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11 Attorneys for Plaintiff
 12 Federal Deposit Insurance Corporation
 13 as Receiver for IndyMac Bank, F.S.B.

14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA

16 FEDERAL DEPOSIT INSURANCE
 17 CORPORATION,

18 Plaintiff,

19 v.

20 FIRST OPTION MORTGAGE, LLC

21 Defendant.

CASE NO.: 2:14-CV-05000-SVW-AGR

STIPULATED PROTECTIVE ORDER

I.

A. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential, proprietary, or
 23 private information for which special protection from public disclosure and from use for any
 24 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
 25 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
 26 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
 27 discovery and that the protection it affords from public disclosure and use extends only to the

1 limited information or items that are entitled to confidential treatment under the applicable legal
2 principles. The parties further acknowledge, as set forth in Section 12.3 below, that this Stipulated
3 Protective Order does not entitle them to file confidential information under seal: Civil Local Rule
4 79.5 sets forth the procedures that must be followed and the standards that will be applied when a
5 party seeks permission from the court to file material under seal.
6

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve documents and materials filed with the Court that includes
9 or references the loan borrowers' first names, social security numbers, addresses, or loan numbers
10 for which special protection from public disclosure and from use for any purpose other than
11 prosecution of this action is warranted. Accordingly, to expedite the flow of information, to
12 facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
13 adequately protect information the parties are entitled to keep confidential, to ensure that the
14 parties are permitted reasonable necessary uses of such material in preparation for and in the
15 conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice,
16 a protective order for such information is justified in this matter. It is the intent of the parties that
17 information will not be designated as confidential for tactical reasons and that nothing be so
18 designated without a good faith belief that it has been maintained in a confidential, non-public
19 manner, and there is good cause why it should not be part of the public record of this case.
20
21

22 **2. DEFINITIONS**

23 2.1 Action: *FDIC v First Option Mortgage*, U.S. District Court, Central District of
24 California, Case No. CV 14-5000 SVW (AGR)

25 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
26 information or items under this Order.
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28

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
3 Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as their
5 support staff and contractors).

6 2.5 Designating Party: a Party or Non-Party that designates information or items that it
7 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in this Action.

15 2.8 In-House Counsel: attorneys who are employees of a party to this Action. In-
16 House Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
20 Action, but are retained to represent or advise a party to this Action and have appeared in this
21 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
22 another party, and includes support staff.

1 2.11 Party: Any party to this action or the predecessor-in-interest to any party to this
2 Action, including all of its officers, directors, current and former employees, consultants, retained
3 experts, and Outside Counsel of Record (and their support staffs and contractors).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation support services
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
8 storing, or retrieving data in any form or medium) and their employees and subcontractors.
9

10 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL” or contains a borrower’s nonpublic personal or financial information which
12 must be kept confidential pursuant to federal or state law. See 15 U.S.C. § 6801.

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.
15

16 **3. SCOPE**

17 The protections conferred by this Stipulation and Order cover not only Protected Material
18 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
19 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
20 conversations or presentations by Parties or their Counsel that might reveal Protected Material.
21

22 Any use of Protected Material at trial shall be governed by the orders of the trial judge.
23 This Order does not govern the use of Protected Material at trial.

24 **4. DURATION**

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

5
6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Except in
8 the case of Protected Material that contains a borrower's nonpublic personal financial information,
9 which must be kept confidential pursuant to federal or state law, each Party or Non-Party that
10 designates information or items for protection under this Order must take care to limit any such
11 designation to specific material that qualifies under the appropriate standards. The Designating
12 Party must designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify so that other portions of the material, documents, items, or
14 communications for which protection is not warranted are not swept unjustifiably within the ambit
15 of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
19 unnecessarily encumber the case development process or to impose unnecessary expenses and
20 burdens on other parties) may expose the Designating Party to sanctions.

21
22 If it comes to a Designating Party's attention that information or items that it designated for
23 protection do not qualify for protection, that Designating Party must promptly notify all other
24 parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations: Except as otherwise provided in this Order
26 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
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1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
6 affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to
7 each page that contains protected material. If only a portion (or portions) of the material on a page
8 qualifies for protection, the Producing Party also must clearly identify the protected portions(s)
9 (e.g., by making appropriate markings in the margins).
10

11 A Party or Non-Party that makes original documents available for inspection need not
12 designate them for protection until after the inspecting Party has indicated which documents it
13 would like copied and produced. During the inspection and before the designation, all of the
14 material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting
15 Party has identified the documents it wants copied and produced, the Producing Party must
16 determine which documents, or portions thereof, qualify for protection under this Order. Then,
17 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL
18 legend” to each page that contains Protected Material. If only a portion or portions of the material
19 on a page qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins).
21

22 (b) for testimony given in depositions that the Designating Party identify the Disclosure or
23 Discovery Material on the record, before the close of the deposition all protected testimony.
24

25 (c) for information produced in some form other than documentary and for any other
26 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
27 or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion
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1 or portions of the information warrants protection, the Producing Party, to the extent practicable,
2 shall identify the protected portions(s).

3 5.3 Inadvertent Failure to Designate: If timely corrected, an inadvertent failure to designate
4 qualified information or items does not, standing alone, waive the Designating Party's right to
5 secure protection under this Order for such material. Upon timely correction of a designation, the
6 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
7 with the provisions of this Order.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges: Any Party or Non-Party may challenge a designation of
11 confidentiality at any time that is consistent with the Court's Scheduling Order. Unless a prompt
12 challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable,
13 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of
14 litigation, a Party does not waive its right to challenge a confidentiality designation by electing not
15 to mount a challenge promptly after the original designation is disclosed.

17 6.2 The Challenging Party shall initiate the dispute resolution process under Local Rule
18 37.1 *et seq.*

19 6.3 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
21 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
22 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
23 designation, all parties shall continue to afford the material in question the level of protection to
24 which it is entitled under the Producing Party's designation until the Court rules on the challenge.

26 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
2 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
3 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to
4 the categories of persons and under the conditions described in this Order. When the Action has
5 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
6 DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless otherwise ordered
11 by the court or permitted in writing by the Designated Party, a Receiving Party may disclose any
12 information or item designated “CONFIDENTIAL” only to

14 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
15 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
16 information for this Action;

17 (b) the officers, directors, and employees (including House Counsel) of the Receiving
18 Party to whom disclosure is reasonably necessary for this Action;

19 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
20 reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement
21 to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff;

25 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
26 whom disclosure is reasonably necessary for this Action and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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1 (g) the author or recipient of a document containing the information or a custodian or
2 other person who otherwise possessed or knew the information;

3 (h) during their depositions, witnesses and attorneys for witnesses, in the Action to
4 whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness
5 sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any
6 confidential information unless they sign the "Acknowledgement and Agreement to Be Bound"
7 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be
9 separately bound by the court reporter and may not be disclosed to anyone except as permitted
10 under this Stipulated Protective Order; and
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12 (i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon
13 by any of the parties engaged in settlement discussions.
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16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

18 If a Party is served with a subpoena or court order issued in other litigation that compels
19 disclosure of any information or items designated in this Action as "CONFIDENTIAL," that Party
20 must:

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

23 (b) promptly notify in writing the party who caused the subpoena or order to issue in
24 the other litigation that some or all of the material covered by the subpoena or order is subject to
25 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
26 and
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1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
2 Designating Party whose Protected Material may be affected.

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

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

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

19 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
20 Party’s confidential information in its possession, and the Party is subject to an agreement with the
21 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 or
23 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 Order
25 in this Action, the relevant discovery requests(s), and a reasonably specific description of the
26 information requested; and
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1 (3) If the Non-Party fails to seek a protective order from this court within 14 days
2 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
3 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks
4 a protective order, the Receiving Party shall not produce any information in its possession or
5 control that is subject to the confidentiality agreement with the Non-Party before a determination
6 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense
7 of seeking protection in this court of its Protected Material.
8

9 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
11 Material to any person or in any circumstance not authorized under this Stipulated Protective
12 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
13 unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the Protected
14 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
15 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
16 Agreement to be Bound" that is attached hereto as Exhibit A.
17

18 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
19 PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently
21 produced material is subject to a claim of privilege or other protection, the obligations of the
22 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
23 provision is not intended to modify whatever procedure may be established in an e-discovery order
24 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
25 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
26 communication or information covered by the attorney-client privilege or work product protection,
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1 the parties may incorporate their agreement in the stipulated protective order submitted to the
2 court.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief: Nothing in this Order abridges the right of any person to
5 seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections: By stipulating to the entry of this Stipulated
7 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
9 party waives any right to object on any ground to use in evidence of any of the material covered by
10 this Protective Order.
11

12 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
13 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
14 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a
15 Party's request to file Protected Material under seal is denied by the court, then the Receiving
16 Party may file the information in the public record unless otherwise instructed by the court.
17

18 **13. FINAL DISPOSITION**

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

9 14. Any violation of this Order may be punished by any and all appropriate measures
10 including, without limitation, contempt proceedings and/or monetary sanctions.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: December 16, 2014

MORTGAGE RECOVERY LAW GROUP
LLP

15 By: /s/ Dana J. Clausen
16 Paul A. Levin
17 Dana J. Clausen
18 Andrew P. Baeza
19 Attorneys for Plaintiff Federal Deposit Insurance
20 Corporation as Receiver for IndyMac Bank, F.S.B.

21 DATED: December 16, 2014

AMERICAN MORTGAGE LAW GROUP

23 By: /s/ Daniel C. Taylor
24 James W. Brody
25 Daniel C. Taylor
26 Attorneys for Defendant First Option Mortgage, LLC

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1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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3 DATED: December 23, 2014

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Alicia G. Rosenberg

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Alicia G. Rosenberg
United States Magistrate Judge

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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 _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. 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 Central 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: _____