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5 **Attorneys for Plaintiff Federal Deposit Insurance**  
 6 **Corporation as Receiver for AmTrust Bank**

7 **UNITED STATES DISTRICT COURT**  
 8 **EASTERN DISTRICT OF CALIFORNIA**  
 9 **SACRAMENTO DIVISION**

10 FEDERAL DEPOSIT INSURANCE  
 CORPORATION as Receiver for  
 AMTRUST BANK  
 11  
 12 Plaintiff,  
 13 vs.  
 14 FIRST PRIORITY FINANCIAL, INC., a  
 California corporation,  
 15 Defendant.

Case No. 2:15-cv-02507 JAM/KJN

**STIPULATED PROTECTIVE ORDER**

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**STIPULATED PROTECTIVE ORDER**

This Stipulated Protective Order (“Protective Order”) is submitted by the Plaintiff, FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for AMTRUST BANK (“FDIC-R” or “Plaintiff”), and Defendant FIRST PRIORITY FINANCIAL, INC. a California Corporation (“First Priority” or “Defendant”) (collectively, the “Parties”).

**RECITALS**

WHEREAS on December 4, 2009, the Office of Thrift Supervision closed AmTrust Bank (“AmTrust” or the “Bank”) and appointed the FDIC as Receiver pursuant to 12 U.S.C. §§ 1464(d)(2)(A) and 1821(c)(5);

WHEREAS, on December 2, 2015, the FDIC-R filed an action in the United States District Court for the Eastern District of California, Civil Action No. 2:15-cv-02507-JAM-KJN (the “Action”), against Defendant seeking damages (the “FDIC-R Claims”); and

WHEREAS, this case necessarily involves confidential bank information and personally identifiable information of borrowers that are confidential and generally protected from disclosure under FDIC rules and regulation (12 C.F.R. §§ 308 and 309), the information privacy provisions of the Graham-Leach-Bliley Act (15 U.S.C. §6801, *et seq.*) and/or the laws of the State of California or other federal or state laws and in anticipation of producing or otherwise revealing other such documents, jointly submit this Protective Order, which shall govern the production and treatment of confidential material (as defined herein) in this Action.

Accordingly, pursuant to Rule 26(c), Federal Rules of Civil Procedure, it is hereby:

STIPULATED that this Protective Order shall govern the production and handling of information exchanged by both the Parties and by third parties in these proceedings as follows:

- 1. **Purpose.** This Protective Order is entered for the purpose of the Parties exchanging confidential documents and information in connection with this litigation. This

1 Protective Order also shall apply to and govern the production of confidential documents by third  
2 parties in connection with the litigation. The Protective Order is necessary because some  
3 documents produced hereunder contain information protected from disclosure by law, including  
4 private and protected financial information about consumers (such as protected by the Gramm-  
5 Leach-Bliley Act (Pub L 106-102) and its implementing regulations) (“Non-Party Borrower  
6 Information”), confidential regulatory information, proprietary work product, or commercially  
7 sensitive information, disclosure of which could result in violation of law, or harm to individual  
8 consumers, third parties, or the Parties. A Court approved protective order is appropriate pursuant  
9 to Local Rule 141.1 because the Parties seek an order pursuant to Federal Rule of Civil Procedure  
10 502(d) (*see* Paragraph 13) and so that they may comply with any federal or state law or other legal  
11 authority that only permits disclosure of Non-Party Borrower Information pursuant to a court  
12 order or subpoena (*see* Paragraph 14).

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

20               (a)       ***Regulatory:*** Confidential Material related in any way to the  
21 regulation or supervision of the Bank, in whatever form, whether preliminary or  
22 final, including reports of examination or inspection, regulatory correspondence,  
23 reports, orders, memoranda, or agreements by, from or with the FDIC in its  
24 corporate capacity, or any other federal or state regulatory authority, and any  
25 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 approval from  
independent government agencies, and that no regulatory documents, however  
obtained, will be disclosed to third parties not covered by this Protective Order.

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2 (b) **Statutory:** Confidential Material includes documents that are  
3 confidential pursuant to the Freedom of Information Act, 5 U.S.C. §552, 12 C.F.R.  
4 Part 309, the laws of the State of California, or any other applicable federal or state  
5 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 Clearing  
9 House items or transactions, chargebacks, merchant processing, bank account  
10 information, signature cards, bank statements, general ledger entries, deposit or  
11 reserve information, commodity trading statements, loans and lending transactions,  
12 loan applications, financial statements and credit reports, business and personal  
13 state and federal income tax forms, correspondence, and related loan  
14 documentation relating to any extension of credit or loan to any borrower.  
15 Examples of “Confidential Material,” without limitation, include documents  
16 containing a customer’s account number, credit card number, personal  
17 identification number, account balance, information relating to a deposit account,  
18 loan, or borrower relationship and loan application materials, and documents or  
19 information that contain the customer’s name, address, social security number, date  
20 of birth or other similar identifying information.

21 (d) **Receivership.** Confidential Material related to the receivership of  
22 the Bank, including any information on loss or estimates of such loss on the Bank’s  
23 assets not publicly available. Notwithstanding the provisions of paragraph 6(a) -  
24 (j), no such Confidential Material shall be disclosed to any person or entity known  
25 to have any current or prospective interest in such 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).

(e) **Third Parties.** Confidential Material produced by independent  
contractors, outside accountants or auditors, or other entities or individuals who  
performed work for the Bank.

Notwithstanding the foregoing paragraphs (a) - (e), no Party is estopped or in any way prevented  
from later challenging the confidentiality designation of any document.

3. **Confidential Designation and Treatment of Confidential Material.** Documents  
provided by any Party or third party pursuant to this Protective Order that are deemed and  
denominated by any Party or producing third party as “Confidential” pursuant to this Protective  
Order shall be deemed to be Confidential Material, unless and until that designation is challenged



1           5.       *Non-disclosure of Confidential Material.* All Confidential Material provided  
2 pursuant to this Protective Order is provided solely and exclusively for purposes of litigating this  
3 Action. Absent further written agreement between the Parties or further court order, all such  
4 materials shall be maintained confidential pursuant to this Protective Order and shall not be  
5 disclosed, discussed, or in any way divulged to any person for any other purpose, except as  
6 permitted under this Protective Order.

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

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

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

16                   (c)       any potential insurer and potential insurer's counsel. A potential  
17 insurer may disclose Confidential Material to any of the insurer's reinsurers,  
regulators, auditors, or other entities to whom the insurer may be required to  
18 respond or report to in the ordinary course of business regarding the subject matter  
of the FDIC-R Claims, each of which are exempt from the requirements of  
19 paragraph 7 but only so long as such persons or entities are already subject to  
confidentiality obligations that are substantially similar to those set forth in this  
Order;

20                   (d)       the individual Defendant in this Action;

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

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

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

7 (h) Court officials involved in this Action including court reporters,  
8 certified translators or interpreters, and other Court personnel as are necessarily  
9 incident to the conduct of discovery, the preparation for the trial or the trial itself;  
10 and

11 (i) officers, employees, representatives, and agents of the Party that  
12 produced the Confidential Material may see any and all Confidential Material  
13 produced by that Party.

14 In no event shall any Confidential Material be disclosed to any party, by consent or by  
15 identification in the foregoing list, without such person first having executed the appropriate  
16 acknowledgments and agreements required herein. Notwithstanding this paragraph 6, Material  
17 that is Confidential pursuant to paragraph 2(d) shall not be disclosed to any person or entity  
18 known by Defendant to have any interest in Bank assets, whether or not that person or entity  
19 would otherwise be allowed access to documents and information under the terms of this  
20 Protective Order, without seeking and obtaining the permission of the Court in this Action.

21 7. **Protective Order Certificate.** Confidential Material may only be disclosed to  
22 persons or entities identified in subparagraphs 6(a) - (i). Persons or entities identified in  
23 subparagraphs 6(c) (with counsel signing for any potential insurer and counsel's own law firm),  
24 6(b), (d), (e), and (g) must sign a written Agreement to Maintain Confidentiality, in the form  
25 attached as Attachment A. The Parties shall keep all of their respective Agreements to Maintain  
Confidentiality containing original signatures.

8. **Demands by Others for Confidential Materials.** If any other person or entity  
demands, by subpoena or other judicial process, or by operation of law production of documents  
produced and marked as Confidential pursuant to this Protective Order, the Party receiving such

1 demand shall promptly notify the producing Party or third party of such demand. At its option, the  
2 producing Party or third party may elect to challenge the demand and assert any applicable  
3 protections. The objecting Party or third party shall notify the other Parties hereto and issuing  
4 court or tribunal of its challenge as required by law, the subpoena, or other judicial process. The  
5 burden of proving that Confidential Material is entitled to protection from disclosure shall be with  
6 the Party or third party making the claim. When such a challenge is made, the Party who received  
7 the demand shall not produce any Confidential Material in the absence of consent by the  
8 producing Party or third party or an order by the issuing court or tribunal compelling production.

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









1 finds that, in view of the protections provided for the information disclosed in this Protective  
2 Order, the volume of documents to be produced and the ongoing oversight of the Court, there is  
3 good cause to excuse such requirement, and this Protective Order shall constitute an express  
4 direction that the producing party is exempted from obtaining a court-ordered subpoena or having  
5 to notify and/or obtain consent from any person or entity prior to the disclosure of Non-Party  
6 Borrower Information in the Action. To the extent that any Non-Party Borrower Information Law  
7 requires that any person or entity be notified prior to disclosure of Non-Party Borrower  
8 Information except where such notice is prohibited by court order, the Court directs that, in view  
9 of the protections provided for the information disclosed in this Protective Order, the volume of  
10 documents to be produced and the ongoing oversight of the Court, producing parties are explicitly  
11 prohibited from providing such notice in the Action; provided, however, that this Protective Order  
12 shall not prohibit any producing party from contacting any person or entity for any other purpose.  
13 Any producing party may seek additional orders from this Court that such party believes may be  
14 necessary to comply with any Non-Party Borrower Information Law.

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

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

23 If to FDIC-R:                     Lauren M. Gibbs  
24   MORTGAGE RECOVERY LAW GROUP LLP  
25   700 North Brand Boulevard, Suite 830  
   Glendale, California 91203

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(818) 630-7900  
lauren.gibbs@mortgagerecoveries.com  
*Counsel for Plaintiff FDIC as Receiver for AmTrust Bank*

If to Defendant : Randy Sullivan  
PATTON & SULLIVAN LLP  
6600 Koll Center Parkway, Suite 250  
Pleasanton, CA 94566  
(925) 600-1800  
randy@pattonsullivan.com  
*Counsel for Defendant First Priority Financial, Inc.*

**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

DATED: December 7, 2016 MORTGAGE RECOVERY LAW GROUP LLP

By: /s/ Lauren M. Gibbs  
Paul A. Levin  
Lauren M. Gibbs  
Attorneys for Plaintiff Federal Deposit Insurance  
Corporation as Receiver for AmTrust Bank

DATED: December 7, 2016 PATTON & SULLIVAN LLP

By: /s/ Randy Sullivan (as authorized on 11/29/16)  
Randy Sullivan  
Attorneys for Defendant First Priority Financial, Inc.

**IT IS SO ORDERED**

Dated: 12/7/2016 /s/ John A. Mendez  
John A. Mendez  
UNITED STATES DISTRICT COURT 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 the Stipulated Protective Order, (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: _____
Name: _____ (printed)	Telephone: _____ (Business)
Company: _____	_____ (Home)
	_____ (Cell)
Address: _____	
City: _____	
State/Zip Code: _____	