

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)
 U.S. SECURITIES AND EXCHANGE)
 COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 EQUITYBUILD, INC., EQUITYBUILD)
 FINANCE, LLC, JEROME H. COHEN,)
 and SHAUN D. COHEN,)
)
 Defendants.)
 _____)

Civil Action No.
1:18-cv-5587

Hon. John Z. Lee

Magistrate Judge Young B. Kim

**MOTION SEEKING LIMITED RELIEF FROM ORDER APPOINTING THE
RECEIVER AND AGREED CONFIDENTIALITY ORDER, TO SERVE A SUBPOENA
UPON RECEIVER AND USE SUBPOENAED RECORDS IN CLASS ACTION
PROCEEDINGS ON BEHALF OF EQUITYBUILD INVESTORS**

EquityBuild investors Annie Chang, Tiger Chang Investments, LLC, Asians Investing in Real Estate, LLC, Melanie Gonzales, Gary Gonzales, and G&M You-Nique Property, LLC (the “Chang Plaintiffs” or “Plaintiffs”), who are the named plaintiffs in a class action case pending in federal court in California against Wells Fargo Bank, N.A. (“Wells Fargo”), hereby move this Court for an Order (1) permitting them to serve a subpoena on the Receiver, and (2) permitting them to use the records obtained pursuant to such subpoena in their case against Wells Fargo. The Receiver does not oppose this Motion by the *Chang* Plaintiffs. In support of this motion, the *Chang* Plaintiffs hereby state as follows:

1. On August 15, 2018, the United States Securities and Exchange Commission (“SEC”) filed a complaint against defendants EquityBuild, Inc. (“EquityBuild”), EquityBuild Finance, LLC

(“EquityBuild Finance”), Jerome H. Cohen and Shaun D. Cohen (collectively “Defendants”). ECF No. 1 (the “SEC Action”).

2. As outlined in the SEC’s complaint, Defendants operated a Ponzi scheme through which they fraudulently induced more than 900 investors to invest at least \$135 million in residential properties on the south side of Chicago. *Id.* ¶¶1-2.

3. The Court appointed the Receiver in the SEC Action on August 17, 2018, to marshal and preserve Receivership Assets, as set forth in ¶3 of the Order Appointing Receiver (the “Receiver Order”). ECF No. 16. When the Receiver finishes his work, he will submit to the Court a plan to distribute the remaining Receivership Assets to the injured investors and other eligible creditors. *See Investor Bulletin: 10 Things to Know About Receivers* (Aug. 27, 2015), https://www.sec.gov/oiea/investor-alerts-bulletins/ib_receivers.html (last visited March 23, 2021).

I. The *Chang* Action Against Wells Fargo

4. The *Chang* Plaintiffs are six of the more than 900 investors and victims of the EquityBuild Ponzi scheme who are class members of the proceeding pending in the Northern District of California against Wells Fargo Bank in an action captioned, *Chang v. Wells Fargo Bank, N.A.*, Civil Action No. 19-cv-01973 (N.D. Cal.) (the “*Chang* Action”), seeking to hold Wells Fargo accountable for the critical role it played in the EquityBuild Ponzi scheme. The *Chang* Plaintiffs specifically allege that Wells Fargo aided and abetted the EquityBuild Ponzi scheme. The *Chang* Action is currently in the discovery phase.

5. Through this Motion, the *Chang* Plaintiffs seek limited relief from the Receiver Order, to allow them to serve a narrowly tailored subpoena (issued in the *Chang* Action) on the Receiver, as well as modification of the Agreed Confidentiality Order (ECF No. 917), which would allow

the *Chang* to use documents obtained in this case or otherwise from the Receiver in the *Chang* Action.

II. The Documents Sought In the Subpoena Are Being Made Available To Claimants for Use In this Action

6. The subpoena seeks five categories of documents in the Receiver's possession relevant to the *Chang* Plaintiffs' claims against Wells Fargo: (1) documents concerning the opening, closing, or modification of accounts with Wells Fargo; (2) Wells Fargo transactional records; (3) relevant communications between EquityBuild and Wells Fargo; (4) communications among and between the EquityBuild perpetrators concerning Wells Fargo; and (5) the claim forms and related documents that the Receiver received from damaged investors. A copy of the Subpoena is attached hereto as Exhibit A.

7. Requests 1-4 of the proposed Subpoena seek EquityBuild documents that would be among the files in the Receiver's possession that are in the process of being loaded into a database for access by any claimant in the instant matter who chooses to obtain a license from the vendor for this purpose. The *Chang* Plaintiffs and their counsel will be given the opportunity to obtain access to the database pursuant to the Court's Order (ECF No. 940) in order to search for and download documents for use in the SEC Action during the six-month period that they will be available to claimants. The *Chang* Plaintiffs agree that if the Court grants the relief requested in this motion, that they will collect documents responsive to Requests 1-4 from this database of EquityBuild records, and will not seek to cause the Receiver to locate or otherwise produce responsive records.

8. Request 5 of the proposed Subpoena seeks the claims documentation that already has been distributed to claimants on a property-by-property basis in this matter. The named *Chang* Plaintiffs have received claims documentation relating to the specific properties in which they

invested for use in the SEC Action. But because *Chang* is a class action filed on behalf of all investors who were harmed by Wells Fargo, the Subpoena seek production of the claims documentation for all properties in the receivership estate which are the subject of investor claims. The Receiver has indicated that he will be able to comply with Request No. 5 of the Subpoena if so ordered.

III. This Court Should Grant the *Chang* Plaintiffs Permission to Serve a Subpoena on the Receiver.

9. In Section VII of the Receiver Order, captioned “Injunction Against Interference with Receiver,” “all persons receiving notice of this Order” are restrained from interfering with the Receiver in certain circumstances.

10. Paragraph 29 of the Receiver Order provides as follows:

“29. The Receivership Defendants and all persons receiving notice of this Order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written consent of the Receiver, which would:

A. Interfere with the Receiver’s efforts to take control, possession, or management of any Receivership Assets; such prohibited actions include but are not limited to, using self-help or executing or *issuing* or causing the execution or issuance of any court attachment, *subpoena*, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Assets....”

ECF No. 16 (*emphasis supplied*).

11. The *Chang* Plaintiffs do not seek to:

- a. Hinder, obstruct or interfere with the Receiver by concealing, destroying or altering records of information, *Id.* at ¶29(b);
- b. Dissipate or otherwise diminish the value of any Receivership Assets, *Id.* at ¶29(c);

- c. Transact business of the Receivership Defendants or transfer Receivership Assets, *Id.* at ¶29(d);
- d. Destroy, alter or dispose of relevant documents, *Id.* at ¶29(e);
- e. Fail or refuse to cooperate with the Receiver, *Id.* at ¶¶29(f) and (g);
- f. Interfere with or harass the Receiver, *Id.* at ¶29(h); or
- g. Otherwise fail to comply with the Receiver Order.

12. The *Chang* Plaintiffs respectfully submit that service of the subpoena on the Receiver in the *Chang* Action would not violate the Receiver Order. Indeed, since the Receiver's efforts are taken to benefit the investors and other creditors in EquityBuild, including the *Chang* Plaintiffs, allowing the *Chang* Plaintiffs access to the Receiver's documents would be consistent with the Receiver's mandate.

IV. The Court Should Modify The Confidentiality Order to Allow the *Chang* Plaintiffs to Use Documents Obtained in this Litigation in the *Chang* Action.

13. On December 19, 2020, this Court entered an Agreed Confidentiality Order, ECF 917, to govern the production and use of (i) all claims and documentation submitted to the Receiver in connection with the claims process in this action; (ii) all documentation and information that contains Confidential Information (as defined [therein]) produced by any party in the claims process, (iii) EquityBuild Documents (as defined [therein]); and (iv) all Discovery Material (as defined [therein]) produced by any party or nonparty in this litigation.

Agreed Confidentiality Order p.1, ECF 917.

14. The Court's Agreed Confidentiality Order, to which the *Chang* Plaintiffs are bound, requires documents such as those sought by the *Chang* Plaintiffs through their proposed subpoena to be treated as confidential and provides that "Confidential Information shall not be used or disclosed by the parties, counsel for the parties or [certain] other persons ... *for any purpose whatsoever other than in this litigation.*" Agreed Confidentiality Order § 5(a).

15. The *Chang* Plaintiffs and their counsel seek an order from this Court modifying the Agreed Confidentiality Order to permit them to use the documents they seek from the Receiver pursuant to the proposed subpoena in the *Chang* Action. First, the *Chang* Plaintiffs are willing to abide by the protections instituted by this Court pursuant to the Agreed Confidentiality Order and the spirit of that Order by protecting the confidentiality of the records they seek from the Receiver and using those records solely for the *Chang* Action and not for any other purpose whatsoever. Second, the *Chang* Action is intended to benefit many of the same EquityBuild investors who may benefit from the efforts of the Receiver in this case. Fairness suggests that the EquityBuild investors should be permitted to use those same records from the case before this Court to pursue their claims against Wells Fargo. Third, the documents sought by the *Chang* Plaintiffs from the Receiver would be subject to a Protective Order currently in force in the *Chang* Action, ECF 52, which would offer an additional layer of protection to such records. See Exhibit B, attached hereto.

16. Consistent with the Federal Rules of Civil Procedure, the *Chang* Plaintiffs will share any discovery obtained in connection with the *Chang* Action with Wells Fargo. In that regard, the *Chang* Plaintiffs will provide Wells Fargo with copies of any documents that it obtains as part of discovery during the claims process in this matter, and any claims submissions received pursuant to the subpoena as described in paragraph 8 above. Wells Fargo's access to such documents is conditioned upon Wells Fargo's agreement that it is willing to abide by the protections under the Agreed Confidentiality Order and the spirit of that Order by protecting the confidentiality of the records it obtains via the *Chang* Plaintiffs' subpoena to the Receiver and use those records solely for the *Chang* Action and not for any other purpose whatsoever.

WHEREFORE, for the reasons set forth above, the *Chang* Plaintiffs respectfully request that the Court grant this motion and enter the Proposed Order (1) allowing them to serve a subpoena upon the Receiver in this Action, and (2) modifying the Confidentiality Order to allow them to use the documents obtained in the SEC Action in the *Chang* Action.

Respectfully submitted,

Dated: August 25, 2021

/s/ Michael D. Smith, Esq.
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CERTIFICATE OF SERVICE

I, Michael D. Smith, certify that on August 25, 2021, the foregoing document entitled MOTION TO SERVE SUBPOENA ON RECEIVER was filed electronically via the Court's EFC; thereby, upon completion, the ECF system automatically generated a "Notice of Electronic Filing" as service through CM/ECF to registered e-mail addresses of parties of record in the case.

Dated: August 25, 2021
Chicago, Illinois

/s/ Michael D. Smith, Esq.

EXHIBIT A

SCHEDULE A

DEFINITIONS

1. “Action” refers to the above-captioned lawsuit.
 2. “All” shall include the term “each” and vice-versa, as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside the scope of the request.
 3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside the scope of the request.
 4. “Communication” refers to any actual or proposed exchange of information, documentation of interviews, discussions, or phone calls, words, numbers, pictures, charts, studies, slide presentations or graphs by any means of transmission, sending or receipt of information of any kind by or through any means including, but not limited to, personal delivery, speech, writings, Documents (as defined herein), language (machine, foreign, or otherwise) of any kind, computer, electronics or Electronically-Stored Information (as defined herein), sound, radio or video signals, telecommunication, telephone, facsimile, mail, film, photographic film of all types, or other media of any kind. The term “communication” also includes, without limitation, all inquiries, discussions, conversations, Correspondence (as defined herein), negotiations, agreements, presentations, understandings, Meetings (as defined herein), notices, requests, responses, demands, complaints, press, publicity, or trade releases.
- “Concern” or “concerning” means relating to, referring to, reflecting upon, describing, evidencing, or constituting.

5. “Correspondence” means any letter, memorandum, note, e-mail, facsimile, text message, instant message, internet message board posting, smartphone message, or any other writing containing a communication from one person or persons to another.

6. “Document” is intended to have the broadest possible meaning under Rule 34(a) of the Federal Rules of Civil Procedure, and includes, without limitation, electronic or computerized data compilations; electronic file backup tapes; hard drives and images of hard drives; all drafts; communications; correspondence; memoranda; records; presentations; books; manuals; reports and summaries of personal conversations or interviews; diaries; graphs; charts; diagrams; tables; photographs; recordings; tapes; microfilms; minutes, transcripts and summaries of Meetings (as defined herein) or conferences; records and reports of consultants; press releases; stenographic, handwritten, or any other notes; work papers; checks and check vouchers; check stubs and receipts; statements; scripts; questions and answers (“Q&A’s”); interview memos; transcripts of testimony; subpoenas; and any paper or writing of whatever description, including any computer database or information contained in any computer although not yet printed out. A draft or non-identical copy of any document is a separate document within the meaning of this term. Otherwise identical copies of documents that were maintained in the files of different custodians are separate documents within the meaning of this term.

7. “Electronically-Stored Information” or “ESI” includes, but is not limited to, the following:

- (a) all items covered by Fed. R. Civ. P. 34(a)(1)(A);
- (b) information or data that is generated, received, processed, and recorded by computers and other electronic devices, including metadata (e.g., author, recipient, file name, file creation date, file modification date, etc.);
- (c) files, information, or data saved on backup tapes or hard drives;

- (d) internal or external web sites;
- (e) output resulting from the use of any software program, including, without limitation, word processing documents, spreadsheets, database files, charts, graphs, files, electronic mail, instant messenger (or similar programs), bulletin board programs, operating systems, source code, PRF files, PRC files, batch files, ASCII files, and all miscellaneous media on which they reside regardless of whether said electronic data exists in an active file, a deleted file, or file fragment; and activity listings of electronic mail receipts and transmittals; and any and all items stored on computer memories, hard disks, USB flash drives, CD-ROM, magnetic tape, microfiche, or on any other media for digital data storage, or transmittal, such as, but not limited to, personal digital assistants (e.g., iPads), hand-held wireless devices (e.g., iPhones or BlackBerry or Android smartphones), or similar devices, and file folder tabs, or containers and labels appended to, or relating to, any physical storage device associated with each original or copy of all documents requested herein.

8. “Employee” means any person who acted or purported to act on behalf of an entity, or another person or persons including, but not limited to, all present and former officers, directors, executives, board members, partners, principals, managers, staff personnel, accountants, agents, representatives, in house attorneys, independent contractors, advisors, and consultants of such entity, person, or persons.

9. “Equitybuild Scheme Perpetrator” means Jerome Cohen, Sean Cohn, and/or any Equitybuild Employee.

10. “Including” is used to emphasize the type of document requested and does not limit the request in any way.

11. “Meeting” refers to the contemporaneous presence of any natural person (including by telephone) for any purpose, whether or not such presence was prearranged and whether or not the meeting was formal or informal or occurred in connection with some other activity. Presentations and conferences are also included within the meaning of this term.

12. “Person” or “Persons” includes any natural person, firm, association, organization, partnership, limited partnership, sole proprietorship, trust, corporation, or legal or governmental entity, association, or body.

13. “Refer” or “relate” or “referring” or “relating” means all documents that explicitly or implicitly, in whole or in part, were received in conjunction with or were generated as a result of, the subject matter of the request, including, but not limited to, all documents that reflect, record, memorialize, discuss, describe, compare, consider, concern, constitute, embody, evaluate, analyze, review, report on, comment on, impinge upon, or impact the subject matter of the request.

14. “Wells Fargo” means Wells Fargo Bank, N.A. and any of its subsidiaries or Employees.

15. “Whitley Penn Subpoena” means the subpoena that the plaintiffs served upon Whitley Penn in the action captioned, *Chang et al v. Wells Fargo Bank, N.A.*, No. 19-CV-01973 (N.D. Cal).

16. “You,” or “Your” means Kevin Duff, Esq., the Court-appointed Receiver in the action captioned *United States Securities and Exchange Commission v. Equitybuild, Inc.*, No. 1:18-cv-5587 (N.D. Ill. filed Aug. 15, 2018).

I. DOCUMENTS REQUESTED

REQUEST NO. 1. All Documents and Communications concerning or reflecting the opening, closing, operation, modification of, or amendment to any Equitybuild or Equitybuild Scheme Perpetrator account with Wells Fargo.

REQUEST NO. 2. All Documents concerning transactional level records of all activity in Wells Fargo accounts, including debits, credits, deposits, confirmations, wires, transfers, and cleared and bounced checks.

REQUEST NO. 3. All Communications between Equitybuild or any Equitybuild Scheme Perpetrator, on the one hand, and Wells Fargo, on the other hand, concerning any (1) transactions, balances, or other activity in any Equitybuild or Equitybuild Scheme Perpetrator account at Wells Fargo, including, for the avoidance of doubt, any notices of insufficient funds in such accounts; (2) any business relationship between Equitybuild or any Equitybuild Scheme Perpetrator and Wells Fargo, including any such relationship that is unrelated to the Equitybuild Ponzi scheme; (3) any due diligence conducted by Wells Fargo with respect to Equitybuild or any Equitybuild Scheme Perpetrator.

REQUEST NO. 4. All Documents and Communications involving or concerning Wells Fargo, on the one hand, and any Equitybuild investors, on the other hand, including Documents and Communications concerning Plaintiffs in this Action.

REQUEST NO. 5. All claim forms and supporting documentation for such claim forms submitted by Equitybuild investors to the Receiver as part of the Receiver's claims process in the action captioned *United States Securities and Exchange Commission v. Equitybuild, Inc.*, No. 1:18-cv-5587 (N.D. Ill. filed Aug. 15, 2018).

August __, 2021

Respectfully submitted,

EXHIBIT B

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23 *Counsel for Plaintiffs and the Class*
24 (Additional Counsel Appear on Signature Page)

25 **UNITED STATES DISTRICT COURT**
26 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

27 ANNIE CHANG, TIGER CHANG
28 INVESTMENTS, LLC, ASIANS
INVESTING IN REAL ESTATE, LLC,
MELANIE GONZALES GARY
GONZALES, and G&M YOU-NIQUES
PROPERTY LLC, Individually and On Behalf
of All Others Similarly situated,

Plaintiffs,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

Case No. 4:19-cv-01973-HSG

STIPULATED PROTECTIVE ORDER FOR
STANDARD LITIGATION

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the Parties hereby stipulate to and petition the court to enter the following
6 Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The Parties further acknowledge, as
10 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
12 followed and the standards that will be applied when a Party seeks permission from the court to
13 file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” means and refers to Disclosure or Discovery Material that
18 contains or reflects trade secrets, confidential or proprietary business or financial information,
19 commercially sensitive information, and/or private personal, client, or customer information
20 about any Party, Non-Party, putative class member, or employee of any Party.

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
22 well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or items that
24 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among other things,
27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
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1 responses to discovery in this matter.

2 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent
3 to the litigation, along with his or her employees and support personnel, who has been retained
4 by a Party or its counsel to serve as an expert witness or as a consultant in this action.

5 2.7 House Counsel: attorneys who are employees of a Party to this action. House
6 Counsel does not include Outside Counsel of Record or any other outside counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or other
8 legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a Party to this
10 action but are retained to represent or advise a Party to this action and have appeared in this
11 action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of
12 that Party.

13 2.10 Party: any named party to this action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their support
15 staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support services
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
20 organizing, storing, or retrieving data in any form or medium) and their employees and
21 subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
23 “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 3. SCOPE
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1 The protections conferred by this Stipulation and Order cover not only Protected Material
2 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
3 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
4 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
5 However, the protections conferred by this Stipulation and Order do not cover the following
6 information: (a) any information that is in the public domain at the time of disclosure to a
7 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
8 a result of publication not involving a violation of this Order, including becoming part of the
9 public record through trial or otherwise; and (b) any information known to the Receiving Party
10 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
11 obtained the information lawfully and under no obligation of confidentiality to the Designating
12 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

13 4. DURATION

14 Even after final disposition of this litigation, the confidentiality obligations imposed by
15 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
16 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
17 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
18 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
19 action, including the time limits for filing any motions or applications for extension of time
20 pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
23 or Non-Party that designates information or items for protection under this Order must take care
24 to limit any such designation to material that qualifies under the appropriate standards. The
25 Designating Party must designate for protection only material, documents, items, or oral or
26 written communications that qualify – so that other portions of the material, documents, items, or
27 communications for which protection is not warranted are not swept unjustifiably within the
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1 ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
3 shown to be clearly unjustified or that have been made for an improper use (e.g., to unnecessarily
4 encumber or retard the case development process or to impose unnecessary expenses and
5 burdens on other Parties) expose the Designating Party to sanctions. The Parties agree that
6 confidentiality designations will be applied on the document level; each page of the document
7 will be branded “CONFIDENTIAL” if any portion of the document is Confidential. The
8 Receiving Party can challenge the designation of specific pages in a “CONFIDENTIAL”
9 document using the process outlined in Section 6 below. The Designating Party will comply with
10 reasonable requests to remove the “CONFIDENTIAL” designation on pages that do not contain
11 Confidential information.

12 If it comes to a Designating Party’s attention that information or items that it designated
13 for protection do not qualify for protection, that Designating Party must promptly notify all other
14 Parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
16 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
17 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
18 designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents, but
21 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
22 Party affix the legend “CONFIDENTIAL” to each page of the document that contains Protected
23 Material, or, in the case of an electronic document that is produced in native form or is
24 impracticable to produce in a form with the affixed legend, by placing the legend on a
25 placeholder document bearing the document’s production number.

26 A Party or Non-Party that makes original documents or materials available for inspection
27 need not designate them for protection until after the inspecting Party has indicated which
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1 material it would like copied and produced. During the inspection and before the designation, all
2 of the material made available for inspection shall be deemed “CONFIDENTIAL” After the
3 inspecting Party has identified the documents it wants copied and produced, the Producing Party
4 must determine which documents qualify for protection under this Order. Then, before producing
5 the specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each
6 page of the document that contains Protected Material, or, in the case of an electronic document
7 that is produced in native form or is impracticable to produce in a form with the affixed legend,
8 by placing the legend on a placeholder document bearing the document’s production number.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
10 Designating Party identify on the record, before the close of the deposition, hearing, or other
11 proceeding, all protected testimony.

12 (c) for information produced in some form other than documentary and for any other
13 tangible items, that the Producing Party affix in a prominent place on the exterior of the
14 container or containers in which the information or item is stored the legend
15 “CONFIDENTIAL.”

16 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
17 information or items does not, standing alone, waive the Designating Party’s right to secure
18 protection under this Order for such material. Upon timely correction of a designation, the
19 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
20 with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
23 confidentiality at any time. A Party does not waive its right to challenge a confidentiality
24 designation by electing not to mount a challenge promptly after the original designation is
25 disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
27 process by providing written notice of each designation it is challenging and describing the basis
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1 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
2 notice must specifically identify the documents subject to challenge by Bates number and recite
3 that the challenge to confidentiality is being made in accordance with this specific paragraph of
4 the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
5 begin the process by conferring directly within 14 days of the date of service of notice. In
6 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
7 designation was not proper and must give the Designating Party an opportunity to review the
8 designated material, to reconsider the circumstances, and, if no change in designation is offered,
9 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
10 stage of the challenge process only if it has engaged in this meet and confer process first or
11 establishes that the Designating Party is unwilling to participate in the meet and confer process in
12 a timely manner.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
15 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
16 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
17 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
18 accompanied by a competent declaration affirming that the movant has complied with the meet
19 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
20 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
21 shall automatically waive the confidentiality designation for each challenged designation. In
22 addition, the Challenging Party may file a motion challenging a confidentiality designation at
23 any time if there is good cause for doing so, including a challenge to the designation of a
24 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
25 be accompanied by a competent declaration affirming that the movant has complied with the
26 meet and confer requirements imposed by the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the Designating
28

1 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
2 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
3 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
4 file a motion to retain confidentiality as described above, all Parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the Designating Party's
6 designation until the court rules on the challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
9 or produced by another Party or by a Non-Party in connection with this case only for
10 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
11 disclosed only to the categories of persons and under the conditions described in this Order.
12 When the litigation has been terminated, a Receiving Party must comply with the provisions of
13 section 13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and
15 in a secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
17 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
18 disclose any information or item designated "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
21 information for this litigation;

22 (b) the officers, directors, and employees (including House Counsel) of the
23 Defendants to whom disclosure is reasonably necessary for this litigation and who have signed
24 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (c) Named Plaintiffs who have signed the "Acknowledgment and Agreement to Be
26 Bound" that is attached hereto as Exhibit A;

27 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
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1 reasonably necessary for this litigation and who have signed the “Acknowledgment and
2 Agreement to Be Bound” (Exhibit A);

3 (e) the court and its personnel, and any appellate court in this litigation;

4 (f) court reporters, stenographers, or video operators, and their staff and Professional
5 Vendors to whom disclosure is reasonably necessary for this litigation;

6 (g) Professional jury or trial consultants and mock jurors to whom disclosure is
7 reasonably necessary for this litigation and who have signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A);

9 (h) during their depositions, witnesses (who do not otherwise fit (i) below) and their
10 counsel, in the action to whom disclosure is reasonably necessary and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
12 Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
13 to depositions that reveal Protected Material must be separately bound by the court reporter and
14 may not be disclosed to anyone except as permitted under this Stipulated Protective Order ;

15 (i) the author or recipient of a document containing the information or a custodian or
16 other person who otherwise possessed or knew the information; or

17 (j) special masters, mediators, or other third parties retained by the Parties for
18 settlement purposes or resolution of discovery disputes or mediation..

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
20 LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
23 Party must:

24 (a) promptly notify in writing the Designating Party. Such notification shall include a
25 copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue in
27 the other litigation that some or all of the material covered by the subpoena or order is subject to
28

1 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
2 and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
4 Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the
6 subpoena or court order shall not produce any information designated in this action as
7 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
8 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
9 shall bear the burden and expense of seeking protection in that court of its confidential material –
10 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
11 Party in this action to disobey a lawful directive from another court.

12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
13 LITIGATION

14 (a) The terms of this Order are applicable to information produced by a Non-Party in
15 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
16 connection with this litigation is protected by the remedies and relief provided by this Order.
17 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
18 additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to produce a
20 Non-Party’s confidential information in its possession, and the Party is subject to an agreement
21 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party that some
23 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
25 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
26 the information requested; and

27 (3) make the information requested available for inspection by the Non-Party.
28

1 (c) If the Non-Party fails to object or seek a protective order from this court within
2 14 days of receiving the notice and accompanying information, the Receiving Party may produce
3 the Non-Party’s confidential information responsive to the discovery request. If the Non-Party
4 timely seeks a protective order, the Receiving Party shall not produce any information in its
5 possession or control that is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
7 burden and expense of seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
10 Material to any person or in any circumstance not authorized under this Stipulated Protective
11 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
12 unauthorized disclosures, (b) use commercially reasonable efforts to retrieve all unauthorized
13 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
14 disclosures were made of all the terms of this Order, and (d) request such person or persons to
15 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

16 11. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

17 11.1 Pursuant to Federal Rule of Evidence 502(d), if a Producing Party discloses
18 information (including both paper documents and electronically stored information) subject to
19 protection by the attorney-client, the Bank Examination privilege and/or protected by the work-
20 product, joint defense or other similar doctrine, or by another legal privilege protecting
21 information from discovery, such disclosure shall not constitute a waiver of any privilege or
22 other protection, provided that the Producing Party notifies the Receiving Party, in writing, of the
23 production after its discovery of the same.

24 11.2 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other protection, the
26 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
27 26(b)(5)(B).
28

1 11.3 This stipulated agreement set forth in this section and its subparts does not
2 constitute a concession by any Party that any documents are subject to protection by the
3 attorney-client privilege, the Bank Examination privilege and/or protected by the work-product,
4 joint defense or other similar doctrine, or by another legal privilege. This agreement also is not
5 intended to waive or limit in any way any Party's right to contest any privilege claims that may
6 be asserted with respect to any of the documents produced except to the extent stated in the
7 agreement.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
10 seek its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
12 Order no Party waives any right it otherwise would have to object to disclosing or producing any
13 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
14 no Party waives any right to object on any ground to use in evidence of any of the material
15 covered by this Protective Order.

16 12.3 Filing Protected Material. Without written permission from the Designating Party
17 or a court order secured after appropriate notice to all interested persons, a Party may not file in
18 the public record in this action any Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
20 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
21 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
22 request establishing that the Protected Material at issue is privileged, protectable as a trade
23 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
24 Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
25 the Receiving Party may file the information in the public record pursuant to Civil Local Rule
26 79-5(e) unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
3 Receiving Party must return all Protected Material to the Producing Party or destroy such
4 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
5 compilations, summaries, and any other format reproducing or capturing any of the Protected
6 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
7 submit a written certification to the Producing Party (and, if not the same person or entity, to the
8 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
9 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
10 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
11 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
12 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
13 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
14 product, and consultant and expert work product, even if such materials contain Protected
15 Material. Any such archival copies that contain or constitute Protected Material remain subject to
16 this Protective Order as set forth in Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: September 11, 2019

ALTSHULER BERZON LLP

4 By: /s/ Eve Cervantez

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22 *Counsel for Plaintiffs and the Class*
23 *(*pro hac vice)*

1 Dated: September 11, 2019

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22 Facsimile: (412) 667-7993

23
24 *Counsel for Defendant*

25
26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27
28 DATED: 9/16/2019


United States District ~~Magistrate~~ Judge

ECF ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), the filer attests that concurrence in the filing of this document has been obtained from each of the other signatories thereto.

Executed this 11th day of September, 2019, at San Francisco, California.

/s/ Eve H. Cervantez

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety
5 and understand the Stipulated Protective Order that was issued by the United States District
6 Court for the Northern District of California on _____ [date] in the case of **Chang, et**
7 **al. v. Wells Fargo Bank, N.A., Case No. 4:19-cv-01973-HSG.** I agree to comply with and
8 to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this
16 action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or any
20 proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No.
v.)	18-CV-5587
)	Hon. John Z. Lee
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,)	Magistrate Judge Young B. Kim
)	
Defendants.)	
)	

**ORDER GRANTING MOTION SEEKING LIMITED RELIEF FROM ORDER
APPOINTING THE RECEIVER AND AGREED CONFIDENTIALITY ORDER, TO
SERVE A SUBPOENA UPON RECEIVER AND USE SUBPOENAED RECORDS IN
CLASS ACTION PROCEEDINGS ON BEHALF OF EQUITYBUILD INVESTORS**

WHEREAS, by Order Appointing Receiver dated August 17, 2018 (Dkt. 16) this Court took exclusive jurisdiction and possession of the assets of all Receivership Defendants (the “Receiver Order”);

WHEREAS, the Receiver Order provides as follows:

The Receivership Defendants and all persons receiving notice of this Order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written consent of the Receiver, which would:

- A. Interfere with the Receiver’s efforts to take control, possession, or management of any Receivership Assets; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Assets....”

ECF No. 16, Paragraph 29;

WHEREAS, on December 19, 2020, this Court entered an Agreed Confidentiality Order in the above-captioned action, ECF No. 917:

to govern the production and use of (i) all claims and documentation submitted to the Receiver in connection with the claims process in this action; (ii) all documentation and information that contains Confidential Information (as defined [therein]) produced by any party in the claims process, (iii) EquityBuild Documents (as defined [therein]); and (iv) all Discovery Material (as defined [therein]) produced by any party or nonparty in this litigation;

WHEREAS, the Agreed Confidentiality Order provides that “Confidential Information shall not be used or disclosed by the parties, counsel for the parties or [certain] other persons ... for any purpose whatsoever other than in this litigation.” ECF No. 917, ¶ 5(a).

WHEREAS, on August 25, 2021, EquityBuild investors Annie Chang, Tiger Chang Investments, LLC, Asians Investing in Real Estate, LLC, Melanie Gonzales, Gary Gonzales, and G&M You-Nique Property, LLC (the “*Chang* Plaintiffs”), who are the named plaintiffs in a class action case pending in federal court in California against Wells Fargo Bank, N.A. (the “*Chang* Action”), moved this Court for an Order (1) permitting them to serve a subpoena on the Receiver seeking documents that might assist EquityBuild investors in their case against Wells Fargo, (2) modifying the Agreed Confidentiality Order to permit them to use documents obtained from the *Chang* Plaintiff’s review of documents in the EquityBuild database and/or the records obtained pursuant to such subpoena in the *Chang* Action, and (3) allowing the *Chang* Plaintiffs to provide Wells Fargo with documents obtained pursuant to the subpoena and/or otherwise are obtained from the EquityBuild database conditioned upon Wells Fargo’s agreement that it is willing to abide by the protections under the Agreed Confidentiality Order.

WHEREAS, the Receiver does not oppose the Motion by the *Chang* Plaintiffs;

WHEREAS, the Court finds that the proposed subpoena does not violate the Receiver Order;

NOW, THEREFORE, it is hereby ORDERED that:

1. The *Chang* Plaintiffs' motion is GRANTED.
2. The *Chang* Plaintiffs may serve a subpoena on the Receiver substantially in the form of Exhibit A attached to the *Chang* Plaintiffs' motion; and
3. The Agreed Confidentiality Order, ECF No. 917, is hereby modified to permit the *Chang* Plaintiffs to use any documents obtained from the *Chang* Plaintiff's review of documents in the EquityBuild database and/or documents produced by the Receiver in response to the subpoena in connection with the *Chang* Action.
4. The *Chang* Plaintiffs will provide Wells Fargo with documents that it uses as part of the claims process in this matter and proofs of claims provided in response to the subpoena conditioned upon Wells Fargo's agreement that it is willing to abide by the protections under the Agreed Confidentiality Order.

Entered:

John Z. Lee
United States District Court Judge