reputation with Mr. Kaplan has really been affected.

12 Court may also consider all of the circumstances surrounding the
13 making of statements. That's where we get back to what were the circumstances
14 these statements were made? Mr. Kaplan yet again trying to find out why the
15 accounts were closed, Mr. Dounel trying to help, so forth and so on.

16 Nominal damages are awarded because there's no proof that serious
17 harm has been done to reputation. I suggest to the Court that that's the case here.

18 Nominal damages are also awarded when the action is really broad for
19 the purpose of vindicating someone's character. I think that's what's happened
20 here, Your Honor.

21 There's been hurt feelings, but not because of Mr. Dounel's
22 statements. The hurt feelings have been generated from the get-go by the fact that
23 Wells Fargo wouldn't tell them why the accounts were closed.

24 So, Your Honor, in conclusion, there's two -- two stories are being told
25 here. That's for sure. You'll have to decide which one is the more plausible, which

1 one is the more consistent with common sensibilities with the evidence and the
2 reasonable inferences that can be drawn from it.

3 But even after all of that, if you believe that she was defamed -- Ms.
4 Johnson was defamed, then by all means award her a dollar. Thank you, Your
5 Honor.

6 THE COURT: Thank you.

7 Anything in conclusion, Mr. Kistler?

8 MR. KISTLER: I beg your pardon?

9 THE COURT: Anything in conclusion?

10 MR. KISTLER: Just very briefly, Your Honor.

11 REBUTTAL ARGUMENT BY THE PLAINTIFF

12 BY MR. KISTLER:

13 And, Your Honor, I really expected more but perhaps I shouldn't have.
14 Mr. Kaplan is a liar and these plaintiffs are involved in a shakedown. Wow. What a
15 creative argument. The person that is suing the Bank is a liar or the recipient of the
16 defamatory statement is a liar and this is all a shakedown.

17 Mr. Kaplan is so persistent. He made our guy say something that our
18 guy shouldn't have said. And it was really interesting the different characterizations
19 throughout Mr. Haire's argument about well Dounel didn't say -- maybe he said --
20 whatever he said, maybe it was inartful, ill-advised or stupid, but gosh, you know --
21 but Kaplan's a liar. Kaplan showed up in trial, Kaplan took the oath, Kaplan is an
22 attorney in four different states, Kaplan has never been under any kind of criticism
23 in the past according to the evidence and yet he came in and lied to Your Honor,
24 and this is a shakedown that goes back to the founding days perhaps of the
25 banking system where bankers in their top hats and cigars looked upon everyone

1 else that took issue with what they did as liars and scoundrels.

2 Your Honor, my client is not a scoundrel. Mr. Kaplan is not a liar. The
3 person who's not worthy of belief in this case on what little bit of exculpatory
4 evidence he gave was Mr. Dounel.

5 And now we have the -- and Mr. Dounel was forced by a very
6 persistent Mr. Kaplan, forced into making misstatements of fact. Well, my
7 examination of Mr. Dounel regarding being pressed for information is found on
8 page 46 of his deposition, lines 5 through 25:

9 I was noticing -- Mr. Dounel testifying: I was noticing that Mr. Kaplan, he,
10 was very unhappy about not getting information and was pressing me for that
11 information.

12 When you say -- question -- he was pressing you, what do you mean?

13 You know, finding -- I don't exactly -- how he was asking me, but just trying to
14 find different ways to ask me, you know, to get the reasons why it was closed.

15 Question: Did he raise his voice?

16 Answer: No.

17 Question: Did he threaten you?

18 Answer: No.

19 Question: But you believed he was unhappy?

20 Yes, happy or -- or just frustrated, getting a little bit anxious, worried,
21 annoyed definitely is a good word. You know, probably just a variant of other things
22 I don't remember.

23 As a result of that, did you tell him anything else?

24 I tried to calm him down.

25 Do you recall telling him anything else?

1 No.

2 And then upon questioning by Mr. Fitts, leading questions, he was
3 pressed, he said things, and then for the first time he says, and I told Mr. Kaplan
4 you're a lawyer, you're an attorney, why don't you go out and find out what's going
5 on. First time anyone ever heard that out of anyone's lips was from Mr. Dounel
6 upon questioning by Mr. Fitts after Mr. Dounel said didn't remember anything else
7 about what he said to Mr. Kaplan.

8 Now, Your Honor, the person that's not worthy of belief in this case is
9 the person that didn't attend the trial, and that's Mr. Dounel. Mr. Kaplan is not a liar.
10 My client is not a scoundrel, a shakedown person.

11 And you'll see in the argument the little clever attorney tricks that are
12 going on, well Mr. Kaplan is an extraordinarily persistent person and he hounded
13 Mr. Dounel for answers and he hounded the Bank -- poor Bank for answers and yet
14 he's not persistent in raising this issue with Ms. Johnson over and over again. So
15 he's persistent with the Bank and yet he's not persistent in demanding with my
16 client, Ms. Johnson.

17 If he's persistent with the Bank, then you can bet your bottom dollar
18 that he is persistent with Ms. Johnson. Why did this happen? They closed the
19 accounts and then they said it was because of your criminal activity. What's going
20 on? What's going on? Why did a bank official say that you'd been in jail or had
21 warrants outstanding? Why won't the bank open this multimillion dollar account for
22 you that I exchanged email with them about? He's persistent with the Bank and yet
23 everything is okey dokey as of December the 16th, 2012.

24 And Your Honor, isn't the better -- isn't the more common sense
25 approach to this to say this is what happened? Someone that was very close to

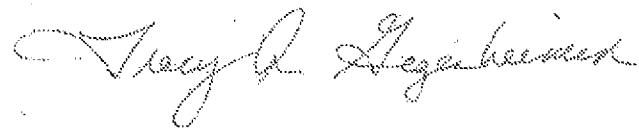
1 you -- someone that should know you was told by an official of the bank following
2 the closure of accounts that the reason that the accounts were closed was because
3 of your criminal activity and we won't open any accounts, even multimillion dollar
4 accounts, as long as she's on it. Isn't that troublesome? Shouldn't that be
5 troublesome? Wouldn't that be troublesome to any couple? Wouldn't that cause
6 problems with any couple?

7 Your Honor, as I came into the courthouse this afternoon, I read all the
8 inscriptions carved in the wall there in the foyer; *We Ask for Justice*, Susan B.
9 Anthony; *Let Justice Be Done*, Lord Mansfield.

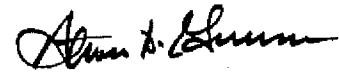
10 Your Honor, we ask for justice in this case. What the Bank did in the
11 defamation per se and the harm that it's caused to Ms. Johnson demands justice.
12 That's what we've asked for and that's what we believe the Court will order. Thank
13 you.

14 [Arguments concluded at 4:11 p.m.]

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

17
18 

19
20 Tracy A. Gegenheimer, CER-282, CET-282
21 Court Recorder/Transcriber
22
23
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25



CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 LISA JOHNSON,

8 Plaintiff,

9 vs.

10 WELLS FARGO BANK NATIONAL
11 ASSOCIATION,

12 Defendant.

CASE NO. A-655393

DEPT. XXVI

13 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

14 FRIDAY, FEBRUARY 7, 2014

15 **RECORDER'S TRANSCRIPT OF PROCEEDING:**
16 **BENCH TRIAL -- DAY 3**
17 **JUDGE'S VERDICT**
18

19 APPEARANCES:

20 For Plaintiff:

JOSEPH S. KISTLER, ESQ.
Hutchison & Steffen

22 For Defendant:

PAUL M. HAIRE, ESQ.
Smith Larsen & Wixom

24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 FRIDAY, FEBRUARY 7, 2014 [EXCERPT BEGINS AT 4:11 P.M.]

2
3 THE COURT: Okay. Well, this is a -- certainly a very unusual circumstance.
4 Because it is a bench trial, the Court's in a position to actually -- I give you the
5 benefit of reasoning that otherwise, if this had been a jury trial, you would just
6 wonder what a jury did in reaching their determination.

7 I think that what's instructed is to look at some of the -- it's interesting
8 how many -- how many defamation cases there are in Nevada. This seems to be a
9 rather frequently litigated cause of action, in our State, for some reason. And there's
10 a lot of case law on it. And what is interesting about these cases is that they have
11 shown some evolution, and not 100 percent adoption of three statements that segue
12 toward us, but they're sort of getting there.

13 And they talk, oftentimes, about the public policy. And I know that one
14 case that we talked -- Mr. Haire just mentioned that the *Simpson* case, which is the
15 Ethel M's case, was that, you know, you have -- there's this public policy that you
16 don't want people saying bad things about each other at work. And there is a
17 reason why, you know, you want to discourage those kinds of things.

18 And the *Lubin* case is, it's a particularly fascinating case. And it's
19 somewhat helpful to the extent that it talks about -- can you make a determination
20 that this like, general statement: "This is not a frivolous lawsuit. There is an
21 abundance of evidence as well as eyewitnesses. These parents never envisioned
22 that anything of this nature could or would happen to their child. It did. It's now time
23 to protect our children."

24 So the whole thing hinged on, you know, what does this mean, that it
25 did? Does this mean that there was actual abuse of this child, or does it mean that

1 the lawsuit was filed? And they look at this as how you have to make this analysis
2 of -- is it partially a legal analysis, partially effectual analysis, where a statement is
3 subject to two different constructions? And that's where we get into this whole thing
4 of first, you know, was there a statement that is possibility defamatory? And this is
5 where I said earlier today, when we started out, that what was interesting was to
6 read Mr. Dounel's deposition.

7 Whereas, Mr. Kistler pointed out, he doesn't actually come right out and
8 say, I never said those words. He says: That's not consistent with me; I wouldn't
9 have done something like that; I don't remember it; I don't recall. But then he does
10 go into a little bit more detail on cross-examination by Mr. Fitts -- a little bit more
11 detail and talks about how -- but I just remember him being very -- Mr. Kaplan being
12 very insistent, Mr. Kaplan wanting an answer, Mr. Kaplan being emotional. And, of
13 course, we have underlying this whole thing, Mr. Dounel had a high value account
14 holder whose -- he wanted to see that account holder's money be put to better use
15 than possibly it was being put. I mean, he being a large amount of assets just, in a
16 bank account. You know, it's in Mr. Kaplan's best interest to get that money working
17 for him.

18 So Mr. Dounel, and for, you know, whatever good purpose that he had,
19 sits him down and they start talking. And somehow in the course of that, whether
20 you believe Mr. Kaplan or you believe Mr. Dounel. And I think you can probably
21 believe them both, that somehow Mr. Dounel makes a statement. Whether he's
22 agreeing with something that Mr. Kaplan says or whether he just volunteers it,
23 because as we were told yesterday, he wouldn't have had access to a screen that
24 would have told him exactly what's going on here. He wouldn't have seen that
25 information and he -- Mr. Dounel admits himself: I don't know that she had any -- I

1 didn't know it then, I don't know it now. I have no knowledge about that.

2 So whether he actually -- there was enough information there that he
3 could surmise something or he was just agreeing with Mr. Kaplan, yes, there's got to
4 be some explanation. Yeah, maybe that's it -- yeah, maybe you should hire
5 somebody, either way, shouldn't have said it. He -- it's -- he shouldn't have said it,
6 and that's what I just can't beyond is that -- whether you -- whichever one of them
7 you believe, it was an inappropriate thing to say.

8 So then the question -- the next question is: Was it a statement made
9 to a third party? Because if it's a statement capable as the *Lubin* case says, is it
10 capable of defamatory construction? I think it is. Whether it is as mild as Mr.
11 Dounel paints it or the specific statement of: It must be criminal activity. There must
12 have been more. She must have been in jail. Capable of defamatory construction,
13 or as Mr. Dounel would tell us: Well, I was just agreeing with him because he was
14 throwing out all these ideas, and I was just trying to help him resolve his anxieties
15 and find an answer.

16 Either way, I think if the statement that is capable of defamatory
17 construction, so I think that's question number one. Question number two: Was it
18 made to an agent? Is it made to a third party? Is it -- or was it made to an agent? I
19 understand the argument that Mr. Kaplan, as a co-owner and having had authority
20 to do this investigation, they both, at different times, had talked to people in actual
21 branches. They've made phone calls. They're trying to get to the bottom of this.

22 But, I just don't see how anything about this encounter shows that he
23 was, at that moment, cloaked in any of that authority. I mean, he went in there for
24 his own specific purposes. Mr. Dounel's approach to him was for his own specific
25 purposes: You have too much money sitting in your -- in your personal account,

1 because he didn't go in there about -- he didn't go in there about this account, he
2 went in there about his personal account. You have too much money sitting in this
3 account, it's not working for you; let's sit and talk about what you might do, other
4 ways you could use this money. I mean, how they can help you make better use of
5 your money.

6 To me that just -- he -- there was nothing to indicate that there was any
7 kind of understanding on the part of Mr. Dounel, that he was talking to Ms.
8 Johnson's agent in -- and I think that's you need, is some knowledge of the person
9 that you are dealing with. Is there -- to inquire about this and they're copacetic to
10 me. I just -- I don't see it. To me it appears that it is a, a statement capable of
11 defamatory construction that is made to a third party, out of nowhere.

12 So then the next question is: Is it information per se? I think it is. And
13 then we get into the other elements: "A false and defamatory statement concerning
14 another -- an unprivileged publication to a third party, fault admitting to at least
15 negligence." And this is where I sort of -- I just -- I don't impute any ill will to Mr.
16 Dounel. I appreciate that Ms. Johnson may feel that: Why would you do that? You
17 had to -- maybe ill; there's no reason to say something like that. I don't think that's --
18 you can't assume that. You can't just presume that. I think you had to have some
19 evidence.

20 And certainly, Mr. Dounel did not give any indication, and Mr. Kaplan
21 didn't even give us any indication that there was -- it was said with any kind of
22 malice. That it was -- I mean, to me this just looked like negligence. That if you take
23 Mr. Dounel's version of this: He was -- he was pressing me for an answer and I was
24 trying to help him and I can't -- you know, he said something he shouldn't have said;
25 that's negligence.

1 So I think that there was fault on the part of the publisher, and it is:
2 "Either actionability of the statement irrespective of special harm, or the existence of
3 special harm caused by publication." It's defamation, per se, because it specifically
4 goes to alleged character -- criminal nature. So I think it's defamatory. So then we
5 get into the question of: What are your damages?

6 As I said, there's just some really interesting cases in Nevada on
7 defamation over the years. And one of them that's one of our older cases, and that
8 I've always kind of looked to is the *K-Mart* case, the shoplifting case. That -- in that
9 one -- that whole -- the bigger part of the analysis was: Did you actually say
10 anything about the guy being criminal, to anybody? Or, is it an act of marching him
11 through the store in handcuffs, sufficient? And that -- they found that the mere
12 marching of him -- so that -- they went up on that whole thing.

13 But, what was interesting to me about this case is, they do have an
14 analysis in here of -- was -- did the jury make a reasonable award? Because there
15 is apparently like nothing, absolutely nothing presented as far as damages. And the
16 jury gave the guy damages for defamation. It was subjective in nature. It has to be
17 supported by expert medical testimony and the Court says: No, it doesn't,
18 absolutely not, does not. So once special damages are quantifiable, monetary losses
19 that flow directly from the injury to reputation caused by defamation, for example, a
20 loss of business.

21 And one thing that I keyed on, and it's one of the few dollar amounts
22 that made any sense to me here was Ms. Johnson testifying that: Well, you know, I
23 was -- I had just hired this publicist. I was getting ready to gear up to make this final
24 push towards getting my book ready to be published and I -- my intention was to
25 fund this bank account with \$25,000s. Well, it made sense to me that the only place

1 that she was going to get the \$25,000s was from Mr. Kaplan. It was the Guitarfile
2 account. And while we're not here to litigate over the closure of the accounts, to me
3 -- that to me shows that there was some quantifiable damages. That because these
4 accounts were closed money wasn't being put into accounts for her. I never heard
5 that she got the money somewhere else. The 3 million dollars, I just can't -- I don't
6 know, that was, to me, just too speculative. I didn't see anything that ever indicated
7 we had -- there was part of the estate plan. That it was being done specifically. I
8 just -- I don't know. For me I -- that just really seemed too remote.

9 But I understood, and it made perfect sense to me that if she's going to
10 be working on what's going to be necessary to finalize this business. She's got this
11 publicist, you know, she's paying -- her first retainer check was \$1,300s, something
12 like that. And she's got to have some expenses for that.

13 And she -- the number I specifically remember is \$25,000s, that she
14 was going to be funding her account with \$25,000s to get to work on this book so I,
15 you know, I think that there was specific quantifiable damages that she testified
16 about that are related to the fact that because all this happened that account was --
17 the Guitarfile account had been closed. And this problem with, were they going to
18 reopen it? But not if she was on it, had to be a different number, they couldn't
19 reopen those accounts -- all those exchanges.

20 And to me, all those exchanges were just about the logistics of -- and I
21 think the perfectly reasonable response of the bank saying: Well, we told you all
22 along, we can't tell you why we closed these accounts. We've got no problem with
23 you Mr. Kaplan you're a valued client. You've got a long term relationship with this
24 bank and a lot of money, and they don't want to lose him. So they'll do what they
25 can to help Mr. Kaplan but they just are -- have made a determination and it's the

1 line in the sand, and they cannot back off from it, and it's their right to do -- we're not
2 going to do banking -- not with Ms. Johnson, no. Okay. Then that means the
3 account wasn't funded. Eventually I know -- her book's now been published. She's
4 a great success, I'm not -- it's very nice.

5 But at least it appears to me that there was, at that point, some specific
6 plan in place that didn't happen because the Guitarfile accounts had been closed.
7 They weren't going to be reopened. Well then, that's directly because of what was
8 said to Mr. Kaplan, whatever it was, by Mr. Dounel. I get there's damage.

9 But what's so fascinating about this *K-Mart* case is, he doesn't really
10 have anything. So they then talk about general damages and they -- and they go
11 into: "A statement's considered to be slander, per se, unless actionable without a
12 showing of special damages if it includes that the Plaintiff has committed a crime
13 here with the shoplifting." So I think it's per se. I don't think she has to prove
14 damages, but we've got -- I do think that there are some special damages that I can
15 see.

16 So in this analysis of the general damages they -- the jury found
17 Washington had been -- first say the same by *K-Mart* and awarded \$25,000s in
18 future general damages and \$20,000s in past general damages on proof of such
19 defamation alone, is proper. They also awarded him \$60,000s in future damages
20 from his assault and battery claim, so I'll leave it for claim.

21 They just picked a number. So I appreciate the fact that all Counsel
22 have indicated the Court is real familiar with these cases and can make its own
23 determination. You know, 20 years ago \$45,000s was perfectly reasonable. That
24 was real interesting, \$60,000s in future pain -- for future special damages on the
25 general and special damages on a \$3,500 future medical. Okay. Well we don't

1 have any future medicals here. It just -- how much -- it's a really interesting case.

2 So I don't know, for me, that gives me at least a starting point for what
3 Mr. Haire had, to me, sort of pointed out the -- I don't know if it's a real
4 inconsistency. The sort of question I had which is -- this is a committed long term
5 relationship and it is hard to quantify the damage of -- I know that Ms. Johnson feels
6 that her relationship was damaged, and Mr. Kaplan feels that the relationship was
7 damaged. He's not [indiscernible] of Plaintiff, but he's testified that he also feels that
8 damage. And how do you quantify that? You know, the Court really can't. You
9 can't put a price on that.

10 So, I appreciate Mr. Haire's point that at least when he -- when Mr.
11 Kaplan was writing to the bank in December he was doing so in support of Ms.
12 Johnson. She has a stellar reputation. She has never had a legal problem, ever.
13 He was supporting her, and I appreciate their feeling that maybe that support may
14 feel strained as between the two of them, but to the third party, to even when he was
15 going to these various people trying to fix this problem, and thus, it's Mr. Haire's
16 point as he pointed out, spreading -- saying this alleged defamation. He was doing
17 so in support of Ms. Johnson.

18 And it may not have felt like that to Ms. Johnson, but to me that's -- it
19 does appear to me that even though, as between the two of them, there may still be
20 some doubts, that Mr. Kaplan was not going to stand for having Ms. Johnson's
21 reputation reputed. Us -- to the outside world he was going to defend her, no matter
22 what, and he did.

23 So it's hard for the Court to say this relationship has been so damaged
24 or destroyed that there is, you know, some huge dollar amount. I just, you know, it's
25 hard to pick a number. It's really kind of random because I -- I believe both Mr.

1 Kaplan and Ms. Johnson when they say that the damage was to them, as to her
2 standing in his eyes, and that this is something that continues on.

3 And perhaps having supported her -- further supported her by
4 supporting litigation -- funding litigation -- actually paying the attorneys fees for
5 litigation. That maybe having somebody -- and I wish that there were some
6 declaration I could make that would make -- waive a magic wand and make this all
7 unhappen, but I can't do that. But I can say that I feel that, I believe that Mr. Dounel
8 made a statement that was entirely without truth and foundation. He even admits,
9 no way for him to know; he has no knowledge; no belief there was ever any criminal
10 activity. Mr. Kaplan has consistently, to the world, stated that to be the truth.

11 And very clearly he supports and believes in Ms. Johnson, and he
12 believed in her not only in this case, but he believed in her vision for her aunt. And I
13 think -- I think that's pretty significant, that he has supported her in bringing this
14 vision that she had to the world and people like Mr. Kistler are now enjoying her
15 book.

16 So how do you put -- how do you put a dollar figure on whatever
17 damage there was? I will tell you that for me, we know what they gave to the
18 shoplifter guy, alleged shoplifter guy, so we're going to double it \$90,000s for the
19 general damages, \$25,000s for the special damages. If you feel that attorneys fees
20 are warranted you can certainly seek them at a later date.

21 I just -- I don't see this as a punitive damage case, Mr. Kistler; I just
22 don't. I think that what Mr. Dounel did was negligent; that's all it takes to beat
23 defamation, and I think it was negligent. He -- if you're reading his deposition, giving
24 him the benefit of the doubt, he wasn't here, but giving him the benefit of the doubt.
25 If he felt pressured that he needed to agree with something Mr. Kaplan was saying,

1 he shouldn't have done it.

2 But, I don't see any intent or any malice there, and I believe that Mr.
3 Haire is correct in the *Tichner* [phonetic] case, that you have to actually have
4 somebody who is in a position of authority, an officer or an agent, or a managing
5 agent of the bank who expressly ratified that, and by valuing the defamation. Not
6 just continuing to defend this or to say that we were -- we stand behind your
7 decision to terminate our banking relationship with Ms. Johnson, but just kind of how
8 I read the letters.

9 Nobody -- everybody just danced around this whole defamation thing. I
10 never saw anybody expressly say: We've talked to Mr. Dounel, he denies he said
11 these things, and if he did say them they were true, but we can't tell you why they're
12 true because we can't tell you anything about why we stopped your account. I
13 appreciate your argument that they can't use it both as a sword and a shield, but I
14 didn't see anything in there that would tell me that they were ratifying the defamation
15 and that's what you needed.

16 And I -- because the one person who he was directly reporting to Mr.
17 Dounel in his deposition, it wasn't clear to me that when that guy said: You can't --
18 the legal department wouldn't let me write that letter. That he was going to be
19 writing a letter saying: I apologize for the defamation or just apologize for closing
20 their accounts. I don't know they'll -- it's just so hard because he's -- it's impossible
21 to "pin down" what it was he said.

22 But, I think that what he said was defamation per se. He shouldn't have
23 done it. I just don't think he did it with malice. I think he did it just from bad -- a bad
24 reaction to a situation where he was eager to try to help a high valued client and he
25 said something inappropriate, but I just don't see any malice. So, I'm not going to

1 award any punitive damages, but \$115,000s for the general and special damages.

2 And I hope that it is some satisfaction Ms. Johnson, to you, that
3 somebody else has listened to the story and said that what Mr. Dounel did was
4 inappropriate. And hopefully, for you and for Mr. Kaplan, that I respect his support
5 of you. I'm sorry that you have felt your relationship strained; I can't fix it for you, but
6 I hope -- I saw it as someone who had supported you no matter what. Even though,
7 perhaps, in your personal moments it hasn't felt like that for you. But I believe that
8 he has demonstrated, publically, a belief in you and in your art, so that's my award.
9 Any questions?

10 MR. HAIRE: No questions, Your Honor, thank you.

11 THE COURT: All right.

12 MR. KISTLER: None, Your Honor, thank you.

13 THE COURT: We're in recess.

14 MS. JOHNSON: Thank you.


15 THE COURT: Thank you.

16 [Court and Clerk confer]

17 THE COURT: Mr. Kistler, are you going to prepare that judgment?

18
19 [Proceeding concluded at 4:36 p.m.]

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

24 
25 _____
Kerry Esparza, Court Recorder/Transcriber
District Court, Department XXVI

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LISA JOHNSON
vs.
WELLS FARGO BANK, NATIONAL
ASSOCIATION
Case Number: A-12-655393-C

JOINT TRIAL EXHIBITS
Trial Date: February 5, 2014
Trial Time: 1:30 p.m.

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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Business Account Application



Bank Name:		Store Name:	
Wells Fargo Bank , N.A.		Town Center	
Banker Name:		Officer/Portfolio Number:	Date:
ERIC SCHWARTZ		N1791	05/12/2010
Banker Phone:	Store Number:	Banker AUI	Banker MAC
702/341--0900	02698	08867	S3725-011

To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individuals and businesses) who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

New Account Information

☐ New Deposit Account(s) Only ☒ New Deposit Account(s) and Business Credit Card

Account 1 Product Name				
Advantage Business Package Checking				
OID	Product	Account Number	Opening Deposit	Type of Funds
825	DDA	999999 7051	\$3,410.00	CKS

Account 2 Product Name				
Expanded Business Services Package				
CCID:	Product:	Account Number:	Opening Deposit:	Type of Funds:
825	DDA	7036	\$100.00	CKS

Account 3 Product Name:				
Business Market Rate Savings				
CCID:	Product:	Account Number:	Opening Deposit:	Type of Funds:
B25	DDA	██████████4981	\$100.00	CKS

Authorized Signers

Business Name: GUITARFILE, LLC	Other Related Customer Name:
Authorized Signer Name(s): LISA JOHNSON	

Manual Submission Instructions:
Fax all pages of the signed form to
Business Direct at 1-888-371-1046
before submitting to Deposit
Operations
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Business Account Application

Checking/Savings Statement Mailing Information

Name(s) and Information Listed on Statement: GUITARFILE, LLC	Statement Mailing Address: [REDACTED]
	Address Line 2: [REDACTED]
	City: [REDACTED] State: [REDACTED]
	ZIP/Postal Code: [REDACTED] Country: [REDACTED]

Business Information

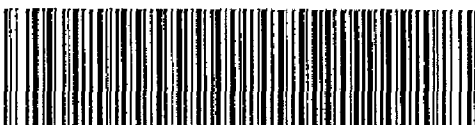
Business Name: GUITARFILE, LLC			Street Address: [REDACTED]	
Business Type: Limited Liability Company			Address Line 2: [REDACTED]	
Business Sub-Type: [REDACTED]		Non-Profit: No	Address Line 3: [REDACTED]	
Date Originally Established: 11/23/2009	Current Ownership Since: [REDACTED]	Number of Employees: 3	City: [REDACTED]	State: NV
Annual Gross Sales: \$4,000.00	Year Sales Reported: 12/31/2009	Fiscal Year End: 12/31	ZIP/Postal Code: [REDACTED]	Country: US
Primary Financial Institution: [REDACTED]		Number of Locations: 1	Business Phone: [REDACTED]	Fax: [REDACTED]
Sales Market: LOCAL			Cellular Phone: [REDACTED]	Pager: [REDACTED]
Primary State 1: [REDACTED]	Primary State 2: [REDACTED]	Primary State 3: [REDACTED]	e-Mail Address: [REDACTED]	
Primary Country 1: [REDACTED]	Primary Country 2: [REDACTED]	Primary Country 3: [REDACTED]	Website: [REDACTED]	
Industry: Arts, Entertainment, and Recreation				
Description of Business: [REDACTED]				
Major Suppliers/Customers: [REDACTED]				

Bank Use Only

Name/Entity Verification: Secretary of State		Address Verification: [REDACTED]		BAC Reference Number: 10BAC1074132
Document Filing Number/Description: E0637352009-3	Filing Country: US	Filing State: NV	Filing Date: 11/23/2009	Expiration Date: [REDACTED]
Country of Registration: US	State of Registration: NV	International Transactions: [REDACTED]		Check Reporting: NO RECORD
Internet Gambling Business: No				

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Business Account Application

Owner/Key Individual 1 Information

Customer Name: LISA JOHNSON	Primary ID Type: DLIC	Primary ID Description: 1701178465	
Position/Title: PRESIDENT	Primary ID State/City/Prov: NV	Primary ID Issue Date: 10/17/2008	Primary ID Expiration Date: 10/20/2012
Check Reporting: None	Secondary ID Type: OTHR DC	Secondary ID Description: WFB	
	Secondary ID State/Country:	Secondary ID Issue Date:	Secondary ID Expiration Date: 10/31/2010

Certificate of Authority

Each person who signs the "Certified/Agreed To" section of this Application certifies that:

- A. The Customer's use of any Bank deposit account, product or service will confirm the Customer's receipt of, and agreement to be bound by, the Bank's applicable fee and information schedule and account agreement that includes the Arbitration Agreement under which any dispute between the Customer and the Bank relating to the Customer's use of any Bank deposit account, product or service will be decided in an arbitration proceeding before a neutral arbitrator as described in the Arbitration Agreement and not by a jury or court trial.
- B. Each person who signs the "Certified/Agreed To" section of this Application or whose name, any applicable title and specimen signature appear in the "Authorized Signers-Signature Capture" section of this Application is authorized on such terms as the Bank may require to:
 - (1) Enter into, modify, terminate and otherwise in any manner act with respect to accounts at the Bank and agreements with the Bank or its affiliates for accounts and/or services offered by the Bank or its affiliates (other than letters of credit or loan agreements);
 - (2) Authorize (by signing or otherwise) the payment of items from the Customer's account(s) listed on this Business Account Application (including without limitation any item payable to (a) the individual order of the person who authorized the item or (b) the Bank or any other person for the benefit of the person who authorized the item) and the endorsement of Deposited Items for deposit, cashing or collection (see the Bank's applicable account agreement for the definitions of "item" and "Deposited item");
 - (3) Give instructions to the Bank in writing (whether the instructions include the manual signature or a signature that purports to be the facsimile or other mechanical signature including a stamp of an Authorized Signer as the Customer's authorized signature without regard to when or by whom or by what means or in what ink color the signature may have been made or affixed), orally, by telephone or by any electronic means in regard to any item and the transaction of any business relating to the Customer's account(s), agreement or services and the Customer shall indemnify and hold the Bank harmless for acting in accordance with such instructions; and
 - (4) Delegate the person's authority to another person(s) or revoke such delegation, in a separate signed writing delivered to the Bank.
- C. If a code must be communicated to the Bank in order to authorize an item, and the code is communicated, the item will be binding on the Customer regardless of who communicated the code.
- D. Each person who is either the Customer (sole proprietor) or an owner of the Customer has read and agreed to the Terms and Conditions for the Wells Fargo® Business Platinum Credit Card appearing below including the personal guaranty.
- E. Each transaction described in this Certificate of Authority conducted by or on behalf of the Customer prior to delivery of this Certificate is in all respects ratified.
- F. If the Customer is a tribal government or tribal government agency, the Customer waives sovereign immunity from suit with respect to the Customer's use of any Bank account, product or service referred to in this Certificate.
- G. The information provided in this Application is correct and complete, each person who signs the "Certified/Agreed To" section of this Application and each person whose name appears in the "Authorized Signers-Signature Capture" section of this Application holds any position indicated, and the signature appearing opposite the person's name is authentic.
- H. The Customer has approved this Certificate of Authority or granted each person who signs the "Certified/Agreed To" section of this Application the authority to do so on the Customer's behalf by:
 - (1) resolution, agreement or other legally sufficient action of the governing body of the Customer, if the Customer is not a trust or a sole proprietor;
 - (2) the signature of each of the Customer's trustee(s), if the Customer is a trust; or
 - (3) the signature of the Customer, if the Customer is a sole proprietor.

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Business Account Application

Certified/Agreed To

Owner/Key Individual 1 Name

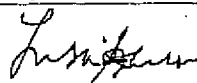
LISA JOHNSON

Position/Title:

PRESIDENT

Owner/Key Individual 1 Signature

LISA JOHNSON



☐ Submit manually

☐ Signature not required

Date:

05/12/2010

Request for Taxpayer Identification Number and Certification

(Substitute Form W9)

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. UNLESS I HAVE CHECKED ONE OF THE BOXES BELOW, I am not subject to backup withholding either because I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding (does not apply to real estate transactions, mortgage interest paid, the acquisition or abandonment of secured property, contribution to an Individual Retirement Arrangement (IRA), and payment other than interest and dividends).
3. I am a US person (including a US resident alien). ☐ I am subject to backup withholding ☐ I am exempt from backup withholding

Note: The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

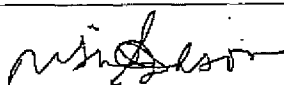
Business Name:

GUITARFILE, LLC

Taxpayer Identification Number (TIN):

TIN Certification Signature:

LISA JOHNSON



☐ Submit manually

☐ Signature not required

Date:

05/12/2010

Authorized Signers - Signature Capture

Authorized Signer 1 Name

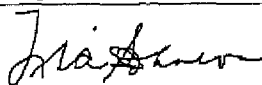
LISA JOHNSON

Position/Title:

PRESIDENT

Authorized Signer 1 Signature

LISA JOHNSON



☐ Submit manually

☐ Signature not required

Date:

05/12/2010

Manual Submission Instructions:

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Business Account Application

Terms and Conditions for the Wells Fargo® Business Platinum Credit Card

By signing in the "Certified/Agreed To" or "Authorized Signers - Signature Capture" sections of this Application ("Application"), I am an owner of the business, I accept on behalf of the Customer named above ("Applicant") all terms and conditions, including the additional terms of acceptance appearing below, and the terms and conditions of the Customer Agreement that will be sent to the Applicant. By signing this form, I also accept in my individual capacity the terms of guaranty appearing below. I agree that a facsimile of my signature, in any capacity, may be used to evidence my acceptance of these agreements. Any new business credit card application for the same business will supersede the pre-approved business credit card offer. Non-profit entities are not eligible for pre-approved business credit card offers.

I certify that I am authorized to submit this Application on behalf of the Applicant and that all information and documents provided in connection with the Application, including federal and state income tax returns (if any), are true, correct, and complete. I authorize Wells Fargo Bank, N.A. ("Bank") to obtain balance and payoff information on all accounts requiring payoff as a condition of approving this Application and to obtain consumer and business reports from and to report credit information to others, including the Internal Revenue Service and state taxing authorities, about me and my business. I agree to notify Bank promptly of any material change in such information. I acknowledge that (i) this Application is subject to final approval of the Applicant and its owners, and that (ii) additional information may be required in order for the Bank to make the final credit decision. I agree to pay Bank's costs and attorney's fees in enforcing the Customer Agreement. I further agree that use of any feature of the Business Platinum Credit Card account may be used as evidence of the foregoing authorizations, acceptances, and agreements. If the signer is married and resides in Arizona, the spouse's signature is required. I understand that the offer may be amended or cancelled.

I, along with each owner signing this Application, jointly and severally unconditionally guarantee in my individual capacity (even though I may place a title or other designation next to my signature), and promise to pay to Bank all indebtedness of the Applicant at any time arising under or relating to this Application and/or the Customer Agreement, as well as any extensions, increases, or renewals of that indebtedness. As guarantor, I waive (a) presentment, demand, protest, and notice of non-payment; (b) any defense arising by reason of any defense of the Applicant or other guarantor; and (c) the right to require Bank to proceed against Applicant or any other guarantor, to pursue any remedy in connection with the guaranteed indebtedness, or to notify guarantor of any additional indebtedness incurred by the Applicant, or of any changes in the Applicant's financial condition. I also authorize Bank, without notice or prior consent, to (x) extend, modify, compromise, accelerate, renew, increase, or otherwise change the terms of the guaranteed indebtedness; (y) proceed against one or more guarantors without proceeding against the Applicant or another guarantor; and (z) release or substitute any Applicant, co-Applicant and/or guarantor. I agree (i) I will pay Bank's costs and attorney's fees in enforcing this guaranty; (ii) this guaranty is made in South Dakota and will be governed by South Dakota law; (iii) this guaranty shall benefit the Bank and its successors and assigns; and (iv) an electronic facsimile of my signature, in any capacity, may be used as evidence of my agreement to the terms of the guaranty.

Features and Pricing

- (i) Annual Fee \$0.
- (ii) Annual Percentage Rate (variable based on Wells Fargo's Prime Rate plus a spread. APR may differ for Purchases and Cash transactions)
- (iii) Grace Period for Repayment of the Balance for Purchase No less than 21 days.
- (iv) Minimum Payment See the Customer Agreement for details.
- (v) Annual Business Card Rewards Membership Fee (optional program) \$50 Your annual membership fee will be charged to your account in the first billing cycle.

Business Platinum Credit Card Account Details

Individual Cardholder Name (First, Last):	Individual Credit Line Limit:	Business Owner:
LISA JOHNSON	\$8,000	Yes
Total Credit Line Limit (Can be less than or equal to amount approved for business):	\$8,000	

Features enrolled In:

Wells Fargo Business Card Rewards SM	Automatic Payment	Overdraft Protection
Yes	No	Yes

Manual Submission Instructions:
Fax all pages of the signed form to
Business Direct at 1-888-371-1045
before submitting to Deposit
Operations

Scanner Enabled Stores should ONLY scan



BBG2307 (2-10 SVF)

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2W02-000059366727-05

Page 5 of 5
Wells Fargo Confidential

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EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

CONFIDENTIAL

Consumer Account Application



Bank name Wells Fargo Bank, N.A.	Bank Use Only
Account(s) I Want to Open PMA Money Market Checking	01753 N0699 09/30/2004 13:04 825

To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individuals and businesses) who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Customer Information - 1 Sole Owner				Customer Information - 2			
Full name MICHAEL KAPLAN				Full name			
Street address		How long at this address Yr Mo		Street address		How long at this address Yr Mo	
Directional Address (Document directional address for customers who do not have physical residence, business or alternate street address.)				Directional Address (Document directional address for customers who do not have physical residence, business or alternate street address.)			
City	State	Zip code	County	City	State	Zip code	County
Taxpayer identification number (TIN)		Home phone		Taxpayer identification number (TIN)		Home phone	
Previous street address		How long at this address Yr Mo		Previous street address		How long at this address Yr Mo	
City	State	Zip code	County	City	State	Zip code	County
Current employer		Business telephone number		Current employer		Business telephone number	
Primary ID	Description	Date of birth		Primary ID	Description	Date of birth	
State/Country	Issue Date	Exp. Date		State/Country	Issue Date	Exp. Date	
Secondary ID	Description			Secondary ID	Description		
Other	WFB			Other	WFB		
State/Country	Issue Date	Exp. Date		State/Country	Issue Date	Exp. Date	
None		06/01/2007		None		06/01/2007	

Request for Taxpayer Identification Number and Certification (Substitute Form W-9)

Certification: Under penalties of perjury, I certify that:
 1) The number shown on this form is my correct Taxpayer Identification Number, and
 2) UNLESS I HAVE CHECKED ONE OF THE BOXES BELOW, I am not subject to backup withholding either because I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding (does not apply to real estate transactions, mortgage interest paid, the acquisition or abandonment of secured property, contributions to an individual Retirement Arrangement (IRA), and payments other than interest and dividends), and
 3) I am a U.S. person (including a U.S. resident alien).
 The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

☐ I am subject to backup withholding. ☐ I am exempt from backup withholding.

Wisconsin Only

The Direct Deposit Advance[®] Service may be available to Wisconsin consumer checking accounts with directly deposited income.

Wisconsin Residents Only

Customer 1 - I am ☐ married ☐ unmarried ☐ legally separated
 Customer 2 - I am ☐ married ☐ unmarried ☐ legally separated

NOTICE TO MARRIED APPLICANTS: No provision of any marital property agreement, unilateral statement under Sec. 766.59 Wis. Stats, or a court decree under Sec. 766.70 advises either the interest of the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or court decree or has actual knowledge of the adverse provisions when the obligation to the creditor is incurred.

Married Wisconsin resident applying individually (Customer 1) or married Wisconsin residents applying jointly, but not married to the other signer (Customer 1 and 2), please complete name and address of spouse on the separate Direct Deposit Advance Service - Wisconsin Marital Property Act (WMPPA) Credit Notice to Spouse.

Joint Account with Right of Survivorship (Texas Only)

The persons signing this section hereby agree with each other and the bank that this account is a joint account with right of survivorship, and that on the death of one party to a joint account, all sums in the account on the date of death vest in and belong to the surviving party as his or her separate property and estate. Each person signing this section who is married to a person who is not also signing this section represents and warrants that no funds now or hereafter deposited to the account, nor any interest earned on such funds, are subject to the management, control or disposition jointly or otherwise of such person's spouse.

Signature	Signature
X	X
Signature	Signature
X	X

Signatures

Everything I have stated in this application is correct. You are authorized to make any inquiries that you consider appropriate to determine if you should open the account. This may include ordering a credit report or other report (i.e. information from any motor vehicle department or other state agency) on me. I have received a copy of the applicable account agreement and privacy brochure and agree to be bound by them, including the terms of the Direct Deposit Advance[®] Service described in the account agreement. I also agree to the terms of the dispute resolution program described in the account agreement. Under this program our disputes will be decided before one or more neutral persons in an arbitration proceeding and not by a jury trial or a trial before a judge.

For account number(s) **3980024164**

Authorized signature	Date	Type(s) DDA
Authorized signature	Date	MICHAEL KAPLAN
X Authorized signature	Date	
X Authorized signature	Date	
X Authorized signature	Date	

DSC6921 (7-04 B0023-J)

NORECORD

AA001541

WFB 0001

CONFIDENTIAL

Consumer Account Application for Relationship, Name or Title Change

WELLS FARGO

Banker name **MAURICE PAGE** Officer # **N0001** Approver's Init. _____
 A/U # **6497** Location # **01780** Phone # _____ MAC _____ Date **10/02/2004**

Accounts to be Changed - Deposit Accounts and Plastic Cards

Account Number	COID #	Product	Account Number	COID #	Product
3980024164	00825	DNA			

Relationship Changes (add change delete) (Complete Customer & Relationship Section)

Customer Name	Customer Number	Current Relationship	New Relationship	Deleted Customer Signature REQUIRED
MICHAEL KAPLAN		Sole Owner	Prim IntOr	
LISA JOHNSON		Not Related	Sec IntOr	<i>[Signature]</i>

Maintain Customer Legal Name (Please sign W-9 with any new name for certification) (W-9BEN if foreign) (Do not complete Customer Relationship Section)

Customer Current Name _____ Customer New Legal Name _____ Customer Number _____

Customer and Relationship (Checking/Savings Only) To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individuals and businesses) who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Primary Relationship (Tax Responsible) Prim IntOr

Full name **MICHAEL KAPLAN**
 Street address _____
 Directional address (Document directional address for customers who do not have physical residence, business, or alternate street address.) _____
 City _____ State _____ Zip code _____ City _____
 Taxpayer identification number (TIN) _____ Home phone _____
 Primary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 Secondary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 CheckSystems Info _____ Date of birth _____
NORECORD

Additional Relationship Sec IntOr

Full name **LISA JOHNSON**
 Street address _____
 Directional address (Document directional address for customers who do not have physical residence, business, or alternate street address.) _____
 City _____ State _____ Zip code _____ City _____
 Taxpayer identification number (TIN) _____ Home phone _____
 Primary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 Secondary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 CheckSystems Info _____ Date of birth _____
NORECORD

Additional Relationship

Full name _____
 Street address _____
 Directional address (Document directional address for customers who do not have physical residence, business, or alternate street address.) _____
 City _____ State _____ Zip code _____ City _____
 Taxpayer identification number (TIN) _____ Home phone _____
 Primary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 Secondary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 CheckSystems Info _____ Date of birth _____

Additional Relationship

Full name _____
 Street address _____
 Directional address (Document directional address for customers who do not have physical residence, business, or alternate street address.) _____
 City _____ State _____ Zip code _____ City _____
 Taxpayer identification number (TIN) _____ Home phone _____
 Primary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 Secondary ID _____ Type _____ State/Country _____ Issue Date _____ Expiration date _____
 CheckSystems Info _____ Date of birth _____

Wisconsin Only

The Direct Deposit Advance® Service may be available to Wisconsin consumer checking accounts with directly deposited income. Wisconsin Residents Only

Primary Relationship Customer - I am ☐ married ☐ unmarried ☐ legally separated
 Additional Relationship Customer - I am ☐ married ☐ unmarried ☐ legally separated

NOTICE TO MARRIED APPLICANTS: No provision of any marital property agreement, unilateral statement under Sec. 766.50 Wis. Stats. or a court decree under Sec. 766.70 adversely affects the interest of the creditor unless the creditor, prior to the time the credit is granted, is furnished a copy of the agreement, statement or court decree or has actual knowledge of the adverse provisions when the obligation to the creditor is incurred.

Married Wisconsin resident applying individually (Primary Relationship Customer) or married Wisconsin resident's applying jointly, but not married to the other signer (Primary Relationship Customer and Additional Relationship Customer), please complete name and address of spouse on the separate Direct Deposit Advance Service - Wisconsin Marital Property Act (WMPPA) Credit Notice to Spouse.

Joint Account with Rights of Survivorship - Texas use only

The persons signing this section hereby agree with each other and the bank that this account is a joint account with right of survivorship, and that on the death of one party to a joint account, all sums in the account on the date of death vest in and belong to the surviving party as his or her separate property and estate. Each person signing this section who is married to a person who is not also signing this section represents and warrants that no funds now or hereafter deposited to the account, nor any interest earned on such funds, are subject to the management, control or disposition (jointly or otherwise) of such person's spouse.

Signature _____

Signature _____

Signature _____

Signature _____

Signature _____

Signature _____

Request for Taxpayer Identification Number and Certification (Substitute Form W-9)

TIN _____

Certification: Under penalties of perjury, I certify that:

- The number shown on this form is my correct Taxpayer Identification Number, and
- UNLESS I HAVE CHECKED ONE OF THE BOXES BELOW, I am not subject to backup withholding either because I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding (does not apply to real estate transactions, mortgage interest paid, the acquisition or abandonment of secured property, contributions to an individual Retirement Arrangement (IRA), and payments other than interest and dividends), and
- I am a U.S. person (including a U.S. resident alien).

☐ I am subject to backup withholding.

☐ I am exempt from backup withholding.

Signatures

Everything I have stated in this application is correct. You are authorized to make any inquiries that you consider appropriate to determine if you should open the account. This may include ordering a credit report or other report (i.e., information from any motor vehicle department or other state agency) on me. I have received a copy of the applicable account agreement and privacy brochure and agree to be bound by them, including the terms of the Direct Deposit Advance® Service described in the account agreement. I also agree to the terms of the dispute resolution program described in the account agreement. Under this program our disputes will be decided before one or more neutral persons in an arbitration proceeding and not by a jury trial or a trial before a judge.

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Authorized signature _____

Mailing name and address

MICHAEL KAPLAN

LISA JOHNSON

W14P57 (4-04 78245-J)

HOST UPDATE SUCCESSFUL

Page 1 of 1

WFB 0002

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EXHIBIT 3

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

SMITH LARSEN & WIXOM
ATTORNEYS AT LAW
HILLS CENTER BUSINESS PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 FAX (702) 252-5006

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

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

13 LISA JOHNSON, a Nevada resident,)	CASE NO: A-12-655393-C
14 Plaintiff,)	DEPT: XXVI
15 v.)	
16 WELLS FARGO BANK, NATIONAL)	WELLS FARGO BANK, N.A.'S
17 ASSOCIATION; DOES 1 through X,)	RESPONSES TO PLAINTIFF'S
18 inclusive; and ROE CORPORATIONS,)	SECOND SET OF REQUEST FOR
19 1 through X, inclusive)	PRODUCTION OF DOCUMENTS
20 Defendants.)	

21
22 Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of
23 record, Smith Larsen & Wixom, hereby answers and responds to Plaintiff's Second Set of
24 Requests for Production of Documents as follows:

25 **SUPPLEMENTAL NRCP 16.1 DISCLOSURES**

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

right to make additional supplemental disclosures.

GENERAL OBJECTIONS

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

RESPONSES

REQUEST NO. 11:

Please produce all account records and other documents concerning the following Wells Fargo accounts associated with Lisa Johnson and/or Michael Kaplan: (1) Guitarfile, LLC, account no. 2273587051, (2) Guitarfile, LLC, account no. 4856200225012957, and (3) account of Michael Kaplan and Lisa Johnson, account no. 3980024164.

1 RESPONSE TO REQUEST NO. 11:

2 In addition to the general objections, Wells Fargo objects on grounds that this request
3 is vague and ambiguous. Further, Wells Fargo objects to the extent that this request seek
4 information beyond the scope of permissible discovery as set forth in the District Court's
5 discovery orders in this case. Subject to and without waiving these objections, and after
6 conducting a reasonable review of available information, please refer to the following
7 documents which have been disclosed pursuant to the stipulated confidentiality agreement
8 and protective order entered this case:
9

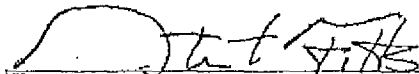
10 1. Guitarfile, LLC. (Advantage Business Package Accounts ending in Nos. #
11 7051, #7036, and #4981). Please refer to the documents specifically identified and labeled
12 in Wells Fargo's NRCP 16.1 Disclosures and the supplements thereto.

13 2. Guitarfile, LLC (Business Credit Card Account ending in #2957). Please
14 refer to the documents specifically identified and labeled in Wells Fargo's NRCP 16.1
15 Disclosures and the supplements thereto.
16

17 3. Lisa Johnson/Michael Kaplan (Account ending in #4164). Please
18 refer to the documents specifically identified and labeled in Wells Fargo's NRCP 16.1
19 Disclosures and the supplements thereto.
20

21 DATED this 3rd day of June, 2013:

22 SMITH LARSEN & WIXOM

23 

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

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

28 SMITH LARSEN & WIXOM

Hills Center Business Park
1935 Village Center Circle
Las Vegas, Nevada 89134

Tel: (702) 252-5002

Fax: (702) 252-5006

Attorneys for Defendant

Wells Fargo Bank, N.A. **Johnson Discovery** 0031546

SMITH LARSEN & WIXOM

A T T N: HILLS CENTER BUSINESS PARK

1935 VILLAGE CENTER CIRCLE

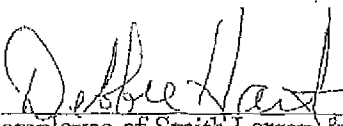
LAS VEGAS, NEVADA 89134

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

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that on the 3rd day of June, 2013, a true copy of the foregoing WELLS FARGO BANK, N.A.'S RESPONSES TO PLAINTIFF'S SECOND SET OF REQUEST FOR PRODUCTION OF DOCUMENTS was mailed, postage prepaid, to the following as noted:

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


an employee of Smith Larsen & Wixom

WILLIAM LARSEN & WIXOM

A T T N : S
HILLS CENTRAL BUSINESS PARK
1936 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89104
TEL (702) 252-6003 • FAX (702) 252-6006

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EXHIBIT 4

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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

August 18, 2011

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

Account Number(s): xxxxxx7051

To Whom This Concerns:

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

The Bank's risk assessment process and the results of this process are confidential, and the Bank's decision to close your account(s) is final. You may elect to close the account(s) before this date. Please note that the Bank reserves the right to close the subject account(s) sooner than September 22, 2011 if circumstances arise that warrant such an earlier closing.

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

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

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

Prevention Contact Center

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EXHIBIT 5

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



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

8/15/2011

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

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

Dear Lisa Johnson:

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

M22 Bank policy excludes lending to certain types of businesses.

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

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

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

Sincerely,
Wells Fargo Bank N.A.
Business Direct

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

Lisa J. 007

AA001551

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EXHIBIT 6

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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

August 18, 2011

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

Account Number(s): xxxxxx4164.

Dear Customers:

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

The Bank's risk assessment process and the results of this process are confidential, and the Bank's decision to close your account(s) is final. You may elect to close the account(s) before this date. Please note that the Bank reserves the right to close the subject account(s) sooner than September 22, 2011 if circumstances arise that warrant such an earlier closing.

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

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

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

Prevention Contact Center

LP-FIU

Lisa J. 006

AA001553

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EXHIBIT 7

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Biz card issue

From: "lisa@celebrityguitars.com" <lisa@celebrityguitars.com>
To: ramy.zaki@wellsfargo.com

Priority: Normal
Date: 9/22/2011 04:02 PM

Hi Ramy,

RE: Credit Card Acct #4856 2002 2501 2957 / Lisa Johnson / Guitarfile, LLC

We met awhile back at the bank. Hope you can help with a situation:

Today I went online to pay my business credit card, which I did in full. However, there was a note that this card had been cancelled. I called to find out why. I was told there was no detail explanation, but that it was closed due to a risk of some kind.

This is really terrible customer service to close a clients business credit card without notice. What if I had been traveling on business using that card? I have not used the card that much, but will be soon. I was told that I would have to reapply for another card and that this one could not be reinstated. This also concerns me that this may have affected my credit rating. I am furious. Please advise what we can do to fix this.

Thank you!
Lisa Johnson
702-743-7341

Lisa J. 0081

AA001555

11/20/12 3:52 PM

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EXHIBIT 8

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

RE: checks

<http://mail.celebrityguitars.com/ox.html#>

RE: checks

From: "lisa@celebrityguitars.com" <lisa@celebrityguitars.com>
To: Ramy.Zaki@wellsfargo.com

Priority: Normal
Date: 9/26/2011 01:45 PM

Thank you Ramy, I appreciate your help with this. Also are you able to order new checks for me?

Thank you!
Lisa Johnson
702-743-7341

On September 26, 2011 at 12:20 PM Ramy.Zaki@wellsfargo.com wrote:

Hi Lisa,

I received the email and will look into the issue asap and contact you back.

Thank you for consulting back with me.

From: lisa@celebrityguitars.com [mailto:lisa@celebrityguitars.com]
Sent: Monday, September 26, 2011 11:20 AM
To: Zaki, Ramy
Subject: Fwd: checks

Hi Again,

Please confirm you got this email for check order. Thank you!

Lisa Johnson
702-743-7341

----- Original Message -----
From: "lisa@celebrityguitars.com" <lisa@celebrityguitars.com>
To: "ramy.zaki@wellsfargo.com" <ramy.zaki@wellsfargo.com>
Date: September 22, 2011 at 4:03 PM
Subject: checks

Hi Ramy,

Also, I need to order more business checks for acct: 2273587051

Thank you!
Lisa Johnson
702-743-7341

Lisa J. 0083

AA001557

11/20/12 3:53 PM

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EXHIBIT 9

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

RE: checks.

<http://mail.celebrityguitars.com/ox.html#>

RE: checks

From: Ramy.Zaki@wellsfargo.com
To: Lisa@CelebrityGuitars.com

Priority: Normal
Date: 9/26/2011 04:41 PM

Hey Lisa,

I'm so sorry. Wish I knew more about what was going on. I hope that they're able to help you get everything resolved.

I really enjoy working with you and wish that there was something more I can do. It is just out of my control at this point.

Please keep in touch and let me know what happens.

Best Regards,

Ramy

From: Lisa@CelebrityGuitars.com [mailto:Lisa@CelebrityGuitars.com]

Sent: Monday, September 26, 2011 4:37 PM

To: Zaki, Ramy

Subject: Re: checks

I'm so outraged!! My accounts are in order, I don't understand this, unless some kind of fraud is happening, but if that is the case I should have been notified.

I appreciate your checking into things Ramy, although it sounds even worse if my accounts are about to be closed???

I will check my mail, and call the numbers.

Best Regards,

Lisa Johnson

On Sep 26, 2011, at 2:52 PM, <Ramy.Zaki@wellsfargo.com> wrote:

Hello Lisa,

I had to be the bearer of bad news but I don't know what exactly has taken place with your accounts. I was told that you were going to be sent a letter explaining the reasons why that credit card was closed out. It also appears that they may be closing out your accounts.

The best that I can do is provide you with a contact number that you can reach out at your convenience. This may be different from the number being mailed out to you but I believe they may be of assistance. I'm very sorry to see what is happening but they couldn't provide me with specific details in regards to the whole situation.

Try to contact customer service first at: 800-869-3557

If they are unable to answer your questions there, try to reach out to this number: 800-231-9244

Please check your mail first because if you haven't already received a letter from them you should have it within the next few days.

Once again, I'm very sorry to be the bearer of bad news. I just hope that you can resolve everything with them and provide clarification to any questions they may have.

Best Regards,

Ramy

From: Lisa@CelebrityGuitars.com [mailto:Lisa@CelebrityGuitars.com]

Sent: Monday, September 26, 2011 2:36 PM

To: Zaki, Ramy

Subject: Re: checks

Business account. 2273587051

Lisa J. 0084

AA001559

11/20/12 4:11 PM

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EXHIBIT 10

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

RE: checks

From: "lisa@celebrityguitars.com" <lisa@celebrityguitars.com>
To: Ramy.Zaki@wellsfargo.com
Priority: Normal
Date: 9/26/2011 07:43 PM

Hi Ramy,

I've been away for a couple weeks. Went through my mail tonight and indeed there were three letters stating ALL my accounts are being closed with NO EXPLANATION.

The new credit card account you opened for me is the only account they have not closed. Wonder why?

There is only one outstanding check on the checking account that has not cleared. Is there any way you can keep on top of that so it does clear??? It's check # 1026 in the amount of \$1375.00.

I am beyond outraged. We have called the 800# this evening and were told there was nothing they can do and they don't need to tell us why the accounts are being closed. One of the accounts is a mutual account with my partner Michael Kaplan. He is an attorney and if they don't fix this, Wells Fargo can expect a lawsuit.

I have bills that need to be paid and I clearly cannot write checks on any of my accounts. I guess tomorrow I'm going to have to go to the bank and withdraw all funds and begin business with another bank. I don't know what else to do. I was going to deposit 25K into my Guitarfile operating account this week, but apparently Wells Fargo does not want my business. I am dumbfounded.

I've checked by credit report this evening as well and it is free and clear and in very good standing.

Tomorrow morning we will be intent on speaking with the President of Wells Fargo to get this situation rectified. Thank you for your considerate help today. Please advise about the Check #1026.

Best Regards,
Lisa Johnson

On September 26, 2011 at 4:41 PM Ramy.Zaki@wellsfargo.com wrote:

Hey Lisa,

I'm so sorry. Wish I knew more about what was going on. I hope that they're able to help you get everything resolved.

I really enjoy working with you and wish that there was something more I can do. It is just out of my control at this point.

Please keep in touch and let me know what happens.

Best Regards,
Ramy

From: Lisa@CelebrityGuitars.com [mailto:Lisa@CelebrityGuitars.com]
Sent: Monday, September 26, 2011 4:37 PM
To: Zaki, Ramy
Subject: Re: checks

I'm so outraged!! My accounts are in order, I don't understand this, unless some kind of fraud is happening, but if that is the case I should have been notified.

Lisa J. 0080

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EXHIBIT 11

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

check:

From: "lisa@celebrityguitars.com" <lisa@celebrityguitars.com>
To: "Albright, Jeff" <RockStarPR@aol.com>

Priority: Normal
Date: 9/26/2011 08:04 PM

Hey, hate to bother you with this ridiculous story. But for some reason my bank Wells Fargo has decided to close ALL of my accounts, and business credit card with NO EXPLANATION, saying there is some kind of business risk. It's a real outrage. One of the accounts is joint with Michael who has been with Wells for over 30 years. Both our credit ratings are in the highest bracket and show no current frauds or risks. They will not give us an explanation as to their actions. As an attorney Michael is going after the top shelf contacts at Wells tmrw and if they don't fix it they can expect a lawsuit. IN the meantime, I can't write any checks on my accounts and I'm not even sure yet what is happening with the balances on the accounts. I am worried about the check I wrote to you, which is fortunately the only current outstanding check. My online statement does not show it has cleared yet, so just giving you a heads up, I may need to send another check. Sorry, I'm so pissed!! I'll let you know what I find out tomorrow. Michael has been doing research tonight and apparently Wells has been doing this to several clients. I'll keep you posted. Maybe you can stop in at a Wells and see if they will cash it??? If not, I'll send you a cashier's check, since I don't have a bank account now! ARRRGGHH!

lj.

Lisa J. 0085

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EXHIBIT 12

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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EXHIBIT PAGE ONLY

EXHIBIT 13

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



Arash Dounel
Premier Banker
NMLSR ID: 729344

23361 Pacific Coast Highway
Malibu, CA 90265
Tel: 310 317 1740
Fax: 310 317 1745

arash.dounel@wellsfargo.com

Wells Fargo Bank, N.A.

Lisa J. 0054

AA001567

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EXHIBIT 14

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

**WELLS
FARGO**

ADVISORS

Arash Dounel
Brokerage Associate
CA Insurance Lic # OH32244

Wells Fargo Advisors, LLC
23361 Pacific Coast Hwy
Malibu, CA 90265
Direct: 310 317 1752

Wells Fargo Advisors, LLC,
Member FINRA/SIPC is a
registered broker-dealer and
separate non-bank affiliate
of Wells Fargo & Company.

Send correspondence to:
1036 Anacapa St.
Santa Barbara, CA 93105

Lisa J. 0055

AA001569

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EXHIBIT 15

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

1 RESP

2 Kent F. Larsen, Esq.

3 Nevada Bar No. 3463

4 Stewart C. Fitts, Esq.

5 Nevada Bar No. 5635

6 SMITH LARSEN & WIXOM

7 Hills Center Business Park

8 1935 Village Center Circle

9 Las Vegas, Nevada 89134

10 Tel: (702) 252-5002

11 Fax: (702) 252-5006

12 Email: kfl@slwlaw.com

13 scf@slwlaw.com

14 Attorneys for Defendants

15 Wells Fargo Bank, N.A.

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 LISA JOHNSON, a Nevada resident,)

CASE NO: A-12-655393-C

19 Plaintiff,)

DEPT: XXVI

20 v.)

21 WELLS FARGO BANK, NATIONAL)

WELLS FARGO BANK, N.A.'S

22 ASSOCIATION; DOES 1 through X,)

SUPPLEMENTAL RESPONSES TO

23 inclusive; and ROE CORPORATIONS,)

PLAINTIFF'S REQUEST FOR

24 1 through X, inclusive)

ADMISSIONS NOS. 2-9

25 Defendants.)

26 Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its counsel of

27 record, Smith Larsen & Wixom, hereby provides its supplemental responses to Plaintiff's

28 Request for Admissions Nos. 2-9 as follows:

SUPPLEMENTAL NRCP 16.1 DISCLOSURES

These disclosures are supplemental to the disclosures made in conjunction with the

1 early case conference and NRCP 16-1. Discovery is continuing and Wells Fargo reserves the
2 right to make additional supplemental disclosures.

3 **GENERAL OBJECTIONS**

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

19
20
21 **RESPONSES**

22 **REQUEST NO. 2:**

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

25 **RESPONSE:**

26 Subject to and without waiving the general objections, upon information and belief
27 after conducting a reasonable review of available information, Wells Fargo states that it is
28

without sufficient information to admit or deny that Mr. Dounel and Mr. Kaplan conversed on the specific date of October 6, 2011. Upon information and belief, it is Wells Fargo's understanding that Mr. Dounel and Mr. Kaplan conversed at a Wells Fargo Store in California in or about October of 2011 and Wells Fargo generally admits to the request based on this qualification. Wells Fargo reserves the right to supplement this response in the event that additional information becomes available.

REQUEST NO. 3:

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

RESPONSE:

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

Subject to and without waiving these objections, upon information and belief after conducting a reasonable review of available information, Wells Fargo states that it is without sufficient information to admit or deny that Mr. Dounel and Mr. Kaplan conversed on the specific date of October 6, 2011. Upon information and belief, Wells Fargo admits that, in

A T R B
HILLS COUNTRY CLUB PARK
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

1 -er about October of 2011, Mr. Kaplan pressed Mr. Dounel with questions regarding why the
2 subject accounts were closed and asked Mr. Dounel for his opinion regarding what Mr.
3 Dounel would do if he were Mr. Kaplan. Upon information and belief, Wells Fargo denies
4 that Mr. Dounel knew, or stated that he knew, the specific reason for the account closure;
5 and denies the remaining portion of this request. Wells Fargo reserves the right to
6 supplement this response in the event that additional information becomes available.
7

8 REQUEST NO. 4:

9 Please admit that, on October 6, 2011, Arash Dounel stated to Michael Kaplan that
10 Mr. Kaplan "should hire a private investigator to check up on" Lisa Johnson.

11 RESPONSE:

12 In addition to the general objections, Wells Fargo objects on grounds that this request
13 seeks information regarding the scope and content of confidential communications with a
14 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
15 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
16 well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
17 The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and
18 which the adverse party can admit cleanly, without qualifications." *Id.* A request is
19 improper where it seeks an admission regarding facts "central to the lawsuit" or "legal
20 concessions." *Id.* The request herein is improper because it pertains to factual allegations
21 that are central to the lawsuit and which are subject to qualifications, and the request also
22 seeks legal concessions.
23

24 Subject to and without waiving these objections, upon information and belief after
25 conducting a reasonable review of available information, Wells Fargo states that it is without
26 sufficient information to admit or deny that Mr. Dounel and Mr. Kaplan conversed on the
27 specific date of October 6, 2011. Upon information and belief, Wells Fargo admits that, in
28

20111111 AM 11:00:00 L. J. JOHNSON

A T R I S

THE CLARK COUNTY JAIL
1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 862-5002 - FAX (702) 862-5008

1 or about October of 2011, Mr. Kaplan pressed Mr. Dounel with questions regarding why the
2 subject accounts were closed and asked Mr. Dounel for his opinion regarding what Mr.
3 Dounel would do if he were Mr. Kaplan. Upon information and belief, Wells Fargo admits
4 that the conversation may have included the word "investigative" or some derivation thereof
5 and, in this regard, refers Plaintiff to the supplemental answer to Interrogatory No. 12. Upon
6 information and belief, Wells Fargo denies that Mr. Dounel knew, or stated that he knew,
7 the specific reason for the account closure and denies the remaining portion of this request.
8 Wells Fargo reserves the right to supplement this response in the event that additional
9 information becomes available.
10

11 REQUEST NO. 5:

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

14 RESPONSE:

15 In addition to the general objections, Wells Fargo objects on grounds that this request
16 seeks information regarding the scope and content of confidential communications with a
17 non-party customer. Wells Fargo also objects on grounds that this request seeks a legal
18 conclusion, is vague and ambiguous, and "is too broad and involves both factual issues as
19 well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389 (1993).
20 The purpose of NRCP 36 is "to obtain admission of facts which are in no real dispute and
21 which the adverse party can admit cleanly, without qualifications." *Id.* A request is
22 improper where it seeks an admission regarding facts "central to the lawsuit" or "legal
23 concessions." *Id.* The request herein is improper because it pertains to factual allegations
24 that are central to the lawsuit and which are subject to qualifications, and the request also
25 seeks legal concessions.
26

27 Subject to and without waiving these objections, upon information and belief after
28

conducting a reasonable review of available information, Wells Fargo states that it is without sufficient information to admit or deny that Mr. Dounel and Mr. Kaplan conversed on the specific date of October 6, 2011. Upon information and belief, Wells Fargo admits that, in or about October of 2011, Mr. Kaplan pressed Mr. Dounel with questions regarding why the subject accounts were closed and asked Mr. Dounel for his opinion regarding what Mr. Dounel would do if he were Mr. Kaplan. Upon information and belief, Wells Fargo denies that Mr. Dounel knew, or stated that he knew, the specific reason for the account closure and denies the remaining portion of this request. Wells Fargo reserves the right to supplement this response in the event that additional information becomes available.

REQUEST NO. 6:

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

RESPONSE:

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

1 allegations that are central to the lawsuit and which are subject to qualifications, and the
2 request also seeks legal concessions.

3 Subject to and without waiving these objections, after making a reasonable inquiry
4 of available information, Wells Fargo is without sufficient information to admit or deny this
5 request. Upon information and belief, a gentleman is believed to have entered the Rainbow
6 Store and communicated with Ms. Freeman regarding the closure of some accounts. Wells
7 Fargo reserves the right to supplement this response after additional information becomes
8 available.
9

10 REQUEST NO. 7:

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

14 RESPONSE:

15 In addition to the general objections, Wells Fargo objects on grounds that this request
16 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of
17 admissible evidence, and seeks information regarding the scope and content of confidential
18 communications with a non-party customer. Wells Fargo also objects on grounds that this
19 request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves both
20 factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d
21 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are in
22 no real dispute and which the adverse party can admit clearly, without qualifications." *Id.*
23 A request is improper where it seeks an admission regarding facts "central to the lawsuit" or
24 "legal concessions." *Id.* The request herein is improper because it pertains to factual
25 allegations that are central to the lawsuit and which are subject to qualifications, and the
26 request also seeks legal concessions.
27
28

1 Subject to and without waiving these objections, after making a reasonable inquiry and
2 review of available information, Wells Fargo is without sufficient information to admit or
3 deny this request. Wells Fargo reserves the right to supplement this response after additional
4 information becomes available. Please also refer to the response to Request No. 6.

5 **REQUEST NO. 8:**

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

8 **RESPONSE:**

9
10 In addition to the general objections, Wells Fargo objects on grounds that this request
11 seeks information that is irrelevant, not reasonably calculated to lead to the discovery of
12 admissible evidence, and seeks information regarding the scope and content of confidential
13 communications with a non-party customer. Wells Fargo also objects on grounds that this
14 request seeks a legal conclusion, is vague and ambiguous, and "is too broad and involves
15 both factual issues as well as legal issues." *See, Smith v. Emery*, 109 Nev. 737, 742, 856
16 P.2d 1386, 1389 (1993). The purpose of NRCP 36 is "to obtain admission of facts which are
17 in no real dispute and which the adverse party can admit cleanly, without qualifications."
18 *Id.* A request is improper where it seeks an admission regarding facts "central to the lawsuit"
19 or "legal concessions." *Id.* The request herein is improper because it pertains to factual
20 allegations that are central to the lawsuit and which are subject to qualifications, and the
21 request also seeks legal concessions.
22

23 Subject to and without waiving these objections, upon information and belief after
24 conducting a reasonable review of available information, Wells Fargo states that it is without
25 sufficient information to admit or deny that Mr. Dounel and Mr. Kaplan conversed on the
26 specific date of October 6, 2011. Upon information and belief, Wells Fargo admits that, in
27 or about October of 2011, Mr. Kaplan pressed Mr. Dounel with questions regarding why the
28

1 subject accounts were closed and asked Mr. Dounel for his opinion regarding what Mr.
2 Dounel would do if he were Mr. Kaplan. Upon information and belief, Wells Fargo denies
3 that Mr. Dounel knew, or stated that he knew, the specific reason for the account closure, and
4 admits that a conversation occurred as generally set forth in the supplemental answer to
5 Interrogatory No. 12. Wells Fargo reserves the right to supplement this response in the event
6 that additional information becomes available.

7 **REQUEST NO. 9:**

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

11 **RESPONSE:**

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

24 Subject to and without waiving these objections, upon information and belief after
25 conducting a reasonable review of available information, Wells Fargo admits that Mr.
26
27
28

1 Dounel had communications with Mr. Kaplan regarding a letter, as referenced in the
2 document labeled Lisa J. 0041. Please also refer to the supplemental answer to Interrogatory
3 No. 12.

4 DATED this 19 day of October, 2012

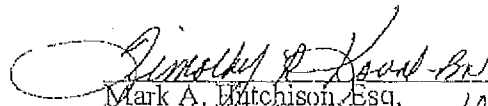
5 SMITH LARSEN & WIXOM

6 

7 Kent F. Larsen, Esq.
8 Nevada Bar No. 3463
9 Stewart C. Fitts, Esq.
10 Nevada Bar No. 5635
11 SMITH LARSEN & WIXOM
12 Hills Center Business Park
13 1935 Village Center Circle
14 Las Vegas, Nevada 89134
15 Tel: (702) 252-5002
16 Fax: (702) 252-5006
17 Attorneys for Defendants
18 Wells Fargo Bank, N.A.

19 RECEIPT OF COPY

20 RECEIPT OF A COPY of the foregoing ^{Defendant} WELLS FARGO BANK, N.A.'S
21 SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF REQUEST FOR
22 ADMISSIONS NOS. 2-9 is hereby acknowledged this 19 day of October, 2012.

23 

24 Mark A. Hutchison, Esq. 10-19-12
25 Joseph S. Kistler, Esq. 2:37 PM
26 Timothy R. Koval, Esq.
27 HUTCHISON & STEFFAN, LLC
28 Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Plaintiff

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EXHIBIT PAGE ONLY

EXHIBIT 16

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

ORIGINAL

INTG

Kent F. Larsen, Esq.
 Nevada Bar No. 3463
 Stewart C. Fitts, Esq.
 Nevada Bar No. 5635
 SMITH LARSEN & WIXOM

Hills Center Business Park
 1935 Village Center Circle
 Las Vegas, Nevada 89134
 Tel: (702) 252-5002
 Fax: (702) 252-5006
 Email: kfl@slwlaw.com
 scf@slwlaw.com
 Attorneys for Defendants
 Wells Fargo Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,

Plaintiff,

v.

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

Defendants.

CASE NO: A-12-655393-C

DEPT: XXVI

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

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

GENERAL OBJECTIONS

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

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

11 ANSWERS

12 INTERROGATORY NO. 1:

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

18 ANSWER:

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

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

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

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

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

10 INTERROGATORY NO. 2:

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

13 ANSWER:

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

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

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

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

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

5 **INTERROGATORY NO. 3:**

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

8 **ANSWER:**

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

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

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

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

1 INTERROGATORY NO. 4:

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

5 ANSWER:

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

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

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

22
23 Subject to and without waiving these objections, please also refer to the response to
24 Request for Admission No. 3.

25 INTERROGATORY NO. 5:

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

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effect?

ANSWER:

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

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

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

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

INTERROGATORY NO. 6:

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

ANSWER:

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

1 pertaining to a non-party customer.

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

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

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

17 INTERROGATORY NO. 7:

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

22 ANSWER:

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

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

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

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

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

INTERROGATORY NO. 8:

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

ANSWER:

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

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

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

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

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

14
15 **INTERROGATORY NO. 9:**

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

20
21 **ANSWER:**

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

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

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

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

11 **INTERROGATORY NO. 10:**

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

15 **ANSWER:**

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

23
24 Wells Fargo also objects on grounds that this interrogatory seeks information that is
25 irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

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

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

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

6
7 **INTERROGATORY NO. 11:**

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

10 **ANSWER:**

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

18 Wells Fargo also objects on grounds that this interrogatory seeks information that
19 is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
20

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

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

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1 INTERROGATORY NO. 12:

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

5 ANSWER:

6
7 In addition to the general objections, Wells Fargo objects on grounds that this
8 interrogatory assumes facts not in evidence, is duplicative, redundant, and is irrelevant and
9 not reasonably calculated to lead to the discovery of admissible evidence. Wells Fargo also
10 objects on grounds that this interrogatory pertains to alleged confidential communications
11 pertaining to a non-party customer.

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

17
18 Subject to and without waiving these objections, please also refer to the response to
19 Request for Admission No. 8.

20 INTERROGATORY NO. 13:

21
22 Is Arash Dounel currently employed by you? If yes, please state the location(s) where
23 Mr. Dounel is employed and his current employment capacity, including job title and duties.

24 ANSWER:

25
26 In addition to the general objections, Wells Fargo objects on grounds that this
27 interrogatory seeks information that is irrelevant and not reasonably calculated to lead to the
28 discovery of admissible evidence. Subject to and without waiving these objections, Mr.

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

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

12 DATED this 18 day of September, 2012

13 SMITH LARSEN & WIXOM


14
15
16 

17 Kent F. Larsen, Esq.
18 Nevada Bar No. 3463
19 Stewart C. Fitts, Esq.
20 Nevada Bar No. 5635
21 SMITH LARSEN & WIXOM
22 Hills Center Business Park
23 1935 Village Center Circle
24 Las Vegas, Nevada 89134
25 Tel: (702) 252-5002
26 Fax: (702) 252-5006
27 Attorneys for Defendants
28 Wells Fargo Bank, N.A.

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

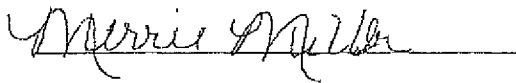
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

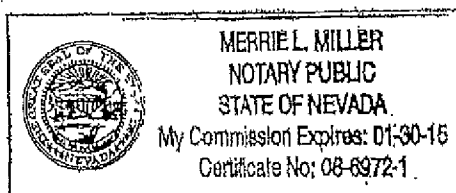
Raelynn Stockman, being first duly sworn, deposes and states that I am a Vice President and Regional Services Manager with Wells Fargo Bank, N.A. The foregoing Answers contain the phraseology of counsel, and since the interrogatories are directed to a corporation, these Answers to Interrogatories do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


Raelynn Stockman:

SUBSCRIBED AND SWORN to before me

this 18th day of September, 2012.


Notary Public












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EXHIBIT PAGE ONLY

EXHIBIT 17

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

 Reply  Reply to all  Forward |   X |   | Close |  Help

 Attachments can contain viruses that may harm your computer. Attachments may not display correctly.


From: mailbox@my.simulscribe.com [mailto:mailbox@my.simulscribe.com]

Sent: Wed 10/12/2011 3:31 PM

To: Michael Kaplan

Cc:

Subject: PhoneTag from (702) 952-7153 at 03:27PM 10/12/2011

Attachments:  10-12-2011_06-27PM.WAV(50KB)

[View As Web Page](#)

Hi, Michael. This is Kate Wright, I'm a District Manager and Vice President with Wells Fargo Bank and I'm returning the call that you placed to Cheryl Taylor earlier today to discuss your account closures. If you could please contact me back at your convenience, you can reach me at 889-3387. Thank you so much. Bye-bye.

PhoneTag Voicemail Message#:

(?)= The word is spelled phonetically, usually happens with names and places.

(??)= Sorry, we can't understand this word or portion of the message.

If you want to share this liberating experience with a friend, simply forward off this link, and you will both receive 30 days of free service upon their signup:

<https://apps.simulscribe.com/signup/r/362263>

Thanks,
Team PhoneTag

<<10-12-2011_06-27PM.WAV>>

Lisa J. 0021

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EXHIBIT 18

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



October 17, 2011

Wells Fargo Bank
Kirk Clausen, Nevada Regional President
3800 Howard Hughes Parkway, Third Floor
Las Vegas, Nevada 89160

Re: Clarification of Reasons for Closing Accounts
Our Clients: Michael Kaplan, Lisa Johnson, and Gunarfile LLC

Dear Sir:

Our clients have retained the firm of Ravenholt & Associates to clarify the reasons from Wells Fargo Bank as to why their accounts were unilaterally closed in August 2011. We are requesting specific information as to the reasons for the closures by the bank's risk assessment division. Our request comes with the understanding that we believe there was no legitimate reason for these closures and in follow-up conversations with three Wells Fargo managers/vice presidents there is indication that Lisa Johnson is the focus of the issues.

Clearly, if Wells Fargo bank took issue with Lisa Johnson for unknown reasons, then the proper method to handle this issue would be to close Lisa Johnson from further associations with your bank. To the contrary, Lisa Johnson's alleged risk assessment issues, have been communicated to Michael Kaplan and have damaged her reputation with him and damaged him directly by closing his account that is under his personal social security number. One of the bank representatives even suggested to our millionaire client that "he is rich enough to hire his own private investigator" to find out information on Lisa Johnson. This is unacceptable reasoning when Michael Kaplan is not the target of the investigations.

The letters of closure and the conversations with bank personnel may be considered defamation of Lisa Johnson to unrelated third parties. We therefore are requesting the reasoning behind your decision and clarification with regards to Michael Kaplan relationship with Wells Fargo. Our firm will certainly be able to obtain this information through the Discovery process in a defamation suit, should legal action be required. It is in both parties' interest to provide this information at this time to justify the Wells Fargo decision. We will then share this information with our clients and discuss your justification with the facts you provide. Please provide a written response within SEVEN (7) days of the receipt of this correspondence.

Sincerely,

Dirk A. Ravenholt, Esq.

Attached Wells Fargo Letters
DAR:cc

Lisa J. 005

Law Offices Of Ravenholt & Associates • Ravenholt Law Center • 2013 Alta Drive • Las Vegas, Nevada 89106
Office (702) 647-0110 • Fax (702) 647-6332 • lawdirk@aol.com

AA001599

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WELLS FARGO BANK
KIRK CLAYSON, VICE PRESIDENT
3800 HOWARD AVENUE
THIRD FLOOR
LAS VEGAS, NV 89162

A. Signature

L. Miller

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Melanie Miller

C. Date of Delivery

10/16/11

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7001 1940 0007 8968 3269

PS Form 3811, February 2004

Domestic Return Receipt

102535-02-01-1540

UNITED STATES POSTAL SERVICE

10 OCT 2011 PM 3:11

First-Class Mail
Postage & Fees Paid
USPS
Permit No. 3-10

• Sender, Please print your name, address, and ZIP+4 in this box •

Ravenholt & Associates
Dirk A. Ravenholt, Esquire
2013 Alta Drive
Las Vegas, Nevada 89106
T (702) 647-0110, F (702) 647-6332

104

Barcode

Lisa J. 0019

AA001600

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EXHIBIT 19

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



Southern Nevada Community Banking
MAC 54733-057
3800 Howard Hughes Parkway
Las Vegas, NV 89109

Wells Fargo Bank Nevada

October 26, 2011

Law Offices of Ravenholt & Associates
Mr. Dirk A. Ravenholt, Esq.
Ravenholt Law Center
2013 Alta Drive
Las Vegas, NV 89106

Dear Sir:

We have received your letter dated October 17, 2011 inquiring about the closure of Michael Kaplan's accounts. Wells Fargo performs ongoing reviews of its account relationships in connection with the Bank's responsibilities to oversee and manage risks in its banking operations. Our risk based assessment is confidential and as a result, we are unable to disclose the specific information and/or details leading to this decision.

We're confident that we have handled this situation appropriately and consider this matter closed.

Respectfully,

Kate Wright
Vice President
Western Mountain District Manager

KW:ct

Lisa J. 004

AA001602

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EXHIBIT 20

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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

Lisa J. 0027

Arash Dounel | Licensed Banker | WIAIDU
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>
Date: October 31, 2011 9:25:13 AM MDT
To:
<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.

Lisa J. 0028

Michael Kaplan

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 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"
<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,

Lisa J. 0029

On Nov 2, 2011, at 5:13 PM, "Arash.Dounel@wellsfargo.com"
<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 |

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









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

 Reply  Reply to all  Forward   X   Close  Help

 You replied on 11/8/2011 7:31 PM.

From: Arash.Dounel@wellsfargo.com [Arash.Dounel@wellsfargo.com] Sent: Thu 11/3/2011 1:59 PM
To: Michael Kaplan
Cc:
Subject: RE: RE: RE: RE: RE: RE:
Attachments:

[View As Web Page](#)

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 |

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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" <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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EXHIBIT PAGE ONLY

EXHIBIT 21

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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 |

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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 |

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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:

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:

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 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 22

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

 Reply  Reply to all  Forward |   X |   | Close |  Help

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

Sent: Thu 11/3/2011 1:59 PM

To: Michael Kaplan

Cc:

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

Attachments:

[View As Web Page](#)

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 |

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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" <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:

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"
<Arash.Dounel@wellsfargo.com> wrote:

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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: 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

Lisa J. 0014

On Nov 2, 2011, at 5:13 PM, "Arash.Dounel@wellsfargo.com"
<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"
<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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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"
<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, Manager, Customer Relations

A. n Dounel | Licensed Banker | MIAA

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 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>

Date: October 31, 2011 9:25:13

AM MDT

To:

<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.

Michael Kaplan

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

Lisa J. 0018

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EXHIBIT PAGE ONLY

EXHIBIT 23

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



Joceda Freeman
Personal Banker
NMLSRID: 442353

2501 S. Rainbow Blvd
Las Vegas, NV 89146
Tel: 702 252 4421
Fax: 702 252 8914
Tel: 702 252 4327 Ext. 222
24 Hour Cust. Service: 800 869 3557
Customer Service: 800 225 5935

joceda.s.freeman@wellsfargo.com

Lisa J. 0056

AA001625

*The finest compliment I can ever receive
is a referral from friends and customers.*

*Thank you,
Joceda*



Lisa J. 0057

AA001626

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EXHIBIT PAGE ONLY

EXHIBIT 24

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

CONFIDENTIAL

From: Chad.W.Maze@wellsfargo.com
Sent: Monday, December 05, 2011 10:09 AM
To: rachel.romijn@wellsfargo.com
Cc: Andrew.M.Noll@wellsfargo.com
Subject: FW: Wells Fargo

Rachel, Do you have an update?

From: Michael Kaplan [mailto:michael@kaplanlv.com]
Sent: Monday, December 05, 2011 9:46 AM
To: Maze, Chad W.
Cc: Noll, Andrew M.
Subject: RE: Wells Fargo

Chad:

I had spoken to Rachel, she was going to have Wells Legal counsel get back to me. I haven't received the courtesy of any response back--could you help in at least having your legal counsel respond to me?

Thanks

Michael Kaplan

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

From: Chad.W.Maze@wellsfargo.com [mailto:Chad.W.Maze@wellsfargo.com]
Sent: Thu 12/1/2011 11:28 AM
To: Michael Kaplan
Subject: RE: Wells Fargo

I am attempting to set up a call as you requested. Waiting to hear back from Rachel.

From: Michael Kaplan [mailto:michael@kaplanlv.com]
Sent: Wednesday, November 30, 2011 5:08 PM
To: Maze, Chad W.
Cc: Noll, Andrew M.
Subject: Re: Wells Fargo

Can you schedule a meeting for tomorrow with you, Rachel and myself?

Michael Kaplan

On Nov 30, 2011, at 4:54 PM, "Chad.W.Maze@wellsfargo.com" <mailto:Chad.W.Maze@wellsfargo.com> <Chad.W.Maze@wellsfargo.com" <mailto:Chad.W.Maze@wellsfargo.com>> wrote:
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

CONFIDENTIAL

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

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

To: Michael Kaplan; Andrew.M.Noll@wellsfargo.com<<mailto: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 amble 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>> [<mailto:Chad.W.Maze@wellsfargo.com>]

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

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

Subject: RE: Wells Fargo

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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<<mailto: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

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

From: Andrew.M.Noll@wellsfargo.com<<mailto: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<<mailto: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

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andrew.m.noll@wellsfargo.com<<mailto: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: Maza, 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
(702) 812-3444

CONFIDENTIAL

From: Jennifer.L.Scafe@wellsfargo.com
Sent: Friday, December 09, 2011 9:53 AM
To: michael@kaplanlv.com
Subject: RE:

Mr. Kaplan, I wanted to let you know that I am still working on obtaining some information internally so that I can fully research your situation, and thus I'm afraid it will be next week before I will be able to get back to you. Thank you for your patience.

Jennifer L. Scafe, Senior Counsel
Wells Fargo Law Department
MAC A0194-268
45 Fremont Street, 28th Floor
San Francisco, California 94105
415-222-6540, Fax 415-975-7864

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From: Michael Kaplan [mailto:michael@kaplanlv.com]
Sent: Monday, December 05, 2011 4:27 PM
To: Scafe, Jennifer L.
Subject:

Jennifer:
I appreciate your call today, and look forward to hearing from you.

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

CONFIDENTIAL

From: Jennifer.L.Scafe@wellsfargo.com
Sent: Wednesday, December 14, 2011 4:27 PM
To: michael@kaplanlv.com
Subject: RE: RE:

Great. I will call you then. Thank you.

Jennifer L. Scafe, Senior Counsel
Wells Fargo Law Department
MAC A0194-266
45 Fremont Street, 26th Floor
San Francisco, California 94105
415-222-6540, Fax 415-975-7864

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From: Michael Kaplan [mailto:michael@kaplanlv.com]
Sent: Wednesday, December 14, 2011 4:26 PM
To: Scafe, Jennifer L.
Subject: Re: RE:

Tomorrow at 2:00PM is good. Do you want to call me at (702) 812-3444?

Michael Kaplan
Kaplan Enterprises

On Dec 14, 2011, at 3:47 PM, "Jennifer.L.Scafe@wellsfargo.com" <Jennifer.L.Scafe@wellsfargo.com> wrote:

Thank you for your patience. I have completed my research. Would you be available for a call tomorrow between 2pm and 4pm Pacific, or Friday between 11am and 1pm Pacific?

Jennifer L. Scafe, Senior Counsel
Wells Fargo Law Department
MAC A0194-266
45 Fremont Street, 26th Floor
San Francisco, California 94105
415-222-6540, Fax 415-975-7864

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From: Michael Kaplan [mailto:michael@kaplanlv.com]
Sent: Wednesday, December 14, 2011 10:37 AM
To: Scafe, Jennifer L.
Subject: RE:

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Have you had any success in obtaining the information on which you were working?
Thanks

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

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

From: Jennifer.L.Scafe@wellsfargo.com [<mailto:Jennifer.L.Scafe@wellsfargo.com>]
Sent: Fri 12/9/2011 9:53 AM
To: Michael Kaplan
Subject: RE:

Mr. Kaplan, I wanted to let you know that I am still working on obtaining some information internally so that I can fully research your situation, and thus I'm afraid it will be next week before I will be able to get back to you. Thank you for your patience.

Jennifer L. Scafe, Senior Counsel
Wells Fargo Law Department
MAC A0194-266
45 Fremont Street, 26th Floor
San Francisco, California 94105
415-222-6540, Fax 415-975-7864

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From: Michael Kaplan [<mailto:michael@kaplanlv.com>]
Sent: Monday, December 05, 2011 4:27 PM
To: Scafe, Jennifer L.
Subject:

Jennifer:
I appreciate your call today, and look forward to hearing from you.

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

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From: michael@kaplanlv.com
Sent: Friday, December 16, 2011 11:19 AM
To: Jennifer.L.Scafe@wellsfargo.com
Cc: Chad.W.Maze@wellsfargo.com; rbryan@lionelsawyer.com
Subject: Wells Fargo
Attachments: Wells Fargo 12.16.11.pdf

Please find the enclosed letter

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

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EXHIBIT PAGE ONLY

EXHIBIT 25

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

KAPLAN ENTERPRISES, LLC.

MICHAEL KAPLAN

MICHAEL@KAPLANIV.COM

December 16, 2011

Jennifer L. Scafe
Senior Counsel
Wells Fargo Law Department
45 Fremont Street
26th Floor
San Francisco, Ca. 94105

Dear Ms Scafe:

On our phone conversation of yesterday, I discussed some of the concerns that I have as it relates to my banking with Wells Fargo. Approximately three months ago, Wells Fargo closed a joint account that I had with Lisa Johnson (the account was under my social security number). The joint account had been in existence with Wells Fargo for over 7 years.

Despite my repeated requests, nobody from Wells Fargo would give me any direct answer as to why they closed my account. On October 6, 2011, I went into the Wells Fargo Branch in Malibu California (where I have a second home). I met with one of your bankers at the branch named, Arash Dounel. I showed the letter regarding my joint bank account closure to Mr. Dounel. Mr. Dounel at first said he couldn't see any reason as to why the Bank closed the account. Mr. Dounel then said that Lisa Johnson (my girlfriend of over 12 years), must have some type of criminal background, and that "I should hire a private investigator to check up on her." He then said that she "must have arrest warrants outstanding." I found Mr. Dounel's remarks to be extremely offensive, and told him so; at that point I left the branch.

Mr. Dounel subsequently sent me emails that he would be happy to re-open accounts for Lisa and myself at his branch. I informed Mr. Dounel that our main home is in Las Vegas, and any accounts had to be based in Las Vegas. On November 3, 2011 Mr. Dounel sent me an email that said: "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."

On November 8, 2011, I went to the Wells Fargo Branch located at 2501 S. Rainbow Blvd. I met with one of your bankers named Joceda Freman. I showed the letter that your bank had sent regarding the closure of my account. Ms. Freeman called the phone number on your letter (888-231-0757), and spoke to your agent named Sheila. Your agent Sheila told Ms Freeman that I was not eligible to open any accounts—I asked Ms Freeman to inquire if I could open a new checking account since I had over \$100,000 in my checking account—

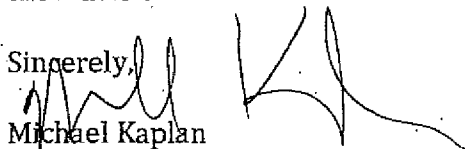
your agent said NO—Mr. Kaplan is not eligible to open any new accounts. This was extremely upsetting, as I have been a client of Wells Fargo (through its previous banks) for well over 35 years, going back to my days in the Nevada Attorney Generals office.

I subsequently met with Chad Maze of your Private Wealth department. Mr. Maze sent me the following in an email: "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."

In yesterday's phone call, I told you that after I was embarrassed by your banker at the Rainbow Branch---I didn't want to attempt open any new accounts without something in writing—you said that you wouldn't do that.

I have never done anything to warrant the treatment that Wells Fargo has given me. I am appalled at the defamatory comments from your agent towards Lisa Johnson (Lisa has an outstanding background—and contrary to the statements by your Banker, she has never had any legal problems). I had advised you that we would have to bring a defamation action; I advised you that myself and Ms. Johnson would be willing to meet in person with you to learn why your bank has treated us in this manner—you declined. Prior to having to bring a legal proceeding, I am seeking for Wells Fargo to meet to attempt a resolution of the matter.

Sincerely,


Michael Kaplan

cc: Chad Maze
Richard Bryan

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EXHIBIT PAGE ONLY

EXHIBIT 26

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

DEPOSITION TRANSCRIPT OF
ARASH DOUNEL
(TO BE PRODUCED)

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EXHIBIT PAGE ONLY

EXHIBIT 27

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Declaration of Lisa Johnson

I, Lisa Johnson, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

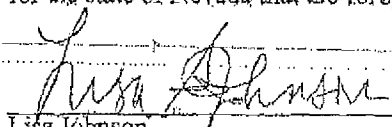
22 19. I was utterly shocked and offended by Dounel's accusations, especially as these
23 accusations were completely false.

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

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

1 22. I then became defensive and essentially stated to Kaplan, "I have nothing to
2 hide."
3 23. Donnel's statements have caused tremendous stress and strain on Kaplan's and
4 my personal relationship.
5 24. I declare under the penalty of perjury for the state of Nevada that the foregoing is
6 true and correct.

7 DATE: 12/16/13


Lisa Johnson

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EXHIBIT PAGE ONLY

EXHIBIT 28

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Declaration of Michael Kaplan

I, Michael Kaplan, declare as follows:

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

2. In or about 2003 or 2004, Johnson and I established a joint account at Wells Fargo.

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

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

5. I went to the Malibu Branch that day solely on my own behalf. Johnson did not: (1) go with me to the Malibu Branch that day; (2) ask me to go to the Malibu Branch; or (3) request that I ask any Malibu Branch employees why Wells Fargo closed our joint account or Johnson's other Wells Fargo accounts.

6. As Johnson and I planned to attend a concert later that evening, I intended to withdraw money for concert purchases. I had no intention of discussing my joint account closure — or any other accounts closures — with Wells Fargo personnel at that time.

7. Nevertheless, after I approached a Wells Fargo teller at the Malibu Branch to cash my check, and as the teller was cashing the check, I believe that she looked at my account balance, following which she stated that I was leaving too much money in my account.

8. The teller stated to me that I should have Wells Fargo open a new savings account for me.

9. 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.

///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

///

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

34. I also inquired into Dounel's apology letter to me, to which Dounel responded, "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."

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

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

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

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

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

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

///

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

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

6 DATE: 12/16/13


Michael Kaplan

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EXHIBIT PAGE ONLY

EXHIBIT 29

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Reply Reply to all Forward X Close Help

Jennifer.L.Scafe@wellsfargo.com [Jennifer.L.Scafe@wellsfargo.com]

Subject: Wed 12/14/2011 4:27 PM

Michael Kaplan

RE: RE:

View As Web Page

at: "I call you then." Thank you.

Jennifer L. Scafe, Senior Counsel
Wells Fargo Law Department
VC A0194-266
Fremont Street, 26th Floor
San Francisco, California 94105
415-222-6540, Fax 415-975-7864

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From: Michael Kaplan [mailto:michael@kaplanlv.com]
Sent: Wednesday, December 14, 2011 4:26 PM
To: Scafe, Jennifer L.
Subject: Re: RE:

Tomorrow at 2:00PM is good. Do you want to call me at (702) 812-3444?

Michael Kaplan

Kaplan Enterprises

On Dec 14, 2011, at 3:47 PM, "Jennifer.L.Scafe@wellsfargo.com" <Jennifer.L.Scafe@wellsfargo.com> wrote:

Thank you for your patience. I have completed my research. Would you be available for a call tomorrow between 2pm and 4pm Pacific, or Friday between 11am and 1pm Pacific?

Jennifer L. Scafe, Senior Counsel

Wells Fargo Law Department
MAC A0194-266
45 Fremont Street, 26th Floor
San Francisco, California 94105
415-222-6540, Fax 415-975-7864

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Michael Kaplan [mailto:michael@kaplanlv.com]

Sent: Wednesday, December 14, 2011 10:37 AM

To: Scafe, Jennifer L.

Subject: RE:

Have you had any success in obtaining the information on which you were working?

Thanks

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

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

From: Jennifer L. Scafe [mailto:jennifer.l.scafe@wellsfargo.com]

Sent: Fri 12/9/2011 9:53 AM

To: Michael Kaplan

Subject: RE:

Mr. Kaplan, I wanted to let you know that I am still working on obtaining some information internally so that I can fully research your situation, and thus I'm afraid it will be next week before I will be able to get back to you. Thank you for your patience.

Jennifer L. Scafe, Senior Counsel
Wells Fargo Law Department
MAC A0194-266
45 Fremont Street, 26th Floor
San Francisco, California 94105
415-222-6540, Fax 415-975-7864

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

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EXHIBIT PAGE ONLY

EXHIBIT 30

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

HUTCHISON & STEFFEN

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

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

Attorneys for Lisa Johnson

DISTRICT COURT
CLARK COUNTY, NEVADA

LISA JOHNSON, a Nevada resident,

Plaintiff,

vs.

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

Defendants.

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

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

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

TO: STEWART FITTS, ESQ., its attorney:

Pursuant to NRCP 36, Plaintiff LISA JOHNSON ("Plaintiff") responds to Defendant
WELLS FARGO BANK, N.A., First Set of Interrogatories as follows. The amended
responses are underlined below:

DEFINITIONS

The following definitions apply to Plaintiff's objections:

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

B. "Unduly burdensome" - The interrogatory in question seeks discovery which is

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

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

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

GENERAL OBJECTIONS

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

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

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

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

interrogatory, or that such answer constitutes admissible evidence. The fact that Plaintiff responds to part of any interrogatory is not to be deemed a waiver by it of its objections, including privilege, to other parts to such interrogatory.

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

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

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

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

SECOND AMENDED ANSWERS TO INTERROGATORIES
INTERROGATORY NO. 1:

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

///

ANSWER TO INTERROGATORY NO. 1:

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

Thereafter, on October 6, 2011, upon information and belief, Mr. Kaplan went into the Wells Fargo Bank Branch at Crosscreek Center in 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 Arash 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 Plaintiff so that she could e-mail him the closure letters. Following a phone discussion between Mr. Dounel and Plaintiff, the letters were emailed to Mr. Dounel. Thereafter, Mr. Dounel told Mr. Kaplan that Plaintiff must have some type of criminal background or have arrest warrants out for her, implying that 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

1 accounts to have been closed.

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

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

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

28 ///

1 INTERROGATORY NO.5:

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

4 (a) state the amount or range of damages claimed;

5 (b) describe in specific detail how the amount or range of damages is calculated or
6 determined;

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

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

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

13 ANSWER TO INTERROGATORY NO. 5:

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

22 INTERROGATORY NO. 12:

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

26 ///
27
28

1 ANSWER TO INTERROGATORY NO. 12:

2 Plaintiff was required to disclose to her publicist that her accounts with Wells
3 Fargo were involuntarily closed due to allegedly suspicious activity. This disclosure
4 harmed Plaintiff's status and reputation in the business community, especially as Plaintiff
5 was required to disclose Wells Fargo's closures of her accounts to a business associate.

6 For additional information, please see Lisa J. 0087 to Lisa J. 0088 containing information
7 pertaining to Plaintiff's disclosure of information to publicist Jeff Albright. Mr.
8 Albright's contact information is as follows: 3070 Windward Plaza, Suite F-770,
9 Alpharetta, Georgia 30005. As discovery is continuing, Plaintiff reserves the right to
10 supplement her answer to this interrogatory.

11 INTERROGATORY NO. 13:

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

15 INTERROGATORY NO. 15:

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

20 ANSWER TO INTERROGATORY NO. 15:

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

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

7 INTERROGATORY NO. 17:

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

12 ANSWER TO INTERROGATORY NO. 17:

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

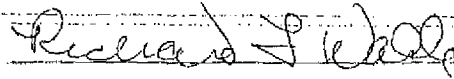
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A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

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

3 DATED this 8th day of August, 2013.

4 HUTCHISON & STEFFEN, LLC

5 

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

12 *Attorneys for Plaintiff Lisa Johnson*

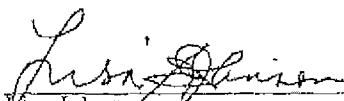
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VERIFICATION

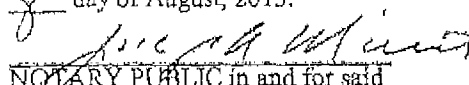
I, LISA JOHNSON, declare as follows:

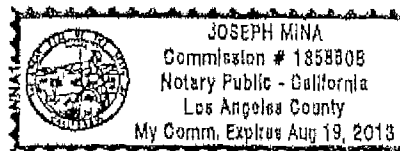
I have read the foregoing SECOND AMENDED RESPONSES TO WELLS FARGO BANK, N.A. FIRST SET OF INTERROGATORIES and know the contents thereof. I know the same to be true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 7th day of August, 2013.


Lisa Johnson

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


NOTARY PUBLIC in and for said County and State



CERTIFICATE OF SERVICE

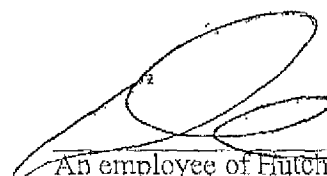
Pursuant to NRCp 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 5 day of August, 2013, I caused the above and foregoing document entitled LISA JOHNSON'S SECOND AMENDED RESPONSES TO WELLS FARGO BANK, N.A. FIRST SET OF INTERROGATORIES to be served as follows:

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

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

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

Attorney for Defendant

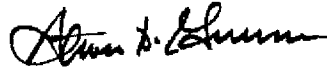


An employee of Hutchison & Steffen, LLC

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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



CLERK OF THE COURT

1 **NOTC**

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

13 *Attorneys for Lisa Johnson*

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

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

19 vs.

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

24 Defendants.

Case No.
Dept.

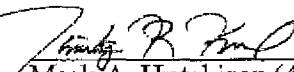
**NOTICE OF ENTRY OF ORDER ON
THE ORDER OF FINDINGS OF
FACT AND CONCLUSION OF LAW**

25 **TO: ALL INTERESTED PARTIES**

26 **NOTICE IS HEREBY GIVEN** that an Order was entered in the above-entitled action on
27 June 9, 2014, a copy of which is attached hereto.

28 DATED this 13th day of June, 2014.

HUTCHISON & STEFFEN, LLC



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

HUTCHISON & STEFFEN

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

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 June, 2014, I caused the above and foregoing document entitled

NOTICE OF ENTRY OF ORDER to be served as follows:

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

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

Paul Haire, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
Facsimile 702-252-5006

Attorneys for Defendants



An employee of Hutchison & Steffen, LLC

1 FFCL

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

ORIGINAL

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4 Lisa Johnson, Plaintiff(s)
5 vs.
6 Wells Fargo Bank National
Association, Defendant(s)

CASE NO.: A-12-655393-C

Department 26

Alvin D. Quinn

CLERK OF THE COURT

7 **FINDINGS OF FACT,
8 CONCLUSIONS OF LAW, AND
9 JUDGMENT**

10 The above matter having come on for a bench trial February 5-7, 2014, and
11 the Court having considered the evidence presented at trial, hereby enters the
12 following findings of fact, conclusions of law, and judgment:

13 **FINDINGS OF FACT**

- 14 1. Lisa Johnson ("Johnson" or "Plaintiff") is an individual who resides in
15 Clark County, Nevada.
- 16 2. Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") engages
17 in business transactions and activities in the State of Nevada and with
18 Nevada-based companies.
- 19 3. Johnson filed her complaint against Wells Fargo on January 26, 2012. The
20 complaint asserted claims against Wells Fargo for defamation, false light,
21 and declaratory relief.
- 22 4. Wells Fargo filed an answer to the complaint on April 6, 2012, which
23 denied all material allegations of Johnson's complaint and asserted
24 affirmative defenses, which included the alleged "truthfulness" of the
25 alleged defamatory statements.

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CLERK OF THE COURT

28
GLORIA J. STURMAN
DISTRICT JUDGE
DEPT XXVI
LAS VEGAS, NV 89155

AA001669

- 1 5. The Court granted Wells Fargo's motion for summary judgment pursuant
2 to NRCP 56 as to Johnson's cause of action for false light on January 10,
3 2014 based upon the lack of sufficient publication to the general public of
4 the alleged statement and for the reasons stated on the record at the
5 summary judgment hearing. The Court granted Wells Fargo's motion for
6 judgment as a matter of law pursuant to NRCP 52 as to Johnson's cause of
7 action for declaratory relief on February 7, 2014 based upon the Court's
8 earlier rulings regarding the Bank Secrecy Act (31 U.S.C. § 5311 et seq.) and
9 the Patriot Act and for the reasons stated on the record at trial.
10
11 6. Johnson, at all times relevant, was and is the managing member of
12 Guitarfile, LLC ("Guitarfile"), a Nevada limited-liability company.
13
14 7. Johnson, as manager of Guitarfile, opened three accounts for Guitarfile at
15 Wells Fargo on about May 12, 2010. The lead account number for these
16 business accounts was a Wells Fargo account number ending in #7051
17 ("Guitarfile Business Account").
18
19 8. Johnson, as manager of Guitarfile, opened a Guitarfile business credit card
20 account prior to August 2011 with account number ending in #2957
21 ("Guitarfile Credit Card Account").
22
23 9. Johnson and Michael Kaplan ("Kaplan") are a couple that have been
24 together for over ten years. There is no asset pooling agreement between
25 Johnson and Kaplan.
26
27 10. Johnson and Kaplan signed a consumer account application to open and
28 did open a Wells Fargo account ending in #4164 on October 2, 2004 ("Joint
Account").

- 1 11. On or About August 15, 2011, Wells Fargo notified Johnson that it was
- 2 closing the Guitarfile Credit Card Account effective September 16, 2011.
- 3
- 4 12. On or about August 18, 2011, Wells Fargo notified Johnson that it was
- 5 closing the Guitarfile Business Account effective September 22, 2011.
- 6
- 7 13. On or about August 18, 2011, Wells Fargo notified Johnson and Kaplan
- 8 that it was closing the Joint Account effective September 22, 2011.
- 9
- 10 14. Johnson inquired of Wells Fargo concerning the reason for Wells Fargo's
- 11 election to close the accounts, but Wells Fargo refused to identify the
- 12 specific reasons for the closure of the accounts.
- 13
- 14 15. Kaplan was identified as the primary Joint Account holder while Johnson
- 15 was identified as the secondary Joint Account holder.
- 16
- 17 16. The Guitarfile Credit Car Account, and Guitar file Business Account were
- 18 closed on September 16, 2011 and September 22, 2011, respectively.
- 19
- 20 17. Thereafter, on October 6, 2011, Kaplan went into a Wells Fargo branch
- 21 located in Malibu, California (the "Malibu Branch") solely on his own
- 22 behalf, and not as Johnson's agent, or to inquire about the closed accounts.
- 23
- 24 18. During the course of Kaplan's check-cashing transaction, the Wells Fargo
- 25 teller invited Kaplan to speak with a personal banker to discuss the
- 26 possibility of opening additional accounts with Wells Fargo.
- 27
- 28 19. At that point, the teller introduced Kaplan to Arash Dounel ("Dounel") who
- further identified himself to Kaplan as a Wells Fargo premier banker and
- brokerage associate.
20. During Kaplan's discussion with Dounel, Kaplan told Dounel about Wells
- Fargo's Joint Account closure letter. Dounel asked if he had a copy with

1 him, Kaplan did not, but at Dounel's request, he called Johnson and
2 requested that she e-mail Dounel the closure letter for the Joint Account.

3
4 21. After Johnson e-mailed Dounel the Joint Account closure letter, Kaplan
5 observed Dounel reading the letter, then looking at something on his
6 computer screen; Kaplan could not see the screen.

7 22. After Dounel reviewed the letter and his computer screen, he made
8 remarks to Kaplan suggesting that Johnson must have a criminal
9 background or must be involved in criminal activity, and that Kaplan
10 should consider hiring a private investigator to look into Johnson's
11 background.

12
13 23. No evidence was presented to show Johnson had a criminal history, and
14 Wells Fargo withdrew its affirmative defense of truthfulness prior to trial.

15 24. Kaplan was not acting as Johnson's agent at the time the aforementioned
16 statements were made to him.

17 25. Dounel was acting within the scope and course of his Wells Fargo
18 employment at the time the aforementioned statements were made to
19 Kaplan.

20
21 26. Dounel testified that he did not recall the conversation, and stated that
22 such remarks were not consistent with his normal practiced and "didn't
23 sound like something I would say." The weight of the evidence suggests the
24 remarks attributed to Dounel were in fact made. The circumstances,
25 however, are not indicative of malice or ill-will toward Johnson.

26
27 27. Dounel was negligent in speaking imprudently in response to what was
28 described as Kaplan's insistence on an explanation for the reason the

1 accounts were closed. Dounel admitted he had no information suggestive
2 of criminal activity on the part of Johnson.

3
4 28. Dounel's remarks to Kaplan were inappropriate and defamatory. Because
5 the remarks concerned allegations of criminal activity, they were
6 defamatory per se.

7 29. Dounel's statements to Kaplan about Johnson caused stress upon their
8 relationship, as Kaplan questioned Johnson about Dounel's allegation that
9 Johnson had a criminal record, which she denied. The topic of Johnson's
10 criminal history, or lack thereof, has been revisited on many occasions
11 thereafter.

12
13 30. The Court finds credible evidence that Dounel's statements caused stress
14 and strain on Johnson's and Kaplan's personal relationship which stress
15 constitutes compensable damage to Johnson.

16 31. Johnson planned to open a bank account in anticipation of publishing a
17 book of her photographs, the account was to be funded with an initial
18 deposit of \$25,000 from Kaplan. Dounel's statements regarding Johnson's
19 alleged criminal activities caused Kaplan not to fund that account for
20 Johnson. Johnson suffered compensable losses in excess of \$25,000.
21

22 CONCLUSIONS OF LAW

- 23 1. Defamation. The elements of defamation are: (1) defendant made a false
24 and defamatory statement concerning the plaintiff; (2) an unprivileged
25 publication to a third person; (3) fault, amounting to at least negligence;
26 and (4) actual or presumed damages. *See Shafer v. City of Boulder*, 896
27 F.Supp.2d 915, 940 (D. Nev. 2012); *see also Wynn v. Smith*, 117 Nev. 6, 10-
28

1 11, 16 P.3d 424, 427 (2001); *Pacquiao v. Mayweather*, 803 F.Supp.2d
2 1208, 1211 (D. Nev. 2011).

- 3
4 2. To constitute slander *per se*, the alleged defamation must be oral and must
5 fall into one of four categories: (1) that the plaintiff committed a crime; (2)
6 that the plaintiff has contracted a loathsome disease; (3) that a woman is
7 unchaste; or (4) the allegations must be one which would tend to injure the
8 plaintiff in his or her trade, business, profession, or office. *See Nevada*
9 *Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 409, 664 P.2d 337,
10 341 (1983).
11
12 3. As a general rule, only assertions of fact, not opinion, can be defamatory.
13 However, expressions of opinion may suggest that the speaker knows
14 certain facts to be true or may imply that facts exist which will be sufficient
15 to render the message defamatory if false. *See Shafer v. City of Boulder*,
16 896 F.Supp.2d, at 940.
17
18 4. Statements of belief are defamatory if they imply the existence of
19 defamatory facts that are not disclosed to the listener. *See id.* at 941.
20
21 5. Based on the Court's findings of fact, the Court concludes that Dounel's
22 statements to Kaplan that Johnson must have a criminal background or
23 must be involved in criminal activity, constitute defamation and
24 defamation *per se*, as they falsely state that Johnson has a criminal history.
25
26 6. The Court concludes that Dounel was acting within the scope and course of
27 his employment when he made the defamatory statements to Kaplan.
28
29 7. The Court concludes that Dounel's defamatory statements were
unprivileged and made to a third-party because: (1) Kaplan went to the

1 Malibu Branch on October 6, 2011 to conduct his own personal business –
2 not on Johnson's behalf; (2) Dounel approached Kaplan that day for the
3 specific purpose of soliciting Kaplan's business based on information that
4 Dounel obtained regarding Kaplan's separate personal account at Wells
5 Fargo; (3) there is no evidence that Dounel believed that Kaplan was
6 Johnson's agent; and (4) there is insufficient evidence demonstrating that
7 Dounel's defamatory statements to Kaplan were privileged.
8

9 8. The Court concludes that Dounel made the defamatory statements to
10 Kaplan negligently; however, Dounel's defamatory statements do not rise
11 to the level of implied or express malice.
12

13 9. The Court concludes that the statements made by Wells Fargo, acting by
14 and through its agent Dounel, constitute slander *per se*.

15 10. Special damages for slander. In all slander actions, special damages, to be
16 recoverable, must be proven. *See K-Mart Corp. v. Washington*, 109 Nev.
17 1180, 1194, 866 P.2d 274, 283 (1993) (overruled in part on other grounds
18 by *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005)). Special damages
19 are quantifiable monetary losses that flow directly from the injury to
20 reputation caused by the defamation. *See id.*, 114 P.3d, at 284.
21

22 11. General damages presumed for slander *per se*. With slander *per se*, the
23 plaintiff is entitled to presumed, general damages. *See Bongiovi v.*
24 *Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006). General damages
25 are those awarded for loss of reputation, shame, mortification, and hurt
26 feelings. *See id.*; *see also K-Mart Corp. v. Washington*, 109 Nev., at 1194,
27 866 P.2d, at 284.
28

1 12. Punitive damages may be awarded when the plaintiff proves by clear and
2 convincing evidence that the defendant is guilty of oppression, fraud or
3 malice, express or implied. See, NRS 42.005(1). There is insufficient
4 evidence to conclude that Dounel acted with oppression, fraud or malice,
5 express or implied, in making the statement at issue. Therefore, the Court
6 finds Johnson is not entitled to punitive damages.
7

8 13. The Court concludes that Johnson is entitled to:

- 9 a. Special damages in the amount of \$25,000 that, but-for Dounel's
10 defamatory statements to Kaplan concerning Johnson, Johnson
11 would have received from Kaplan to fund the account in
12 anticipation of publishing the book of her photographs.
13
14 b. General damages totaling \$90,000 for loss of reputation, shame,
15 mortification, and hurt feelings.
16

17 JUDGMENT


- 18 1. Judgment is hereby entered in Wells Fargo's favor and against Johnson on
19 Johnson's claims of false light and declaratory relief.
20
21 2. Judgment is hereby entered in Johnson's favor and against Wells Fargo on
22 Johnson's claims of defamation in the following amounts:
23 a. Special damages in the amount of \$25,000.
24 b. General damages in the amount of \$90,000.
25 c. Pre-judgment interest from the date the complaint and summons
26 were served on Wells Fargo on February 2, 2012 to the date of entry
27 of this judgment for the special and general damages awarded.
28

1 d. Post-judgment interest from the date the judgment is entered for
2 the special and general damages awarded until paid at a rate of
3 \$16.54 per day.
4

5 e. Costs, per NRS 18.020(3), upon Johnson's filing an approved
6 memorandum of costs.

7 3. Without deciding entitlement at this time, the Court permits Johnson to
8 seek recovery of costs in accordance with statute, and to move for
9 attorney's fees, if she so desires.
10

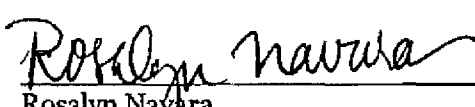
11 DATED: June 06, 2014

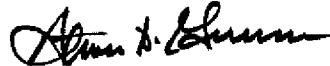
12 
13 GLORIA STURMAN
District Court Judge, Department 26

14 I hereby certify that on the date signed, a copy of the foregoing Order was placed in
15 the attorney folder(s) in the Clerk's Office or mailed or faxed to the following:

16 Kent F Larsen
1953 Village Center CIR
17 Las Vegas, NV 89134 → 702.252.5004

18 Mark A Hutchison
19 Peccole Professional Park
10080 Alta Drive, Ste. 200 → 702.385.2886
20 Las Vegas, NV 89145-8651

21 
22 Rosalyn Navara,
23 Judicial Executive Assistant
24
25
26
27
28



CLERK OF THE COURT

1 NOAS
Mark A. Hutchison (4639)
2 Michael K. Wall (2098)
Joseph S. Kistler (3458)
3 Timothy R. Koval (12014)
HUTCHISON & STEFFEN, LLC
4 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
5 Tel: (702) 385-2500
Fax: (702) 385-2086
6 mhutchison@hutchlegal.com
mwall@hutchlegal.com
7 tkoval@hutchlegal.com

8 *Attorneys for Lisa Johnson*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 LISA JOHNSON, a Nevada resident,

12 Plaintiff,

13 vs.

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

16 Defendants.

Case No. A655393
Dept. XXVI

17 **NOTICE OF APPEAL**

18 Notice is given that Lisa Johnson, plaintiff in the above-captioned matter, appeals to the
19 Supreme Court of Nevada from the Findings of Fact, Conclusions of Law, and Judgment,
20 which was entered by the district court on June 13, 2014.¹

21 DATED this 14 day of July, 2014.

22 HUTCHISON & STEFFEN, LLC



23 Mark A. Hutchison (4639)
24 Michael K. Wall (2098)
25 Timothy R. Koval (12014)
26 10080 West Alta Drive, Suite 200
27 Las Vegas, NV 89145

28 *Attorneys for Plaintiff Lisa Johnson*

¹Notice of entry was served by mail on June 13, 2014.

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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 14th day of July, 2014, I caused the above and foregoing document entitled

NOTICE OF APPEAL to be served as follows:

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

☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

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

Paul Haire, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
Facsimile 702-252-5006

Attorneys for Defendants


An employee of Hutchison & Steffen, LLC