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 12 *Insurance Corporation, as Receiver for*  
 13 *1st Centennial Bank*

14 **UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FEDERAL DEPOSIT INSURANCE  
 CORPORATION, AS RECEIVER FOR  
 17 1st CENTENNIAL BANK

Civ. No. CV-11-00476-JAK (PLAx)

18 Plaintiff,

**PROTECTIVE ORDER  
 REGARDING CONFIDENTIAL  
 INFORMATION**

19 vs.

DISCOVERY MATTER

20 JAMES R. APPLETON, BRUCE J.  
 21 BARTELLS, CAROLE H. BESWICK,  
 LARRY F. JACINTO, RONALD J.  
 22 JEFFREY, WILLIAM A. MCCALMON,  
 PATRICK J. MEYER, THOMAS E.  
 23 VESSEY, STANLEY C. WEISSER,  
 DOUGLAS F. WELEBIR, JOHN LANG,  
 24 AND CLIFFORD N. SCHOONOVER,

Magistrate Judge Paul L. Abrams

25 Defendants.



1 pursuant to examinations and investigations by the California Department of Financial  
2 Institutions (“CDFI”). The California Public Records Act (the “CA PRA”) exempts  
3 documents from public disclosure where such disclosure is prohibited by express  
4 provisions of law. CA PRA, §6253(b). The CA PRA specifically exempts from public  
5 disclosure information contained in:

6 (1) applications filed with any state agency responsible for the regulation or  
7 supervision of the issuance of securities or of financial institutions;

8 (2) examination, operating, or condition reports prepared by, on behalf of, or  
9 for the use of, any state agency referred to in paragraph (1);

10 (3) preliminary drafts, notes, or interagency or intra-agency communications  
11 prepared by, on behalf of, or for the use of, any state agency referred to in  
12 paragraph (1); and

13 (4) information received in confidence by any state agency referred to in  
14 paragraph (1).

15 CA PRA, §6254(d).

16 FDIC-R contends discovery in this action will also likely involve the disclosure  
17 of financial information and personal identifying information from the receivership  
18 files of the Bank customers prior to the Bank’s failure. Public disclosure of such  
19 information is prohibited without the consent of the individual whose information is  
20 disclosed, by The Privacy Act of 1974, 5 U.S.C. §552a. An exception to this  
21 prohibition under the FDIC’s Regulations governing the Privacy Act and Insured  
22 Financial Institution Liquidation Records exists for the information of an obligor or  
23 obligee of a failed financial institution that may be disclosed only:

24 To the individual, the individual's counsel or other  
25 representatives, insurance carrier(s) or underwriters of  
26 bankers' blanket bonds or other financial institution bonds  
27 in conjunction with claims made by the FDIC or litigation  
28 instituted by the FDIC or others on behalf of the FDIC  
against former officers, directors, accountants, lawyers,  
consultants, appraisers, or underwriters of bankers' blanket

1 bonds or other financial institution bonds of a failed or  
2 assisted FDIC-insured financial institution.

3 12 C.F.R. Part 310, FDIC-30-64-0013(16) (2009).

4 FDIC-R further believes good cause exists to prevent disclosure to the public at  
5 large, financial information and personal identifying information of 1st Centennial  
6 Bank customers pursuant to the Information Privacy Provisions of the Gramm-Leach-  
7 Bliley Act, 15 U.S.C. §6801, and California Financial Code, §§4050-60. Documents  
8 containing information protected by the above provisions will include 1st Centennial  
9 Bank loan files, loan applications, financial statements, income tax returns, and  
10 internal bank records containing taxpayer information, account numbers, account  
11 statements, transaction records and other personal identifying information.

12 The Parties acknowledge that this Stipulated Protective Order (the “Order”)  
13 does not confer blanket protections on all disclosures or responses to discovery, and  
14 that the protection it affords extends only to the information or items that are entitled  
15 to confidential treatment under the applicable legal principles. The Parties further  
16 acknowledge that this Order creates no entitlement to file confidential information  
17 under seal, and good cause must be shown in any motion to file confidential  
18 information under seal.

19 Good cause exists to enter this Order to protect the above-referenced  
20 information from public disclosure, pursuant to FDIC Rules and Regulations, the laws  
21 of the State of California, and other federal or state laws. Accordingly, pursuant to  
22 Fed. R. Civ. P. 26(c), the Parties hereby stipulate to and petition the Court to enter the  
23 the Order.

24 **IT IS HEREBY STIPULATED AND AGREED** by and between Plaintiff and  
25 Defendants in the Litigation, by and between their undersigned counsel, that all  
26 documents or information designated as Confidential Information in this Litigation  
27 shall be subject to the terms and provisions set forth:

1 **GENERAL PROVISIONS**

2 1. Definitions

3 a. “Challenging Party” means a Party or Non-Party that challenges the  
4 designation of information or items under this Order.

5 b. “Confidential Information” means (regardless of how it is generated,  
6 stored, or maintained), materials, documents or items supplied in any  
7 form containing non-public information that qualifies for protection  
8 under Fed. R. Civ. P. 26(c); FDIC Rules and Regulations, 12 C.F.R.  
9 §308-10, FDIC-30-64-0013(16) (2009); Privacy Act, 5 U.S.C. §552a;  
10 California Public Record Act, §6254(d); Gramm-Leach-Bliley Act, 15  
11 U.S.C.. §6801, and California Financial Code, §§4050-60.

12 c. “Counsel” means Counsel for Plaintiff or Defendants in this Litigation.

13 d. “Designating Party” means a Party or Non-Party that designates  
14 information or items that it produces in disclosures or in responses to  
15 discovery as “Confidential Information.”

16 e. “Disclosure Material” or “Discovery Material” means all items or  
17 information, regardless of the medium or manner in which it is  
18 generated, stored, or maintained (including, among other things,  
19 testimony, transcripts, and tangible things), that are produced or  
20 generated in disclosures or responses to discovery in this matter.

21 f. “Litigation” means the case *FDIC, as Receiver for 1st Centennial Bank*  
22 *vs. Appleton, et al.*, No. 2:11-cv-00476, currently pending in the U.S.  
23 District Court for the Central District of California.

24 g. “Non-Party” means any natural person, partnership, corporation,  
25 association, or other legal entity not named as a Party to this action.

26 h. “Party” means any Party to this action, including all of its officers,  
27 directors, employees, consultants, and representatives.

1 i. “Producing Party” means a Party or Non-Party that produces Disclosure  
2 or Discovery Material in this action.

3 j. “Receiving Party” means a Party that receives Disclosure or Discovery  
4 Material from a Producing Party.

5 2. Scope of Application of Order: The protections conferred by this Order  
6 cover not only Confidential Information (as defined above), but also (i) any  
7 information copied or directly extracted from Confidential Information; (ii) all  
8 excerpts, summaries, or compilations of Confidential Information; and (iii) any  
9 testimony or information contained in pleadings, briefs or other documents filed with  
10 the Court in the Litigation for purposes of discovery by any Producing Party or their  
11 Counsel that might reveal Confidential Information.

12 **DESIGNATING CONFIDENTIAL INFORMATION**

13 3. Designating Discovery Material: Any Party or Non-Party responding to a  
14 subpoena in this Litigation may designate Discovery Material as Confidential  
15 Information. Confidential Information in documents or discovery responses shall be  
16 designated as such by marking the appropriate pages or sections thereof with a label  
17 reading “Confidential Information – Subject to Protective Order.” Disclosures,  
18 pleadings, motions, affidavits, briefs, exhibits, and other papers which contain or  
19 make specific reference to Confidential Information and are filed with the Court shall  
20 comply with Paragraph 13 of this Order.

21 4. Inadvertent Failure to Designate Information as Confidential Information:  
22 A Producing Party’s inadvertent failure to designate information as Confidential  
23 Information at the time of disclosure may be remedied by the Producing Party or any  
24 other Party by giving written notice of the inadvertent failure to designate the  
25 information as Confidential Information to all other Parties. Once such a designation  
26 has been made, the relevant documents or materials shall be treated as Confidential  
27 Information in accordance with this Order as if they had been initially so designated.

1 If the Discovery Material that was inadvertently not designated had already been filed  
2 with the Court on the public record at the time of the later designation, the Producing  
3 Party that failed to make the designation shall move to seal the document or request  
4 other appropriate relief or withdraw the designation. The Parties shall make a good-  
5 faith effort to ensure that any analyses, memoranda or notes that were generated based  
6 upon such newly designated Confidential Information are immediately treated as  
7 having been designated Confidential Information as appropriate.

8       5.     Objections to Confidentiality Designations: If any Party in this Litigation  
9 objects to a confidentiality designation, or otherwise desires to have a confidentiality  
10 designation removed, the Challenging Party shall notify the Designating Party in  
11 writing, including a list of control numbers of the documents challenged and a  
12 statement of the legal or factual basis for each objection. The Challenging Party shall  
13 promptly meet and confer in good faith with the Designating Party to attempt to  
14 resolve the dispute pursuant to, and in accordance with, the requirements of Local  
15 Rule 37. If the Designating Party and the Challenging Party are unable to settle their  
16 differences, then the Parties may seek to obtain a decision from the Court by filing a  
17 motion and joint stipulation pursuant to, and in accordance with, the procedures set  
18 forth in Local Rule 37.

19       6.     Designation of Deposition Transcripts and Exhibits as Confidential  
20 Information: Information disclosed during a deposition may be designated in whole or  
21 in part as “Confidential Information.” Any Party may indicate on the record at the  
22 deposition that the deposition testimony, deposition exhibits or deposition videotape  
23 are, in whole or in part, Confidential Information, or within 30 days after receipt of a  
24 final deposition transcript, notify opposing Counsel in writing that the deposition  
25 transcript consists of, or contains, Confidential Information and designate specific  
26 portions of the transcript as such. Confidential Information within deposition  
27 testimony may be designated by underlining the portions of the pages that contain

1 Confidential Information, and all deposition transcripts that contain Confidential  
2 Information shall be so designated by marking on their front covers by the court  
3 reporter(s). Until expiration of the 30 day period, the entire deposition transcript,  
4 exhibits and videotape shall be treated as Confidential Information.

5 **USE OF CONFIDENTIAL INFORMATION**

6 7. Disclosure of Confidential Information: Confidential Information shall  
7 not be disclosed to anyone except as provided in this Order. All documents, material  
8 or information in this Litigation that are designated Confidential Information may be  
9 used only for purposes of prosecuting, defending or settling this Litigation.  
10 Confidential Information shall not be used for any other purpose, including but not  
11 limited to, commercial, business, competitive or other purposes, for any reason  
12 whatsoever, or in or for any other judicial or administrative proceedings, disputes or  
13 cases unrelated to the Litigation.

14 8. Limitations on Disclosure of Confidential Information: Except as  
15 otherwise provided in this Order, Confidential Information may only be disclosed to,  
16 or examined by, the following persons:

- 17 a. Parties in this Litigation;
- 18 b. Counsel including support staff of Counsel;
- 19 c. Clerical personnel, Litigation personnel, and vendors who are acting  
20 under the direction of Counsel and who are necessary to assist such  
21 Counsel in this Litigation;
- 22 d. Expert witnesses or consultants retained in connection with this  
23 Litigation by Counsel, but only for the purposes of prosecuting,  
24 defending or settling this Litigation;
- 25 e. Witnesses during depositions, hearings, mediations, trial or other  
26 proceedings in this action;



- 1 f. Stenographers or court reporters, but only to the extent necessary to  
2 prepare records of sworn testimony in the Litigation;  
3 g. Magistrate Judges, Judges, clerks or other members or employees of  
4 any court of competent jurisdiction over proceedings in, or related  
5 to, this Litigation;  
6 h. Any insurer or indemnitor of any Defendant in this action; and  
7 i. Any other person agreed to in writing by the Parties.

8 9. Non-Disclosure Certificate: Before Counsel may disclose Confidential  
9 Information to witnesses, expert witnesses or consultants under Paragraph 8(d) and (e)  
10 (collectively, “Witnesses”) or anyone else agreed to in writing under Paragraph 8(i) of  
11 this Order, Counsel shall obtain from the Witnesses an executed copy of the  
12 Acknowledgement and Agreement to Be Bound annexed hereto as Exhibit A.  
13 Counsel who discloses Confidential Information shall provide each such Witness with  
14 a copy of this Order and shall retain the Witness’ original executed Acknowledgement  
15 pending further order of the Court or for a one-year period following the final  
16 termination of the Litigation.

17 10. Unauthorized Disclosure: If Confidential Information is disclosed to any  
18 person other than in the manner authorized by this Order, the Party responsible for the  
19 disclosure shall, immediately upon learning of the disclosure, inform the Designating  
20 Party in writing of all pertinent facts relating to such disclosure, and make every  
21 reasonable effort to retrieve the designated material and prevent the occurrence of any  
22 further disclosure unauthorized by this Order.

23 11. Copies: All copies of any documents containing Confidential Information  
24 shall constitute and be treated as such as provided in this Order. Any person making,  
25 or causing to be made, copies of any documents containing Confidential Information  
26 shall make certain that each such copy bears the appropriate designation “Confidential  
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1 Information – Subject to Protective Order” and that such copies are disclosed only as  
2 allowed in Paragraph 8 of this Order.

3 12. Production for Inspection Purposes Only: If a Producing Party intends to  
4 produce documents for inspection only, the Parties shall meet and confer on whether  
5 production by inspection is appropriate and on the procedures for designating  
6 Confidential Information.

7 13. Confidential Information to Be Filed Under Seal: If confidential material  
8 is included in any papers to be filed in Court, such papers may be accompanied by an  
9 application directed to the judge to whom the papers are directed, to file the papers—  
10 or the confidential portion thereof—under seal showing good cause for the under seal  
11 filing. In making any application to file Confidential Information under seal, the  
12 Parties to this Order shall comply with Local Rule 79-5 of the U.S. District Court for  
13 the Central District of California and any Standing Orders of this Court. If the Court  
14 grants an application to file Confidential Information under seal, such Confidential  
15 Information shall be filed in sealed envelopes bearing the caption of this Litigation,  
16 the phrase “Confidential Information – Subject to Protective Order” and state in  
17 substantially the following form:

18 THIS ENVELOPE IS SEALED PURSUANT TO ORDER  
19 OF THE COURT AND CONTAINS CONFIDENTIAL  
20 INFORMATION, AND IS NOT TO BE OPENED OR THE  
21 CONTENTS THEREOF TO BE DISPLAYED OR  
REVEALED BY ANYONE EXCEPT UPON ORDER OF  
THE COURT.

22 Pending the ruling on the application, the papers or portions thereof, subject to the  
23 sealing application, shall be lodged under seal. If either Party wishes to file a joint  
24 stipulation required by Local Rule 37 under seal, the Parties may file a stipulation or  
25 the Party seeking to have the information filed under seal may file an *ex parte*  
26 application, making a request to file the joint stipulation required by Local Rule 37  
27 under seal. Such stipulation or *ex parte* application must set forth good cause as to

1 why the joint stipulation required by Local Rule 37, or portions thereof, should be  
2 filed under seal.

3 14. Inadvertent Production: Inadvertent production of information that a  
4 Producing Party later claims should not have been produced because it is subject to a  
5 claim of privilege from production (“Inadvertently Produced Privileged Information”),  
6 shall not constitute a waiver of, or estoppel as to, any claim of privilege or other legal  
7 ground for withholding production as to which a Producing Party would be entitled.  
8 The procedures for handling Inadvertent Production of Privileged Information shall be  
9 in accordance with Fed. R. Civ. P. 26(b)(5)(B), F.R.E. 502(b), and as follows:

10 a. Upon discovery by a Producing Party (or upon receipt of notice  
11 from a Receiving Party) that a Producing Party may have produced  
12 Inadvertently Produced Privileged Information, the Producing Party,  
13 within 10 days of such discovery, may request the return of such  
14 information in writing by identifying the Inadvertently Produced  
15 Privileged Information, and stating the basis for withholding such  
16 information from production.

17 b. After being notified, any Receiving Party must return, destroy or  
18 sequester the Inadvertently Produced Privileged Information and  
19 any copies he/she/it has, and sequester any work product  
20 incorporating, in whole or in part, the Inadvertently Produced  
21 Privileged Information, and must not use or disclose the information  
22 until the claim is resolved.

23 c. If a Receiving Party disputes the privilege claim, the Receiving  
24 Party shall notify the Producing Party of the dispute and the basis  
25 therefore in writing within 10 days of receipt of the request for the  
26 return of the Inadvertently Produced Privileged Information. The  
27 Producing Party and Receiving Party thereafter shall meet and

1 confer in good faith regarding the disputed claim within 10 days  
2 pursuant to, and in accordance with, the procedures set forth in  
3 Local Rule 37.

- 4 d. If the Parties are unable to settle their differences, they may  
5 formulate a joint stipulation and bring a motion to resolve the  
6 privilege dispute within 30 days of the Parties' good faith  
7 conference and in accordance with the procedures set forth in Local  
8 Rule 37 and paragraph 14(c) of this Order. If such a motion is  
9 made, the Party claiming the privilege shall have the burden of  
10 establishing the applicability of the privilege to the information at  
11 issue, and shall submit to the Court for *in camera* review a copy of  
12 the Inadvertently Produced Privileged Information in connection  
13 with the motion papers. The Producing Party must preserve the  
14 information until the claim is resolved.

15 15. Protected Material Subpoenaed or Ordered Produced in Other Litigation:

16 If a Party is served with a subpoena or court order issued in any other litigation or  
17 judicial, administrative, or any other legal process that compels disclosure of any  
18 information or items designated in this action as Confidential Information, that Party  
19 shall, if so permitted by law or by the nature of the legal process, subpoena, or order at  
20 issue:

- 21 a. Promptly notify in writing the Designating Party. Such notification  
22 shall include a copy of the subpoena or court order; and  
23 b. Cooperate with respect to all reasonable procedures sought to be  
24 pursued by the Designating Party whose Confidential Information  
25 may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with the  
27 subpoena or court order shall not produce any information designated in this action as

1 Confidential Information before a determination by the court from which the  
2 subpoena or order is issued, unless the Party has obtained the Designating Party's  
3 permission. The Designating Party shall bear the burden and expense of seeking  
4 protection in that court of its confidential material. Nothing herein shall be construed  
5 as requiring the Party from whom Confidential Information is being sought to  
6 challenge or appeal any Court order requiring production of Confidential Information  
7 protected by this Order, or to subject himself/herself/itself to any penalties for  
8 noncompliance with any legal process or order, or to seek any relief from this Court,  
9 other than as provided in 15(a) or (b) above.

### 10 **MISCELLANEOUS PROVISIONS**

11 16. Other Discovery Objections: Nothing contained in this Order shall affect  
12 the rights of the Parties to object to discovery on grounds other than those related to  
13 the confidentiality of documents or information, nor shall it preclude any Party or  
14 Non-Party from seeking further relief or protective orders from the Court as may be  
15 appropriate and in accordance with the Federal Rules of Civil Procedure and the Local  
16 Rules of the U.S. District Court for the Central District of California. The Parties to  
17 this Litigation reserve all rights to apply to the Court for any order modifying this  
18 Order, or seeking further protection against discovery or other use of Confidential  
19 Information or other information, documents, or transcripts.

20 17. Notices and Time Periods: All notices that this Order requires to be sent  
21 to a particular Party shall be sent via mail to counsel for that Party at the address listed  
22 in the signature block below or by email. For purposes of computing any period of  
23 time under this Order, the provisions of Rule 6 of the Federal Rules of Civil  
24 Procedure, and the Local Rules of the Court shall apply.

25 18. No Admission: Nothing contained in this Order shall be construed as an  
26 admission or agreement that any document or information, or any testimony relating  
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1 to such document or information, is or would be, subject to discovery or admissible as  
2 evidence in this Litigation or any other proceeding.

3 19. Modification Permitted: Nothing herein shall prejudice the right of the  
4 Parties to stipulate, subject to Court approval, to move to amend or modify this Order  
5 in the interests of justice.

6 20. Duration: The confidentiality obligations imposed by this Order shall  
7 remain in effect until the final disposition of this Litigation, or the commencement of  
8 trial, whichever is first, unless good cause is shown to the Court in advance of the trial  
9 to proceed otherwise. Final disposition shall be deemed to be the dismissal of all  
10 claims and defenses in this action, with or without prejudice.


11 21. Final Disposition: Within 60 days after the final disposition of this action,  
12 as defined in Paragraph 20, each Receiving Party must use commercially reasonable  
13 efforts to return all Confidential Information to the Producing Party or destroy such  
14 material. As used in this paragraph, “all Confidential Information” includes all  
15 copies, abstracts, compilations, summaries, and any other format reproducing or  
16 capturing any of the Confidential Information. Written confirmation of such return or  
17 destruction shall be forwarded to Counsel for the Party from whom the Confidential  
18 Information was received. Notwithstanding this provision, (i) each Receiving Party  
19 may retain Confidential Information to the extent such retention is necessary to satisfy  
20 such Party’s legal, regulatory or internal requirements, including internal document  
21 retention policies and procedures; and (ii) Counsel are entitled to retain an archival  
22 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
23 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
24 work product, and consultant and expert work product, even if such materials contain  
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1 Confidential Information. Any such archival copies that contain or constitute  
2 Confidential Information remain subject to this Order as set forth in Paragraph 20.

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IT IS SO ORDERED.

DATED: June 28, 2011

  
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Hon. Paul L. Abrams  
UNITED STATES MAGISTRATE JUDGE