

1 JOHNNY DARNELL GRIGGS (SBN 110640)
jgriggs@zuberlaw.com

2 **ZUBER LAWLER & DEL DUCA LLP**
777 S. Figueroa Street, 37th Floor
3 Los Angeles, California 90017
Telephone: (213) 596-5620
4 Facsimile: (213) 596-5621

5 Attorneys for Plaintiff
Federal Deposit Insurance Corporation,
6 as Receiver for Butte Community Bank

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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11 FEDERAL DEPOSIT INSURANCE
COMPANY AS RECEIVER FOR
12 BUTTE COMMUNITY BANK,

13 Plaintiff,

14 v.

15 ROBERT CHING, EUGENE EVEN,
16 DONALD LEFORCE, ELLIS
MATTHEWS, LUTHER
17 McLAUGHLIN, ROBERT MORGAN,
JAMES RICKARDS, GARY
18 STRAUSS, HUBERT TOWNSHEND,
JOHN COGER, AND KEITH
19 ROBBINS,

20 Defendants.

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22 This Court has concluded that there are compelling reasons to enter a
23 protective order regarding confidentiality and non-disclosure in order to facilitate
24 the production of discovery materials in this case and to balance the need to protect
25 the disclosure of sensitive customer personal and financial information and
26 regulatory information without requiring the FDIC-R to incur the burden and
27 expense of having to review each document line-by-line to redact potentially
28 sensitive information. The protective order regarding confidentiality and non-

CASE NO. 2:13-cv-01710-KJM-EFB

**PROTECTIVE ORDER
REGARDING CONFIDENTIALITY
AND NON-DISCLOSURE**

**(With court modifications in
strikeout/underline format.)**

1 disclosure (“Protective Order”) will significantly reduce the cost of production and
2 will expedite the production of discovery materials in this case. Accordingly,
3 pursuant to Fed. R. Civ. P. 26(c), it is hereby

4 ORDERED and ADJUDGED that this Protective Order shall govern the
5 production and handling of information exchanged by FDIC-R and Defendants
6 (hereinafter individually referred to as a "Party" or together as the "Parties") in these
7 proceedings.

8 1. **Purpose.** This Protective Order is entered for the purpose of the Parties
9 exchanging confidential documents and information in connection with this
10 litigation. The Protective Order is necessary because some documents exchanged
11 hereunder contain information protected from disclosure by law, including private
12 and protected financial information about consumers (such as protected by the
13 Gramm-Leach-Bliley Act (Pub. L 106-102)), confidential regulatory information, or
14 commercially sensitive information, disclosure of which could result in violation of
15 law, or harm to individual consumers or the Parties.

16 2. **Definition of Confidential Material.** For purposes of this Protective
17 Order, "Confidential Material" shall mean certain documents, records, and
18 information composed or stored in written, electronic, digital, or any other medium,
19 provided by any Party pursuant to this Protective Order, and to any information
20 identifying any names, addresses, account information, personal information (such
21 as social security number, date of birth, and any other personal identification
22 information} recognized by law as, or required to be maintained as, confidential,
23 including, without limitation, the following:

24 (a) **Regulatory:** Confidential Material related in any way to the
25 regulation or supervision of the Bank, in whatever form, whether preliminary
26 or final, including reports of examination or inspection, regulatory
27 correspondence, reports, orders, memoranda, or agreements by, from or with
28 the FDIC in its corporate capacity, the Office of Thrift Supervision ("OTS"),
or any other federal or state regulatory authority, and any documents
containing confidential information obtained from any documents and records
related to the supervision or regulation of the Bank. The Parties understand
and agree that the release of such regulatory information may require

1 approval from independent government agencies, and that no regulatory
2 documents, however obtained, will be disclosed to third parties not covered
by this Protective Order.

3 (b) **Statutory:** Confidential Material includes documents that are
4 confidential pursuant to the Freedom of Information Act, 5 U.S.C. §552, 12
5 C.F.R. Part 309, the laws of the State of Florida, or any other applicable
federal or state laws.

6 (c) **Bank and Bank Customers:** Confidential Material related to the
7 Bank, its customers, any trading company involved in placing orders for
8 commodities futures or options, or any other. entity, including: Automated
9 Clearing House items or transactions, chargebacks, merchant processing,
10 bank account information, signature cards, bank statements, general ledger
11 entries, deposit or reserve information, commodity trading statements, loans
12 and lending transactions, loan applications, financial statements and credit
13 reports, business and personal state and federal income tax forms,
correspondence, and related loan documentation relating to any extension of
credit or loan to any borrower. Examples of "Confidential Material," without
limitation, include documents containing a customer's account number, credit
card number, personal identification number, account balance, information
relating to a deposit account, loan, or borrower relationship and loan
application materials, and documents or information that contain the
customer's name, address, social security number, date of birth or other
similar identifying information.

14 (d) **Receivership:** Confidential Material related to the receivership
15 of the Bank, including any information on loss or estimates of such loss on
16 the Bank's assets not publicly available. Notwithstanding the provisions of
17 paragraph 6(a) — (k), no such Confidential Material shall be disclosed to any
18 person or entity known to have any current or prospective interest in such
19 assets, whether or not that person or entity would otherwise be allowed access
to documents and information under the terms of this Protective Order. This
subparagraph (d), however, does not prevent such documents from being
shared with experts or others listed in paragraphs 6(a) — (i).

20 Notwithstanding the foregoing paragraphs (a) — (d), no party is estopped or
21 in any way prevented from later challenging the confidentiality designation of any
22 document.

23 **3. Confidential Designation and Treatment of Confidential Material.**

24 Documents provided by any Party pursuant to this Protective Order that are deemed
25 and denominated by any Party as "Confidential" pursuant to this Protective Order
26 shall be deemed to be Confidential Material, unless and until that designation is
27 challenged pursuant to paragraph 4, below. Confidential Material may be designated
28 as such by affixing to the material the legend "Confidential." The failure to

1 designate any documents with such legend shall not constitute a waiver by any Party
2 of the right to assert that such documents contain protected Confidential Material. In
3 the event that any Party produces Confidential Material without designating it as
4 such, the producing Party may notify the receiving Parties that the documents or
5 information should have been designated Confidential Material, and the Parties will
6 treat the documents as Confidential Material under this Protective Order.
7 Confidential Material shall only mean and shall be limited to the documents
8 produced in this litigation marked with a Bates Stamp number. In the event a Party
9 obtains a duplicate copy of a document produced in discovery in this litigation from
10 a publicly available source the party acquiring the document shall not be required to
11 comply with the terms of this Order regarding the use of the duplicate document and
12 the use of such duplicate document shall not be subject to the provisions of the
13 Order

14 4. **Challenge of Confidentiality Designation.** A Party shall not be
15 obligated to challenge the propriety of a designation of confidentiality at the time
16 made, and a failure to do so shall not preclude a subsequent challenge thereto. In the
17 event that any Party disagrees at any stage of these proceedings with the
18 confidentiality designation by the producing Party, the Parties shall first try to
19 dispose of such dispute in good faith on an informal basis. If after fifteen (15) days
20 the dispute cannot be resolved, the Party objecting to the designation may, at any
21 time thereafter, seek appropriate relief from the Court in which this action is
22 pending. The challenged designation shall be maintained and shall remain in full
23 force and effect pending the Court's determination on the challenged designation.

24 5. **Non-disclosure of Confidential Material.** All Confidential Material
25 provided pursuant to this Protective Order is provided solely and exclusively for
26 purposes of litigating this action. Absent further written agreement between the
27 Parties of further court order, all such materials shall be maintained confidential
28 pursuant to this Protective Order and shall not be disclosed, discussed, or in any way

1 divulged to any person for any other purpose, except as permitted under this
2 Protective Order.

3 6. **Exceptions for Non-disclosure.** The Parties agree that the Confidential
4 Material shall be used only to investigate, analyze, litigate, and resolve this action.
5 The Parties may disclose Confidential Material received pursuant to this Protective
6 Order to the following persons or entities, provided that each person or entity,
7 required to do so, complies with paragraph 7 below:

8 (a) counsel signing this Protective Order (together with any employees
9 of counsel) engaged by any Party to assist or participate in the evaluation and
resolution of the FDIC-R Claims;

10 (b) vendors, consulting experts, testifying experts and consultants
11 engaged by any Party to assist or participate in the investigation, analysis and
defense of the FDIC-R Claims;

12 (c) insurers, reinsurers, regulators, auditors, or other entities to whom
13 Defendants may be required to respond or report to in the ordinary course of
business regarding the subject matter of the FDIC-R Claims;

14 (d) the individual Defendants in this action;

15 (e) other Bank officers, directors, employees, independent contractors,
16 or outside accountants or auditors who performed work for the Bank;

17 (f) FDIC (in any of its capacities) personnel, including, but not limited
18 to, its Chairman, Board of Directors, attorneys, investigators, senior
executives, and others) conducting ,assisting, monitoring, reviewing, or
19 making determinations with regard or related to the FDIC-R Claims, or the
action;

20 (g) any witness or third party contacted by counsel for a party to
investigate this case, whether such witness or third party will or will not
21 testify at trial or in deposition, in this action; provided, however, that no
disclosure of Confidential Material to such persons shall be made unless and
22 until the witness or third party has executed the agreement to maintain
confidentiality.

23 ~~(h) Court officials involved in this action including court reporters,
24 certified translators or interpreters, and other Court personnel as are
necessarily incident to the conduct of discovery, the preparation for the trial
or the trial itself; and~~

25 (i) officers, employees, representatives and agents of the Party that
26 produced the Confidential Material may see any and all Confidential Material
produced by that Party.
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1 In no event shall any Confidential Material be disclosed to any party, by
2 consent or by identification in the foregoing list, without such person first having
3 executed the appropriate acknowledgements and agreements required herein.
4 Notwithstanding this paragraph 6, Material that is Confidential pursuant to
5 paragraph 2(d) shall not be disclosed to any person or entity known to have any
6 current or prospective interest in Bank assets, whether or not that person or entity
7 would otherwise be allowed access to documents and information under the terms of
8 this Protective Order, without seeking and obtaining the permission of the Court in
9 this action.

10 7. **Protective Order Certificate.** Confidential Material may only be
11 disclosed to persons or entities identified in subparagraphs 6(a) – (g) and (i) ~~(j)~~ after
12 that person or entity agrees to be bound by this Protective Order and signs a written
13 Agreement to Maintain Confidentiality, in the form attached as Attachment A. The
14 Parties shall keep all of their respective Agreements to Maintain Confidentiality
15 containing original signatures.

16 8. **Demands by Others for Confidential Materials.** If any other person
17 or entity demands, by subpoena or other judicial process, or by operation of law
18 production of documents produced and marked as Confidential pursuant to this
19 Protective Order, the Party receiving such demand shall promptly notify the
20 producing Party of such demand. At its option, the producing Party may elect to
21 challenge the demand and assert any applicable protections. The objecting Party
22 shall notify the other Parties hereto and issuing court or tribunal of its challenge as
23 required by law, the subpoena, or other judicial process. The burden of proving that
24 Confidential Material is entitled to protection from disclosure shall lie with the Party
25 making the claim. When such a challenge is made, the Party who received the
26 demand shall not produce any Confidential Material in the absence of consent by the
27 producing Party or an order by the issuing court or tribunal compelling production.

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1 9. **No Waiver of Objections to Use; Filing Under Seal.** The Parties
2 hereto shall not contend or assert that a Party's production of Confidential Material
3 pursuant to this Protective Order in any way acts as a waiver of any privilege, work
4 product doctrine, or discovery or evidentiary objections by the producing Party, or
5 otherwise entitles the receiving Party to obtain or use Confidential Material in a
6 manner contrary to this Protective Order. In the event any party, who has designated
7 a document (the "Designating Party") as Confidential Material pursuant to this
8 Order, wishes to file under seal the Confidential Material, the Designating Party
9 shall first consult with the Non-Designating Party to determine whether agreement
10 may be reached on an informal basis. After consulting with the Non-Designating
11 Party the Designating Party shall file a motion with the Court demonstrating good
12 cause for the sealing with a request that the Confidential Material be filed under seal
13 pursuant to Court rules ~~and remain under seal~~ until such time as the Court orders
14 otherwise. The Court will then determine whether the document should be filed
15 under seal and enter an appropriate order. In the event a Non-Designating Party
16 wants to include in a court filing Confidential Material, which will not be the subject
17 of a motion by the Non-Designating Party seeking the Court's permission to file the
18 document under seal, the Non-Designating Party must give the Designating Party at
19 least three days advance notice to allow the Designating Party to file its own
20 motion seeking a court determination of whether the document should be filed under
21 seal. The Non-Designating Party must not file the Confidential Material with the
22 Court until the Court has ruled upon the Designating Party's motion to file under
23 seal. In the event the Designating Party fails. to file a motion to seal within three
24 days after notification by the Non-Designating Party of its intent to file Confidential
25 Material, the Non-Designating Party shall not then be required to file the
26 Confidential Material under seal. Any Confidential Material the court orders filed
27 under seal shall remain under seal until such time as the Court orders otherwise.

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1 10. **Reservation of Rights.** Nothing in this Protective Order confers upon
2 the Parties any further right or access to documents or information not provided by
3 the other Parties, including but not limited to any documents a Party withholds on
4 the basis of any applicable privilege or immunity, regardless of whether such
5 withheld documents) may otherwise qualify as Confidential Material if produced
6 rather than withheld. With respect to Confidential Material produced, each Party
7 reserves its rights under this Protective Order, and otherwise under law. Any
8 documents withheld on this basis or any other basis must be identified on a privilege
9 log to be provided by the Party asserting the privilege or other protection within two
10 weeks of the date the documents) would have been produced had it not been
11 privileged or otherwise protected from disclosure.

12 11. **Return of Documents.** Within ninety (90) days after final adjudication
13 of this action, including any resolution through settlement, unless otherwise agreed
14 to in writing by Counsel for all Parties, the Parties shall either: (a) assemble and
15 return all Confidential Materials, including all copies thereof, to the producing
16 Party, or (b) certify in writing that all such information has been destroyed or will be
17 maintained as Confidential until destroyed pursuant to any document or data
18 destruction procedures applicable to such material.

19 12. **Remedies.** To enforce rights under this Protective Order or in the event
20 of an alleged violation of this Protective Order, the Parties shall first seek to resolve
21 the alleged violation through prompt and reasonable discussion. In the event such
22 efforts fail to promptly resolve the alleged violation, the Parties reserve the right to
23 seek relief from the Court in the action for, inter alia, money damages, injunctive
24 relief, or any other relief as appropriate. Upon request by the producing Party, the
25 receiving Party will provide appropriate certificates with respect to disposition of
26 the Confidential Materials.

27 13. **No Waiver of Privileges; Inadvertent Production Procedure.** The
28 Parties do not waive any privilege, including any attorney-client privilege, work

1 product doctrine, or any other applicable privilege they might have with respect to
2 any of the documents and information produced, nor do the Parties waive the right
3 to challenge any assertion of privilege by entering into this Protective Order. With
4 respect to the FDIC, in any of its capacities, these privileges include, but are not
5 limited to, any privilege that the Bank may have had or any federal or state
6 regulatory agency may hold. The Parties' production of Confidential Material is not
7 intended to, and shall not, waive or diminish in any way the confidentiality of such
8 material or its continued protection under the attorney-client privilege, work product
9 doctrine, or any applicable privilege as to any other third party. Furthermore, in the
10 event that a Party inadvertently produces attorney client privileged or otherwise
11 privileged documents or information, or other documents protected by law from
12 disclosure even under a Protective Order, and if the Party subsequently notifies the
13 receiving Party that the privileged documents or information should not have been
14 produced, the receiving Party shall immediately return the originals and all copies of
15 the inadvertently produced privileged documents and information. Nothing in this
16 Protective Order shall prevent the FDIC from using any Confidential Material that it
17 produces to the Defendants in any of its capacities for any lawful purposes. In
18 addition, with regard to privileged and/or otherwise protected documents, Federal
19 Rule of Evidence 502 is hereby expressly incorporated into this Protective Order.

20 14. **Binding Effect; Assignment.** The Protective Order shall be binding
21 upon and inure to the benefit of the Parties hereto, their affiliates, their
22 representatives, and the Parties' respective successors or assigns. No Party may
23 assign any right or delegate any duty under this Protective Order other than to an
24 affiliate without the other Party's prior written consent.

25 15. **Notice.** All notices required to be given under the Protective Order
26 shall be in writing and delivered to the addressees set forth below. Notice shall be
27 sent by overnight delivery or registered or certified mail, return receipt requested,
28 and shall be considered delivered and effective three days after mailing.

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If to FDIC-R: Zuber Lawler & Del Duca LLP
777 South Figueroa Street, 37th Floor
Los Angeles, California 90017
Attn: Johnny Darnell Griggs, Esq.

If to Defendants: Tisdale & Nicholson, LLP
2029 Century Park East, Suite 900
Los Angeles, California 90067
Attn: Kevin D. Hughes (SBN 188749)

DONE AND ORDERED this 12th day of February 2014.


UNITED STATES DISTRICT JUDGE

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ATTACHMENT A
AGREEMENT TO MAINTAIN CONFIDENTIALITY

I hereby acknowledge that I have been provided and have read a copy of that certain Protective Order Regarding Confidentiality and Non-disclosure Order, dated _____, (the "Protective Order"), a copy of which is annexed hereto. I understand that any Confidential Material within the meaning of the Protective Order shown to me is confidential, shall be used by me only as provided in the Protective Order, and shall not be disclosed by me unless expressly permitted under the Protective Order. I agree to abide by the terms of the Protective Order. I will return any such Confidential Material provided to me and will not retain any copies of Confidential Material, including any notes or other documents generated that include any content from the Confidential Material, pursuant to the terms of the Protective Order.

Name: _____ (signature)	Date: _____, 2013
_____	Telephone: _____ (business)
(printed)	Telephone: _____ (home)
Title: _____	Telephone: _____ (cell)
Company: _____	Address: _____
	City: _____
	State/Zip Code: _____