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 FEDERAL DEPOSIT INSURANCE CORPORATION, AS
 11 RECEIVER FOR COUNTY BANK

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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE
 CORPORATION, AS RECEIVER FOR
 COUNTY BANK
 Plaintiff,
 vs.
 THOMAS T. HAWKER; JOHN J.
 INCANDELA; DAVE KRAECHAN;
 EDWIN JAY LEE; EDWARD J. ROCHA;
 AND DOES 1-50,
 Defendant.

Case No: 12-cv-00127-LJO-DLB
STIPULATED PROTECTIVE
 ORDER

1 **PROTECTIVE ORDER**

2 Plaintiff Federal Deposit Insurance Corporation, as receiver of County Bank
3 (“FDIC-R”), and defendants Thomas T. Hawker, John J. Incandela, Dave Kraechan,
4 Edwin Jay Lee, and Edward J. Rocha (collectively “Defendants” and together with FDIC-
5 R “the Parties”) have agreed to the provisions of the following Stipulated Protective
6 Order.

7 **IT IS HEREBY ORDERED THAT:**

8 1. **Confidential Documents.** The Parties contemplate that during the course of
9 this action they might produce to one another certain Confidential Documents (as
10 hereafter defined) in their possession. The term “Document” as used herein is
11 comprehensively defined to be synonymous in meaning and equal in scope to the usage
12 of the term in Rule 34(a) of the Federal Rules of Civil Procedure, which defines
13 “document” to include writings, drawings, graphs, charts, photographs, images, and other
14 data compilations stored in any medium from which information can be obtained. The
15 term “Confidential Document” shall specifically mean:

16 (a) **Personal Information.** “Personal information” shall mean: account
17 information, customer bank records, signature cards, bank statements, general ledger
18 entries, deposit information, and related records or documents that contain any names,
19 addresses, account numbers, social security numbers, dates of birth, or other identifying
20 information or personal information (including personal financial information, such as
21 but not limited to loan applications, financial statements and credit reports, business and
22 personal state and federal income tax forms) protected from public disclosure by statute
23 or regulation or otherwise under applicable law.

24 (b) **Regulatory Documents.** “Regulatory documents” shall mean all
25 documents and information related in any way to the regulation or supervision of County
26 Bank (the “Bank”), including but not limited to, reports of examination or inspection,
27 regulatory correspondence, reports, orders, memoranda, or agreements by, from, or with
28 the FDIC in its corporate capacity or any other state or federal bank or holding company

1 regulatory agency or authority. FDIC-R does not agree by this definition that such
2 records are discoverable or admissible. This definition shall not include documents that
3 become generally publicly available, as described in paragraph 1(e), below.

4 (c) **Receivership Documents.** “Receivership documents” shall mean
5 documents or information related to the FDIC's appointment or service as receiver of the
6 Bank, including, but not limited to, any information on loss or estimates of such loss.

7 (d) **Confidential Business Information.** “Confidential Business
8 Information” shall mean any proprietary document or information relating to the business
9 of a Party, which constitutes, reflects, or discloses a trade secret, proprietary data,
10 commercially sensitive information, or other information which is confidential under
11 applicable law. Any Producing Party may also apply to the Court for an order to
12 supplement the foregoing categories of Confidential Documents or to designate particular
13 documents not within the foregoing categories as Confidential Documents.

14 (e) The term “Confidential Documents” shall specifically not include any
15 information that (i) is or becomes generally available to the public other than as a result
16 of communication or disclosure by any person or identified in Paragraph 5 below in
17 contravention of this Protective Order; or (ii) is disclosed to one or both of the Parties,
18 their counsel, their agents, or any individual or entity identified in Paragraph 5 below, by
19 a third party who learned or acquired the information under circumstances or by means
20 not requiring the third party to preserve the confidentiality of the information.

21 2. **Definitions.** Any person or entity who produces any discovery material, and
22 any person or entity who generated any discovery material or created or provided any
23 information that is contained in any discovery material, regardless of whether that person
24 or entity is a Party or non-party, shall be referred to herein as a “Producing Party.” The
25 term “Litigation” used herein shall mean the above-styled cause, including without
26 limitation any and all claims, counterclaims, cross-claims and defenses asserted by a
27 Party.

28 3. **Designation of Confidential Documents.** Any Producing Party may

1 designate any Document as a “Confidential Document” under the terms of this Protective
2 Order if such Party in good faith believes that the Document contains information of any
3 kind described in Paragraph 1(a)-(d). The designation of discovery material as a
4 “Confidential Document” for purposes of this Protective Order shall be made in the
5 following manner by any Producing Party:

6 (a) in the case of documents, exhibits, briefs, memoranda, interrogatories,
7 or other materials (apart from depositions or other pretrial testimony): by stamping or
8 otherwise affixing the word “Confidential” to each page without obscuring any writing,
9 mark, communication, or depiction contained in the document; and

10 (b) in the case of depositions or other pretrial testimony: (i) by a
11 statement on the record, by counsel for the Producing Party or any other Party to the
12 Litigation, at the time of or immediately following such disclosure; or (ii) by written
13 notice, sent by such counsel to all parties within thirty days after receiving a copy of the
14 transcript thereof, or at the time errata sheets for such transcripts are provided to the court
15 reporter, whichever occurs earlier; and in both of the foregoing instances, by directing the
16 court reporter that an appropriate confidential legend be affixed to the original and all
17 copies of the transcript.

18 4. **Savings Provision.** Failure to designate any information as Confidential
19 Documents pursuant to this Protective Order shall not constitute a waiver of any
20 otherwise valid claim for protection, so long as such claim is asserted within ten days of
21 the Producing Party’s discovery of the inadvertent failure. At such time, arrangements
22 shall be made for the return to the Producing Party of all copies of documents
23 inadvertently not designated as Confidential and the substitution, where appropriate, of
24 properly labeled copies. Disclosure of Confidential Documents prior to later designation
25 as provided in this Paragraph shall not be a violation of this Protective Order.

26 5. **Permitted Use and Disclosure of Confidential Documents.** Except as
27 permitted below, Confidential Documents shall be used solely for the purposes of the
28 Litigation and shall not be used for any other purpose, including, without limitation, any

1 business, proprietary or commercial purpose. Confidential Documents may be disclosed,
2 summarized, described, characterized, or otherwise communicated or made available in
3 whole or in part only to the following persons:

4 (a) witnesses in the Litigation and such witnesses' counsel, including
5 former employees, directors, or officers of the Bank and their counsel;

6 (b) counsel and personnel of the FDIC, including, but not limited to, its
7 officers, directors, in-house attorneys, investigators, and executives having any
8 involvement with, assisting in connection with, monitoring, reviewing, or making any
9 decision or determination in connection with, in regard to, or related to the Litigation or
10 proceedings arising out of or related to the Litigation;

11 (c) experts or consultants and their employees retained by a Party and/or
12 their respective counsel to assist a Party in connection with the Litigation or proceedings
13 arising out of or related to the Litigation;

14 (d) clerical, ministerial, or litigation support service providers, such as
15 outside copying support, electronic discovery, or trial presentation or graphics personnel
16 retained by a Party and/or their respective counsel to assist a Party in the Litigation or
17 proceedings arising out of or related to the Litigation;

18 (e) court reporters employed in connection with the Litigation or
19 proceedings arising out of or related to the Litigation;

20 (f) insurers, reinsurers, auditors, independent consultants, or any other
21 person to whom a Party may be required to respond or report in their ordinary course of
22 business regarding the Litigation or proceedings arising out of or related to the Litigation;

23 (g) regulators to which a Party may be required to respond or report in the
24 ordinary course of business regarding the Litigation or proceedings arising out of or
25 related to the Litigation;

26 (h) persons, if any, to whom the FDIC may be required to make
27 Confidential Documents available under the Freedom of Information Act ("FOIA") or the
28 FDIC's FOIA regulations, 12 C.F.R. § 309.5, upon receipt of a proper FOIA request for

1 such information;

2 (i) individuals and entities permitted access to exempt information held
3 by the FDIC under 12 C.F.R. § 309.6;

4 (j) the Court in this Litigation, and its employees, staff and supporting
5 personnel, including, but not limited to, law clerks, the Court Clerk and Deputies, jurors
6 and alternate jurors;

7 (k) any other person, but only upon order of this Court or with advance
8 written permission of the Producing Party.

9 Before a non-producing Party gives access to Confidential Documents, or
10 information contained therein, to any recipient of a kind described in Paragraphs 5(a),
11 5(d), 5(g) (unless such recipient in this category (g) is already subject to substantially
12 similar confidentiality requirements), the non-producing Party shall first provide a copy
13 of this Protective Order to the recipient and obtain the recipient's agreement to keep the
14 Confidential Documents confidential as contemplated by the terms of this Protective
15 Order or such other Protective Order as the producing Party shall have approved in
16 writing before the non-producing Party gives such access to such recipient(s). The
17 parties may redact Personal Information from any Confidential Documents. If any party
18 wishes to use the redacted Personal Information for a substantive purpose, such as
19 questioning at a deposition, the parties shall meet and confer in good faith regarding the
20 need to redact such Personal Information. If the parties cannot resolve the dispute after
21 meeting-and-conferring, the parties shall raise that dispute with the Magistrate Judge.

22 **6. Filing Under Seal.** All documents of any nature that have been designated
23 as a "Confidential Document" and that are filed with the Court, and any briefs or other
24 papers that disclose information that has been designated a "Confidential Document"
25 shall be filed with the Court with a request that they be filed under seal and remain under
26 seal until such time as the Court orders otherwise.

27 **7. Challenge to Confidential Designation.** Any party may challenge the
28 propriety of the designation of discovery material as "Confidential Document" at any

1 time by providing written notice to the Producing Party. The notice shall either attach a
2 copy of each document marked “Confidential Document” that is subject to challenge or
3 identify such document by production number or other appropriate designation, and state
4 that the challenging Party objects to the designation of such document as a “Confidential
5 Document.” Within five days of service of the notice, the objecting Party and the
6 Producing Party shall attempt in good faith to resolve any challenge on an informal basis.
7 If an agreement cannot be reached within seven days of such notice, the person or entity
8 who is challenging the “Confidential Document” designation may file a motion to
9 challenge the designation of such documents or information as “Confidential
10 Documents.” The Confidential Documents will continue to be protected by the terms of
11 this Protective Order unless and until the Court orders otherwise. In the event a challenge
12 to the designation of documents or testimony as “Confidential Documents” is filed, the
13 burden of establishing the propriety of the designation is on the Producing Party.

14 **8. Reservation of Rights.** The Parties do not waive any privilege or right,
15 including, but not limited to, the attorney-client privilege and work product doctrine,
16 concerning any documents or information produced pursuant to this Protective Order.
17 Further, neither agreeing or complying with this Protective Order, nor producing or
18 receiving Confidential Documents shall prejudice in any way the rights of:

19 (a) any Party or non-party to object to the production of documents it
20 considers privileged or otherwise not subject to discovery, or operate as an admission by
21 any Party or non-party that the restrictions and procedures set forth in this Protective
22 Order constitute adequate protection for any information deemed by any Party to be
23 Confidential Documents;

24 (b) any Party to object to the authenticity or admissibility into evidence of
25 any document, testimony, or other evidence subject to this Protective Order;

26 (c) a Party or non-party to seek a determination by the Court of whether
27 any Confidential Documents should be subject to the terms of this Protective Order; and

28 (d) a Party or non-party to petition the Court for a further protective order

1 relating to any purportedly confidential information.

2 **9. Modification.** It is the intention of the Parties that the provisions of this
3 Protective Order shall govern discovery in this Litigation as well as the use of documents
4 after discovery has concluded. Nonetheless, each Party shall be entitled to seek
5 modification of this Protective Order, first by attempting to obtain the other Party's
6 consent to such modification, and then, absent consent, by application to this Court.

7 **10. Duration.** The provisions of this Protective Order shall, absent written
8 permission of the Producing Party or further order of the Court, continue to be binding
9 throughout and after the conclusion of this Litigation, including without limitation any
10 subsequent appeals. Upon the final resolution of this Litigation, either by settlement or
11 by entry of a final, non-appealable judgment governing the Parties' rights and
12 obligations, or otherwise, a Party receiving Confidential Documents and such Party's
13 counsel may retain a copy of any Confidential Documents as deemed reasonably
14 necessary, including as reasonably necessary to comply with ethical obligations of
15 counsel, business requirements, future requests for review by reinsurers, auditors and
16 regulators, or as necessary to exercise or enforce any subrogation rights. Such Party shall
17 promptly return to the Producing Party all other Confidential Documents not required for
18 such purposes. A Party receiving Confidential Documents and its counsel shall maintain
19 the confidentiality of all such Confidential Documents retained by such Party or its
20 counsel pursuant to this paragraph in accordance with this Protective Order, until such
21 documents are destroyed, which shall occur no later than twenty years after the close of
22 the Party's claim file, or within such period then required by such Party's standard record
23 destruction procedures, or thereafter if the documents are then subject to any applicable
24 litigation hold, or thereafter if the documents are then subject to any other document or
25 information hold required by any law, governmental body, or court order. This paragraph
26 does not apply to any documents or information produced to a Party without the
27 limitations set forth in this Protective Order, or to documents or information otherwise
28 obtained by either Party in a manner that is not in violation of this Protective Order.

1 **11. Producing Party’s Control of Its Own Confidential Documents.** Nothing
2 in this Protective Order shall be construed to prevent a Producing Party who has
3 designated material as Confidential Documents from agreeing to release any such
4 material or information from the requirements of this Protective Order, and if it decides
5 to do so, it shall notify the other Party in writing. A Producing Party’s rights pursuant to
6 this Protective Order may only be waived by a writing clearly evidencing intent to waive
7 such rights.

8 **12. Prior Production.** All documents which were produced prior to the entry of
9 this Protective Order and were marked with a “confidential” legend at time of production
10 shall be treated as Confidential Documents pursuant to this Protective Order, subject to
11 all terms and provisions of this Protective Order.

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14 1. The foregoing Stipulated Protective Order is hereby approved.

15 **IT IS SO ORDERED.**

16 DATED: _12 July 2012

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18 /s/ Dennis L. Beck
19 U.S. MAGISTRATE JUDGE
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AGREED AND APPROVED:

DATED: July 5, 2012

NOSSAMAN LLP

By: /s/ Patrick J. Richard
Patrick J. Richard
Attorneys for Plaintiff
FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
COUNTY BANK

DATED: July 5, 2012

JOSEPH & COHEN

By: /s/ Jonathan Cohen
Jonathan Cohen
Attorneys for Defendants
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JOHN J. INCANDELA,
DAVE KRAECHAN,
EDWIN JAY LEE,
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11 Attorneys for Plaintiff
12 FEDERAL DEPOSIT INSURANCE CORPORATION, AS
RECEIVER FOR COUNTY BANK

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16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA

18 FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
19 COUNTY BANK

20 Plaintiff,

21 vs.

22 THOMAS T. HAWKER; JOHN J.
INCANDELA; DAVE KRAECHAN;
23 EDWIN JAY LEE; EDWARD J. ROCHA;
AND DOES 1-50,

24 Defendant.

Case No: 12-cv-00127-LJO-DLB

EXHIBIT A

1
2 **CONFIDENTIALITY AGREEMENT**

3 I, _____ represent and agree as follows:

4 I reside at _____
5 (Street Address)

6 (City) _____, (State) _____,

7
8 _____ and I am employed as _____
9 (Zip Code) _____ (Title)

10 by _____,
11 (Employer)
12 (State) _____ (Zip Code) _____ (Daytime Telephone)

13
14 1. I have read and know the contents of the "Stipulated Protective Order," dated
15 _____, 2012 filed in the above entitled action, agree to be bound by its terms and
16 conditions, and submit myself to the jurisdiction of the U.S. District Court for the Eastern District of
17 California relative to assuring enforcement of the terms and conditions of this Stipulated Protective
18 Order.

19 2. I am one of the persons described in Paragraph 5 of the Stipulated Protective Order, and I am
20 signing this Confidentiality Agreement and agreeing to enter into this Confidentiality Agreement in
21 order to satisfy the conditions provided for in the Stipulated Protective Order prior to the disclosure to
22 me of any Confidential Information as said term is defined and described in the Stipulated Protective
23 Order.

24 3. I expressly agree that:

- 25 a. I have read and shall be fully bound by the terms of the Stipulated Protective Order;
- 26 b. All such Confidential Material as is disclosed to be pursuant to the Stipulated
27 Protective Order shall be maintained by me in strict confidence, and I shall not
28 disclosure or use the original or any copy of, or the subject matter of, the
Confidential Information except in accordance with the Stipulated Protective Order;
- c. I shall not use or refer to any Confidential Material, or copies thereof, other than in
connection with the above entitled action and as provided in the Stipulated Protective
Order; and
- d. I shall, upon being notified of the termination of the above entitled action proffer the

1 return of all copies of all Confidential Material to the counsel for the party who
2 furnished such Confidential Material to me, and I shall destroy any notes and
3 memoranda I have regarding the same.

4 Date: _____

5 Signed Name

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