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17 UNITED STATES DISTRICT COURT

18 EASTERN DISTRICT OF CALIFORNIA

19
20 THOMAS T. HAWKER; JOHN J.
21 INCANDELA; DAVE KRAECHAN;
22 EDWIN JAY LEE; and EDWARD J.
ROCHA,

23 Plaintiffs,

24 v.

25 BANCINSURE, INC. and DOES 1
26 through 10,

27 Defendants.
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Case No: 1:12-cv-01261-LJO-SAB

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: August 1, 2012
Trial Date: June 6, 2014

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Local
2 Civil Rule 141.1, and subject to approval by the Court, Plaintiffs Thomas T.
3 Hawker, John J. Incandela, Dave Kraechan, Edwin Jay Lee, and Edward J.
4 Rocha (collectively "Plaintiffs"), the Federal Deposit Insurance Corporation
5 as Receiver for County Bank, plaintiff as assignee of certain claims (the
6 "FDIC-R"), and Defendant BancInsure, Inc., ("BancInsure") (the FDIC-R,
7 Plaintiffs and BancInsure are referred to herein individually as "Party" and
8 collectively as the "Parties"), by and through their counsel of record, hereby
9 stipulate to a protective order consisting of the following terms regarding
10 non-disclosure of Confidential Material to be produced by the Parties:

11 1. **Purpose.** In connection with discovery in this case, the Parties
12 and/or third persons/entities who are not parties to this litigation, may
13 furnish and/or produce certain documents, including, but not limited to,
14 documents containing confidential, financial, personal, trade secret, and/or
15 proprietary information related to a party's or a third party's financial
16 condition, business plans, business operations, agency, underwriting,
17 investigation, contracts, agreements, claims handling procedures, practices
18 and operations, or other private or confidential matters. Such documents
19 have not been made public and have been the subject of efforts that are
20 reasonable under the circumstances to maintain their privacy. The
21 disclosure of such documents or information derived or obtained therefrom
22 might harm a party's competitive position, and might harm constitutionally
23 protected privacy rights of the Parties or third persons/entities. Accordingly,
24 the Parties stipulate that such documents are confidential and shall not be
25 disclosed by any party or any of their agents or representatives, except as
26 set forth under the terms of this Stipulation and Order. The parties
27 acknowledge that this Order does not confer blanket protections on all
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1 disclosures or responses to discovery and that the protection it affords from
2 public disclosure and use extends only to the limited information or items
3 that are entitled to confidential treatment under the applicable legal
4 principles. The parties further acknowledge, as set forth in Section 19,
5 below, that this Order does not entitle them to file confidential information
6 under seal; Civil Local Rule 141 sets forth the procedures that must be
7 followed and the standards that will be applied when a party seeks
8 permission from the court to file material under seal.

9 2. **Definition of Confidential Material.** For purposes of this
10 Stipulation and Order, “Confidential Material” includes, without limitation,
11 certain documents, records, and information composed or stored in written,
12 electronic, digital, or any other medium, produced by the FDIC-R, Plaintiffs,
13 BancInsure or a third party pursuant to this Stipulation and Order, and any
14 information identifying any names, addresses, account information,
15 personal information (such as social security number, date of birth, and any
16 other personal identification information) recognized by law as, or required
17 to be maintained as, confidential; and further includes, without limitation,
18 the following:

19 a. **Regulatory:** Confidential Material related in any way
20 to the regulation or supervision of County Bank (“Bank”), in
21 whatever form, whether preliminary or final, including reports of
22 examination or inspection, regulatory correspondence, reports,
23 orders, memoranda, or agreements by, from or with the FDIC in
24 its corporate capacity, the California Department of Financial
25 Institutions, or any other federal or state regulatory authority, and
26 any documents containing Confidential Material obtained from
27 any documents and records related to the supervision or
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1 regulation of the Bank. The Parties understand and agree that
2 the release of documents created by governmental agencies
3 other than the FDIC in its receivership capacity may require
4 approval from those other governmental agencies. Confidential
5 Material includes documents that are confidential and exempt
6 from disclosure as provided in the FDIC's FOIA regulations, 12
7 C.F.R. § 309, the laws of the State of California, and any other
8 applicable federal or state laws.

9 b. **Bank and Bank Customers:** Confidential Material
10 related to the Bank, its customers, any trading company involved
11 in placing orders for commodities futures or options, or any other
12 entity, including: ACH items or transactions, chargebacks,
13 merchant processing, bank account information, signature cards,
14 bank statements, general ledger entries, deposit or reserve
15 information, commodity trading statements, loans and lending
16 transactions, loan applications, financial statements and credit
17 reports, business and personal state and federal income tax
18 forms, related loan documentation relating to any extension of
19 credit or loan to any borrower, other previously designated
20 confidential business records, and documents containing trade
21 secrets. Examples of "Confidential Material" include, without
22 limitation, documents containing a customer's account number,
23 credit card number, personal identification number, account
24 balance, information relating to a deposit account, loan, or
25 borrower relationship and loan application materials, and
26 documents or information that contain the customer's name,
27 address, social security number, date of birth or other similar
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1 identifying information.

2 c. **Receivership:** Confidential Material related to the
3 receivership of the Bank, including any information on loss or
4 estimates of such loss on the Bank's assets. Notwithstanding
5 the provisions of section 5(a)-(d) and (k), no Confidential
6 Material related to the receivership of the Bank shall be
7 disclosed to any person or entity known to have any current or
8 prospective interest in such assets, whether or not that person or
9 entity would otherwise be allowed access to documents and
10 information under the terms of this Stipulation and Order.

11 d. **Other:** Any Party may seek an amendment to this
12 Stipulation and Order to designate confidential documents and
13 information in addition to the categories described above before
14 production of any such documents and information. The Parties
15 agree to meet and confer in good faith and attempt to reach
16 agreement on any request by a Party to designate such
17 additional categories of confidential documents or information.

18 **3. Confidential Designation and Treatment of Confidential**
19 **Material.**

20 a. As to hard-copy documents produced pursuant to this
21 Order which a Party seeks to deem to be Confidential Material, the
22 documents shall be identified and conspicuously marked
23 "CONFIDENTIAL." Such identification and marking shall be made at the
24 time when the document is produced by such party. Any such stamp or
25 designation shall not cover up, obscure or otherwise conceal any text,
26 picture, drawing, graph or other communication or depiction in the
27 document. As reasonably practicable, to the extent the document contains
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1 both confidential and non-confidential information, the designating Party
2 shall delineate the portions constituting Confidential Material and the
3 remaining portions of the document or material not deemed Confidential.
4 Except as otherwise provided in 12 C.F.R. 309, in the event there is a
5 dispute over whether a particular document or set of documents is
6 Confidential Material, the receiving/objecting Party may raise that issue with
7 the court and shall maintain its copy(ies) of the challenged documents in
8 confidence unless and until a ruling is issued by the court.

9 b. As for any tangible items or information produced in some
10 form other than documentary which a Party seeks to deem to be
11 Confidential Material, the Producing Party shall affix in a prominent place
12 on the exterior of the container or containers in which the information or
13 item is stored the legend "CONFIDENTIAL." If only a portion or portions of
14 the information or item warrant protection, the Producing Party, to the
15 extent practicable, shall identify the protected portion(s).

16 c. As to testimony given in deposition or in other pretrial or
17 trial proceedings, that the Designating Party identify on the record all
18 protected testimony within the time parameters set by Paragraph 9a, below.

19 **4. *Nondisclosure of Confidential Material.*** All Confidential
20 Material produced by the Parties and/or third persons/entities who are not
21 parties to this litigation, and information derived or obtained therefrom, shall
22 be used by the Parties (and related persons and/or entities described in
23 Paragraph 5, below) solely and exclusively for purposes of this litigation
24 and not for commercial purposes or any purpose whatsoever unrelated to
25 this litigation. Absent further written agreement between the Parties, all
26 such Confidential Material shall be treated as strictly confidential and shall
27 not be disclosed, discussed, or in any way divulged by the Parties (or
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1 related persons and/or entities described in Paragraph 5, below), except as
2 permitted under this Order. Notwithstanding the provisions of this section,
3 a Party may disclose its own Confidential Material to any person it deems
4 appropriate with or without conditions to the disclosure and without waiving
5 any claim of protection under this Agreement.

6 **5. Exceptions to Nondisclosure.** Notwithstanding anything to
7 the contrary herein, Confidential Material received pursuant to this
8 Stipulation and Order, and information derived or obtained therefrom, may
9 be disclosed to the following persons or entities:

- 10 a. The Parties or an officer, director, or employee of a
11 Party deemed reasonably necessary by counsel to aid
12 in the prosecution, defense, or settlement of this
13 action;
- 14 b. Banclinsure's reinsurers, receivers and/or regulators;
- 15 c. Counsel for the Parties, including all partners and
16 associate attorneys of such counsel's law firms and
17 all clerks, employees, independent contractors,
18 investigators, paralegals, assistants, secretaries,
19 staff and stenographic, computer audio-visual and
20 clerical employees and agents thereof when
21 operating under the direct supervision of such
22 partners or associate attorneys and who are actually
23 working on this action, all of whom shall be bound by
24 this Order;
- 25 d. Vendors, experts and consultants engaged by
26 counsel of record for the Parties to assist or
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participate in the investigation and analysis of the Claims;

- e. Any person from whom testimony is taken or to be taken in this action, except that such person only may be shown Confidential Material, and information derived or obtained therefrom, during his or her testimony, review of same, and in preparation therefor, and only to the extent relevant to such testimony, and may not copy or retain any such information;
- f. Persons who appear on the face of the Confidential Material marked "CONFIDENTIAL" as an author, addressee or recipient thereof;
- g. Court reporters used in connection with this action and their employees;
- h. The Court and its staff;
- i. The jury, if any;
- j. Those present in the Courtroom during the trial of this matter, including all pre-trial and motion hearings, and during presentation/argument of this evidence unless the Court orders otherwise;
- k. persons to whom the information is required to be made available under the FOIA or the FDIC's FOIA regulations, 12 C.F.R. § 309.5, upon receipt of a proper FOIA request for such information;
- l. individuals and entities permitted access to exempt information under 12 C.F.R. § 309.6; and

1 m. Any other person as to whom all Parties in writing
2 agree.

3 **6. Non-Disclosure of Confidential Material.** All persons
4 described in Paragraph 5 above shall not disclose any Confidential
5 Material, including information derived or obtained therefrom, except in
6 conformance with this Stipulation and Order, and for purposes of this
7 litigation. With respect to official court employees, said employees shall not
8 be bound by the terms of this Stipulation and Order except to the extent of
9 normal court procedures and applicable laws for Court-ordered sealed
10 documents, such that Court administration is not unduly impeded. Any
11 party who wishes to keep Confidential Material confidential at the time of
12 trial shall show cause in advance of trial to proceed in a manner that
13 preserves the confidentiality of the Confidential Material. The Parties agree
14 that the procedures for protecting the confidentiality of Confidential Material
15 at the time of trial will be done in accordance with the Court's instructions,
16 and that the Parties will cooperate in complying with such instructions.

17 **7. Confidentiality Agreement Certificate.** Confidential Material
18 may only be disclosed to persons or entities identified in subparagraphs
19 5(c), (d), and (m) after the person or entity provided with such Confidential
20 Material agrees to be bound by this Stipulation and Order and signs a
21 written Agreement to Maintain Confidentiality, in the form attached as
22 Attachment A. Counsel of record who obtains a signed Agreement to
23 Maintain Confidentiality shall keep all Agreements to Maintain
24 Confidentiality containing original signatures for a period of at least three
25 years following termination of the litigation, including all appeal(s).

26 **8. Demands by Others for Confidential Material.** If any other
27 person or entity demands, by subpoena or other judicial process, that a
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1 Party produce the Confidential Material produced by the other Party, the
2 Party receiving such demand shall promptly notify the Party that produced
3 the Confidential Material of such demand in no event less than 20 days
4 prior to the deadline to respond. At its option, the Party that produced the
5 Confidential Material may elect to challenge the demand and assert any
6 applicable protections and shall notify the other Party and the court or
7 tribunal that issued the demand of its challenge as required by law, the
8 subpoena, or other judicial process. The burden of proving that
9 Confidential Material is entitled to protection from disclosure shall lie with
10 the Party producing the Confidential Material. When such a challenge is
11 made, the Party who received the demand shall not produce any
12 Confidential Material in the absence of consent by the Party that produced
13 the Confidential Material, or an order by the issuing court or tribunal
14 compelling production. Any Party required to give notice to any other Party
15 under this Paragraph shall be deemed to comply if such notice is provided
16 to counsel of record signing this Stipulation and Order.

17 9. ***Use of Confidential Material in Connection With***
18 ***Depositions.***

- 19 a. Portions of deposition transcripts that contain testimony
20 referring to and/or exhibits containing Confidential
21 Material may be designated as “CONFIDENTIAL” as soon
22 as possible and in no event more than 15 days from the
23 day such testimony was provided. If any testimony is so
24 designated, the transcript of the testimony and/or exhibits
25 designated as “CONFIDENTIAL” shall be marked as
26 “CONFIDENTIAL” and identified as such by the court
27 reporter in the deposition transcript. A Designating Party
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may elect to ask the court reporter to create a separate additional transcript which divides such Confidential Material into a separate portion of the same volume of the deposition transcript. The Parties agree that the disclosure of Confidential Material, testimony and/or exhibits containing or referring to Confidential Material to court reporters, videographers and/or their staff shall not change the confidential status of Confidential Material and shall not be deemed a waiver of privileges asserted as to the Confidential Material.

- b. Where testimony or documents are designated as Confidential Material at a deposition, any party may exclude from the deposition all persons other than those to whom the Confidential Material may be disclosed under Paragraph 5 of this Stipulation and Order.
- c. Any party may mark Confidential Material, or information derived or obtained therefrom, as a deposition exhibit and examine any witness thereon, provided that the deposition witness is a qualified person to whom the exhibit may be disclosed under Paragraph 5 of this Stipulation and Order and that the exhibit and related transcript pages receive the same confidentiality designation as the original Confidential Material.
- d. In the event there is a dispute over any designation as provided for in this Section 9, the objecting Party may raise that issue with the court and all parties shall

1 maintain the challenged testimony as confidential unless
2 and until a ruling is issued by the court.

3 **10. No Waiver or Alteration of Confidential Status.** Neither this
4 Stipulation and Order, nor the production of Confidential Material, nor any
5 proceedings pursuant to this Stipulation and Order, shall be deemed an
6 admission or waiver, in whole or in part, of a Party's claim of confidentiality,
7 either as to the specific information disclosed or as to any other information
8 derived or obtained therefrom. Nothing in this Stipulation and Order shall
9 be construed as limiting in any way the right of any party to object to
10 furnishing information sought by any other Party, any Party's right to object
11 to information requested to be furnished by any third person/entity, or any
12 third person/entity's right to object to furnishing information. This
13 Stipulation and Order is not intended to and, therefore, should not be
14 construed as affecting the right of any party to withhold information based
15 on a claim of privilege.

16 **11. No Waiver of Right to Object to Designation as Confidential**
17 **Material.** Nothing in this Stipulation and Order shall be construed as
18 limiting in any way the right of any Party to object to another Party
19 designating documents as being "Confidential Material." If any such
20 dispute cannot be informally resolved, it shall be resolved by the Court
21 upon noticed motion brought by the party asserting the claim of
22 confidentiality, and the party asserting such claim shall bear the burden of
23 proof that such information is confidential.

24 **12. No Waiver of Objections to Admissibility.** Nothing in this
25 Stipulation and Order shall be deemed a waiver of any objections any party
26 may have to the admissibility of Confidential Material or information derived
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1 or obtained therefrom. All applicable objections are hereby expressly
2 reserved.

3 **13. No Waiver of Use of Producing Party's Own Records.** This
4 Stipulation and Order shall not affect a Party's or third person/entity's use of
5 its own information or documents.

6 **14. No Waiver From Inadvertent Disclosure.** If any Party
7 inadvertently discloses and/or produces any Confidential Material which is
8 the subject of this Stipulation and Order, said inadvertent disclosure and/or
9 inadvertent production shall not be deemed a waiver, in whole or in part, of
10 a Party's claim of confidentiality, either as to the specific information
11 disclosed or as to any other information relating thereto or on the same or
12 related subject matters.

13 **15. Return or Destruction of Documents.** Within 30 days after
14 the final termination of the litigation, including all appeals, the Party
15 receiving Confidential Material shall obtain Confidential Material from any
16 persons identified in subparagraphs 5(a), (c), (d) and (m). All Confidential
17 Material marked "CONFIDENTIAL" shall be returned to the producing party
18 or destroyed unless (i) there is a separate written agreement between the
19 Parties allowing retention of such documents, in which case, the terms of
20 this Stipulation and Order will continue to govern; or (ii) the material has
21 been included within a claims file or other file or report which must be
22 preserved in whole pursuant to applicable state or federal statutes, rules or
23 regulations. All notes, memoranda, summaries or other documents in the
24 possession, custody or control of the parties referring to or relating to the
25 Confidential Material shall be destroyed, except counsel to each party may
26 retain one copy of pleadings, transcripts, exhibits, notes, memoranda and
27 correspondence even if such documents constitute or contain Confidential
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1 Material. Such material retained by counsel shall continue to be subject to
2 the terms and conditions of this Protective Order.

3 **16. No Waiver of Privileges.** The Parties do not waive any
4 privilege, including any attorney-client privilege, work product privilege or
5 any other applicable privilege they might have, including, but not limited to,
6 any privilege that the Bank may have had or any federal or state regulatory
7 agency may hold, with respect to any of the documents and information
8 produced. A Party's production of Confidential Material is not intended to,
9 and shall not, waive or diminish in any way the confidentiality of such
10 material or its continued protection under the attorney-client privilege, work
11 product doctrine or any applicable privilege as to any other third party.

12 Furthermore, in the event that a Party inadvertently produces
13 attorney-client privileged documents or information, and if that Party
14 subsequently notifies the other Party that the privileged documents or
15 information should not have been produced, the Parties agree to
16 immediately return the originals and all copies of the inadvertently produced
17 privileged documents and information. Nothing in this Stipulation and Order
18 shall prevent the FDIC-R from using any Confidential Material in any of its
19 capacities or for any lawful purposes.

20 **17. Modification; Waiver; Headings.** A modification or waiver of
21 any of the terms of this Stipulation and Order must be in writing and signed
22 by the Parties. The headings and captions in this Stipulation and Order are
23 inserted for convenience only and shall not affect the meaning or
24 interpretation of the provisions hereof.

25 **18. Binding Effect of Stipulation.** This Stipulation and Order shall
26 continue to be binding after the conclusion of this litigation. At any time, a
27 Party may seek written permission from the producing party or order of the
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1 Court with respect to the relief from or dissolution or modification of this
2 Stipulation and Order.

3 **19. *Filing of Confidential Materials with Court.*** Without written
4 permission from the Designating Party or a court order secured after
5 appropriate notice to all interested persons, a Party may not file in the
6 public record in this action any Protected Material. A Party that seeks to file
7 under seal any Protected Material must comply with Civil Local Rule 141.
8 Protected Material may only be filed under seal pursuant to a court order
9 authorizing the sealing of the specific Protected Material at issue. Pursuant
10 to Civil Local Rule 141, a sealing order will issue only upon a request
11 establishing that the Protected Material at issue is privileged, protectable as
12 a trade secret, or otherwise entitled to protection under the law.
13

14 DATED: July 2, 2013

NOSSAMAN LLP

16 By: /s/ James H. Vorhis
17 James H. Vorhis
18 Attorneys for Federal Deposit
19 Insurance Corporation, as
Receiver for County Bank, as
assignee of certain claims

20 DATED: July 2, 2013

JOSEPH AND COHEN

22 By: /s/ Jonathan A. Cohen
23 Jonathan A. Cohen
24 Attorneys for Plaintiffs Thomas
25 T. Hawker, John J. Incandela,
26 Dave Kraechan, Edwin Jay Lee
27 and Edward J. Rocha
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DATED: July 2, 2013

HINSHAW & CULBERTSON LLP

By: /s/ Edward F. Donahue
Edward F. Donahue
Attorneys for Defendant
Banclnsure, Inc.

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ORDER

IT IS SO ORDERED.

Dated: July 2, 2013



UNITED STATES MAGISTRATE JUDGE

1 **ATTACHMENT "A"**
2 **AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER**

3 I hereby certify that I have received a copy of the Stipulation and
4 Order Regarding Non-Disclosure of Confidential Material issued in the
5 above-captioned action, "*Thomas T. Hawker, et al. v. BancInsure, Inc., et*
6 *al.*," United States District Court, Eastern District of California, Case No.
7 1:12-cv-01261-LJO-SAB (the "Action"), and represent and agree as follows:

8 1. I have read and understand the provisions of the Stipulation and
9 Order.

10 2. I will comply with and agree to be bound by all of the provisions
11 of the Stipulation and Order.

12 3. I will maintain all Confidential Material, including copies, notes,
13 or other transcriptions obtained or derived therefrom, in a secure manner to
14 prevent unauthorized access to it.

15 4. No later than thirty (30) days after the conclusion of the Action, I
16 will return the Confidential Material, including copies, notes, or other
17 transcriptions obtained or derived therefrom, to the counsel who provided
18 me with the Confidential Material. I hereby consent to the jurisdiction of
19 said Court for the purpose of enforcing the Stipulation and Order.

20
21 Signature: _____

22 Printed Name: _____

23 Date: _____

24 Company: _____

25 Address: _____

26 Telephone: _____

27 Cell Phone: _____