

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

<b>U.S. SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No.</b>
	)	<b>1:18-cv-5587</b>
v.	)	
	)	<b>Hon. John Z. Lee</b>
<b>EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, and SHAUN D. COHEN,</b>	)	
	)	<b>Magistrate Judge Young B. Kim</b>
<b>Defendants.</b>	)	

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

Wells Fargo Bank, N.A. (“Wells Fargo”), named defendant in a class action titled *Annie Chang, et al. v. Wells Fargo Bank, N.A.*, Case No. 4:19-cv-01973-HSG, United States District Court, Northern District of California (the “*Chang Action*”), by and through its undersigned counsel, hereby moves the Court for an Order permitting Wells Fargo to serve a subpoena on the Receiver and use the records obtained in the *Chang Action*. Plaintiffs in the *Chang Action* are investors and claimants in this action and assert their claims on behalf of themselves and a putative class they allege are similarly situated. *Chang Action*, ECF 1 at 1. In light of the discussion of the issue during the August 31, 2021 hearing before this Court, as well as meet and confer discussions held between counsel for Wells Fargo and counsel for the Receiver, the Receiver has informed Wells Fargo that he will not contest this Motion. In support of this Motion, Wells Fargo states as follows:

1. On August 15, 2018, the United States Securities and Exchange (“SEC”) filed a complaint in this case against defendants EquityBuild, Inc., EquityBuild Finance, LLC, Jerome H. Cohen and Shaun D. Cohen (collectively, “EquityBuild”) (hereinafter the “SEC Action”). ECF 1.

2. The SEC’s complaint alleges that Defendants operated a Ponzi Scheme promising investors safe and secured investments secured by income-producing real estate. *Id.* ¶ 2. The SEC alleges that, in reality, the real estate properties were not as profitable and Defendants could only pay earlier investors by raising funds from new investors. *Id.* ¶ 3.

3. On August 17, 2018, this Court appointed Kevin B. Duff of the firm Rachlis Duff Adler Peel & Kaplan LLC as the federal equity receiver (the “Receiver”) for the EquityBuild estate. ECF 16 (the “Receivership Order”) ¶ 2. As part of the powers and duties conferred upon him by this Court, the Receiver is tasked with managing the EquityBuild estate. *Id.* ¶¶ 35-41, 62-66.

#### **I. Chang Class Action and Plaintiffs’ Limited Motion**

4. On April 12, 2019, Plaintiffs 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”), as investors of the EquityBuild scheme and on behalf others they allege are similarly situated, filed the *Chang* Action against Wells Fargo, advancing claims that Wells Fargo aided and abetted the EquityBuild scheme. *Chang* Action, ECF 1.

5. On August 25, 2021, the *Chang* Plaintiffs filed a 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. ECF 1034. In brief, the *Chang* Plaintiffs filed a motion requesting that

this Court permit them to serve a subpoena on the Receiver to gain access to a repository of EquityBuild documents and allow them to use the records obtained pursuant to the subpoena in their case against Wells Fargo. *Id.* at 1. The Receiver did not contest that motion, just as he does not contest this motion.

6. The Court held a hearing on the *Chang* Plaintiffs' motion on August 31, 2021, which was attended by the SEC, the Receiver, the *Chang* Plaintiffs' counsel, and counsel for Wells Fargo. The Court granted the *Chang* Plaintiffs' motion as to the EquityBuild database and indicated that Wells Fargo could file a motion for leave to serve a subpoena on the Receiver for equal access to the EquityBuild database. *See generally* ECF 1040 (granting the *Chang* Plaintiffs' motion in part to the extent that the Plaintiffs "may use documents contained in the EquityBuild document database for the purposes of the [Chang Action], consistent with the protective Order in that action").

7. Wells Fargo now moves this Court for leave to serve a subpoena, from the *Chang* Action, on the Receiver for equal access to the EquityBuild database and permit Wells Fargo to use the documents from the EquityBuild database as needed in the *Chang* Action.

## **II. Wells Fargo's Motion Should Be Granted to Permit Leave to Subpoena the Receiver and Use Produced Documents in the *Chang* Action**

8. Wells Fargo's Motion should be granted because documents in the EquityBuild database have been made available to the *Chang* Plaintiffs, and the Motion does not run afoul of any portion of the Receivership Order.

9. Wells Fargo's Subpoena to the Receiver seeks the same access to EquityBuild documents as granted by this Court [ECF 1040] in response to the *Chang* Plaintiffs' motion [ECF 1034]. A copy of the Subpoena is attached hereto as Exhibit A.

10. Wells Fargo seeks equal access to the EquityBuild database and permission to use those documents in the *Chang* Action, as permitted to the *Chang* Plaintiffs by this Court, because otherwise, the *Chang* Plaintiffs will have full access to search and review documents in the EquityBuild database but only download and produce to Wells Fargo what they determine to be “relevant.” Such discretion by the *Chang* Plaintiffs will leave Wells Fargo without independent right to review and access the documents for its claims and defenses in the *Chang* Action and goes against the spirit and purpose of the discovery rules under the Federal Rules of Civil Procedure. *See, e.g., Ind. H. B. R.R. Co. v. Am. Cyanamid Co.*, No. 80 C 1857, 1991 U.S. Dist. LEXIS 13983, at \*10 n.4 (N.D. Ill. Sep. 26, 1991) (“These [discovery] rules, as are all discovery rules, are intended to provide each party with equal access to all relevant non-privileged information before trial.”).

11. Wells Fargo’s Motion and request for equal access to the EquityBuild database does not seek to violate any portion of the Receivership Order, particularly in that Wells Fargo does not seek to interfere with the Receiver’s duties and efforts to pursue and execute the duties conferred upon him by this Court. *See* Receivership Order ¶ 29. Wells Fargo will not burden the Receiver to locate or produce records responsive to the subpoena, but agrees that it will assume the burden of searching the EquityBuild database for responsive documents and will bear the costs of its access to the EquityBuild database. Wells Fargo’s use of the documents received and retrieved from the EquityBuild database will be limited to its claims and defenses in the *Chang* Action and pursuant to the Protective Order entered in that case. *See Chang* Action, ECF 52, Protective Order, attached hereto as Exhibit B (“*Chang* Protective Order”).

12. In conjunction with permitting Wells Fargo leave to Subpoena the Receiver, Wells Fargo also agrees to the terms of the Agreed Confidentiality Order [ECF 917], but seeks

an order from this Court granting Wells Fargo exception from the Agreed Confidentiality Order allowing it to use the documents it receives from the Receiver or retrieves from the EquityBuild database in the *Chang* Action. First, this Court has already granted the *Chang* Plaintiffs' motion and has permitted the *Chang* Plaintiffs to use the documents they receive in the *Chang* Action. *See* ECF 1040 at 1 (“[The *Chang* Plaintiffs] may use any documents contained in the EquityBuild document database for the purposes of the [*Chang* Action], consistent with the protective order in that action.”). Wells Fargo will be prejudiced without equal right to use the documents it retrieves from the EquityBuild database in the *Chang* Action. Absent an exception, Wells Fargo will be restricted from fully defending the claims against it by the *Chang* Plaintiffs, who will have an unjust advantage in their ability to utilize the documents they select from the EquityBuild database in the *Chang* Action. Second, Wells Fargo's use of the documents received from the Subpoena in its defense against the claims in the *Chang* Action will have no bearing on the Receiver's duties as conferred by this Court. Therefore, permitting Wells Fargo to use the documents received from the Subpoena in the *Chang* Action will not disrupt or burden the parties or Court in this action or impose any financial burden on the Receiver or the Receivership estate. Lastly, any documents Wells Fargo receives in response to its Subpoena will be subject to the Protective Order in the *Chang* Action, which protects confidential information. *See Chang* Protective Order.

WHEREFORE, for the reasons stated above, Wells Fargo respectfully requests that the Court grant this motion and enter the Proposed Order permitting Wells Fargo to serve the Subpoena attached as Exhibit A upon the Receiver in this Action and use the documents received in the *Chang* Action.

Respectfully,

DATED: September 30, 2021

**MCGUIREWOODS LLP**

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Attorneys for Wells Fargo Bank, N.A.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2021 a copy of the foregoing pleading was filed electronically with the clerk of court via ECF, which will serve all counsel of record.

Executed on this September 30, 2021.

/s/ K. Issac deVyver

K. Issac deVyver

# **EXHIBIT A**



## **SCHEDULE A**

### **DEFINITIONS**

The following definitions shall apply to the Requests set forth herein as well as any other discovery requests that may incorporate these definitions by reference:

A. “Communication” shall mean any transmission or exchange of information, ideas, thoughts, or sentiments between two or more persons, the information, ideas, thoughts, or sentiments transmitted, and any process by which information, ideas, thoughts, or sentiments are transmitted, and shall include written, oral, or electronic communications, whether face-to-face or by means of a telephone, telegraph, telex, telecopier, facsimile, email, or any other method of Communication.

B. “Document” as used herein means all written, graphic, or otherwise recorded matter, including electronically stored information, however produced or reproduced, in Your actual or constructive possession, custody, care or control, including but not limited to originals and all copies of correspondence, drafts (whether or not sent), tapes, disks, diskettes, e-mails, notes, photographs, packaging, envelopes, manuals, sound recordings, memoranda of all types, reports, copies of tax returns and records, receipts, bills, invoices, purchase orders, charge slips, working papers, computer printouts, charts, statistical records, delivery records, stenographers’ notebooks, desk calendars, appointment books, diaries, time sheets and logs, job matter and transaction files, and any papers or recordings similar thereto, whether made or received by You. The term “document” expressly includes audio and visual tapes and tape recordings as well as information stored in any computer system or on computer disks or diskettes of any type.

C. “Chang Plaintiffs” shall collectively refer to Plaintiffs Annie Chang, Tiger Chang Investments, LLC, Asians Investing in Real Estate, LLC, Melanie Gonzales, Gary Gonzales, G&M You-Nique Property, LLC, in the action captioned *Annie Chang, et al. v. Wells Fargo Bank, N.A.*, Case No. 3:19-cv-01973 (N.D. Cal. April 19, 2019) and any of their attorneys, assigns, agents, employees or representatives, as well as any other person acting, authorized to act or purporting to

act on their behalf now, or in the past.

D. The singular of any word used herein shall be deemed to include the plural of such word and the plural shall include the singular.

E. The present tense of any word used herein shall be deemed to include the past tense of such word, and the past tense shall include the present tense.

F. The use of the word “and” shall be deemed to include the word “or” and the use of the word “or” shall be deemed to include the word “and.”

G. The terms “any” and “all” shall be construed as “any and all” such that the request shall be understood in the most expansive and inclusive manner.

H. Unless given a prescribed definition herein, each word or term used shall be construed according to its usual and customary dictionary definition.

I. These definitions shall be used for the defined terms regardless of capitalization.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

#### **REQUEST FOR PRODUCTION NO. 1:**

All Documents and Communications in the Equitybuild database, as made accessible to the *Chang* Plaintiffs pursuant to the Court’s Order at ECF 1040.

# **EXHIBIT B**

1 Eve H. Cervantez (SBN – 164709)  
2 ALTSHULER BERZON LLP  
3 177 Post Street, Suite 300  
4 San Francisco, CA 94108  
5 Telephone: (415) 421-7151  
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7 ecervantez@altshulerberzon.com

8 Mark S. Goldman (*pro hac vice*)  
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11 8 Tower Bridge, Suite 1025  
12 161 Washington Street  
13 Conshohocken, PA 19428  
14 Telephone: (484) 342-0700  
15 goldman@lawgsp.com  
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17 Alan L. Rosca (*pro hac vice*)  
18 GOLDMAN SCARLATO & PENNY P.C.  
19 23250 Chagrin Blvd., Suite 100  
20 Beachwood, OH 44122  
21 Telephone: (484) 342-0700  
22 rosca@lawgsp.com

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

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  
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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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2  
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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

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

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

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

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

U.S. SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	1:18-cv-5587
v.	)	
	)	Hon. John Z. Lee
EQUITYBUILD, INC., EQUITYBUILD	)	
FINANCE, LLC, JEROME H. COHEN,	)	
and SHAUN D. COHEN,	)	Magistrate Judge Young B. Kim
	)	
Defendants.	)	

**[PROPOSED] ORDER GRANTING WELLS FARGO’S MOTION SEEKING LIMITED RELIEF FROM ORDER APPOINTING THE RECEIVER AND AGREED CONFIDENTIALITY ORDER TO SERVE A SUBPOENA UPON RECEIVER AND USE SUBPOEANED RECORDS IN A SEPARATE CLASS ACTION BROUGHT ON BEHALF OF EQUITYBUILD INVESTORS**

WHEREAS, this Court has exclusive jurisdiction and possession of the assets of all Receivership Defendants pursuant to the August 17, 2018 Order Appointing Receiver (the “Receiver Order”) [ECF 16];

WHEREAS, the Receiver Order prohibits certain actions interfering with the Receiver’s efforts and duties as conferred upon him by this Court without express written consent of the Receiver;

WHEREAS, on August 25, 2021, Equitybuild investors Annie Chang, Tiger Chang 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 [ECF 1034];

WHEREAS, the Court held a hearing on August 31, 2021, and granted, in part, the *Chang* Plaintiffs' Motion to the extent that the *Chang* Plaintiffs were permitted to access and use the documents contained in the Equitybuild document database for the purposes of the *Chang* Action, consistent with the protective order in that case [ECF 1040];

WHEREAS, Wells Fargo filed a motion for leave to serve the Receiver a subpoena requesting the same full access to the Equitybuild database and an order permitting Wells Fargo to use those documents in the *Chang* Action consistent with the Protective Order in that case;

WHEREAS, the Receiver does not contest the Motion by Wells Fargo;

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

NOW, THEREFORE, it is hereby ORDERED that:

1. Wells Fargo's Motion is GRANTED.
2. Wells Fargo may serve a subpoena on the Receiver as included as Exhibit A to Wells Fargo's Motion;

3. The Receiver shall not be required to locate or produce documents responsive to the subpoena to Wells Fargo;
4. Instead, Wells Fargo may have full access to the Equitybuild database at its sole cost to independently search for and obtain copies of documents for use in defending the *Chang* action; and
5. Wells Fargo may use the documents obtained pursuant to this Order in the *Chang* Action consistent with the Protective Order entered in that case and consistent with those limitations placed upon the *Chang* Plaintiffs as previously stated by this Court.

**IT IS SO ORDERED.**

---

Hon. John Z. Lee  
United States District Court Judge