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 10 **Federal Deposit Insurance Corporation**  
 11 **as Receiver for BankUnited, F.S.B.**

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 FEDERAL DEPOSIT INSURANCE  
 16 CORPORATION as Receiver for  
 17 BankUnited, F.S.B.,  
 18 Plaintiff,  
 19 vs.  
 20 PACIFIC MORTGAGE  
 21 CONSULTANTS, INC., a California  
 22 corporation,  
 23 Defendant.

Case No. 4:15-cv-02236-SBA  
 Honorable Sandra Brown Armstrong  
**[PROPOSED] STIPULATED  
 PROTECTIVE ORDER**

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1 **STIPULATED PROTECTIVE ORDER**

2 This case, brought by the Plaintiff, the Federal Deposit Insurance Corporation (“FDIC”) in  
3 its capacity as Receiver for BANKUNITED, F.S.B., (“FDIC-R”), necessarily involves  
4 confidential bank information and personally identifiable information of borrowers that are  
5 generally protected from disclosure under federal laws. Accordingly, because of the strict federal  
6 laws governing the disclosure of such information, a protective order is necessary in order to  
7 protect the information, the parties, and others who may need to be exposed to or review the  
8 information. Defendant PACIFIC MORTGAGE CONSULTANTS, INC. (“Pacific” or  
9 “Defendant”), appearing through its respective counsel of record, consent to the entry of this  
10 Order. The parties also acknowledge that disclosure and discovery activity in this action are likely  
11 to involve production of confidential or proprietary information for which special protection from  
12 public disclosure and from use for any purpose other than prosecuting this litigation may be  
13 warranted. It appearing to the Court that the requested stipulated relief is warranted and  
14 appropriate:

15 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

16 1. **Scope of Protective Order.** The parties contemplate that in the course of this  
17 litigation they may produce to one another certain Confidential Documents, as defined below, or  
18 portions of Confidential Documents in their possession. The parties shall not utilize this  
19 stipulation to unreasonably designate documents as “confidential” that do not meet the definitions  
20 contained herein. The term “Document” is comprehensively defined to be synonymous in  
21 meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil  
22 Procedure, which defines document to include writings, drawings, graphs, charts, photographs,  
23 phone records, and other data compilations from which information can be obtained, including  
24 electronically stored information. The term “Confidential Documents” shall specifically include,  
but not be limited to:

25 (a) Regulatory Information: Confidential Documents related in any way to the regulation  
26 or supervision of BANKUNITED, F.S.B., (“Bank”), in whatever form, whether preliminary or  
27 final, including reports of examination or inspection, regulatory correspondence, reports, orders,  
28 memoranda, or agreements by, from or with the FDIC, the Board of Governors of the Federal

1 Reserve System, the Office of Financial and Insurance Regulation (“OFIR”), or any other federal  
2 or state regulatory authority, and any documents containing confidential or privileged information  
3 obtained from any documents or records related to the supervision or regulation of the Bank. The  
4 release of any such regulatory documents may require prior approval from independent  
5 government agencies. No regulatory documents, however obtained, will be disclosed to anyone  
6 other than Defendants and other persons or entities identified in paragraph 4 below without prior  
7 approval by the respective regulatory authority or a court order. Confidential Documents also  
8 include documents that are privileged, confidential, or exempt from disclosure as provided in the  
9 Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), the regulations governing the disclosure of  
10 information, 12 C.F.R. Parts 261 and 309, the laws of the State of Florida including, or any other  
11 applicable federal or state laws.

12 (b) Bank and Bank Customer Information: Confidential Documents related to the  
13 Bank, or any other bank or financial institution, its customers, or any trading company involved in  
14 placing orders for commodities futures or options, including but not limited to: Automated  
15 Clearing House items or transactions, chargebacks, merchant processing, bank account  
16 information, customer bank records, signature cards, bank statements, general ledger entries,  
17 deposit or reserve information, commodity trading statements, loans and lending transactions, loan  
18 applications, financial statements and credit reports, business and personal state and federal  
19 income tax forms, correspondence, and loan documentation relating to any extension of credit or  
20 loan to any borrower. Examples of Confidential Documents also include, without limitation,  
21 documents containing a bank or financial institution, including the Bank, customer’s name,  
22 address, social security number, date of birth, account number, credit card number, personal  
23 identification number, account balance, information relating to a deposit account, loan or borrower  
24 relationship, loan application materials, or any other identifying information.

25 (c) Receivership Information: Confidential Documents related to the receivership  
26 of the Bank, including any information on loss or estimates of such loss on the Bank’s assets that  
27 is not publicly available. Notwithstanding the provisions of paragraph 4 of this Protective Order,  
28 no Confidential Documents shall be disclosed to any person or entity known to have any current

1 or prospective interest in such assets, whether or not that person or entity would otherwise be  
2 allowed access to documents and information under the terms of this Order.

3 (d) Trade Secret/Proprietary Information: Documents and information that the  
4 producing party reasonably believes constitute, reflect, or disclose trade secrets, proprietary data  
5 or commercially sensitive information. These include underwriting manuals, agency guidelines,  
6 agency agreements, underwriting bulletins and similar proprietary agency documents. Irrespective  
7 of any confidential designation by a producing party, this Protective Order shall not apply to any  
8 documents independently obtained from a non-party on an unrestricted basis.

9 **2. Manner of Designation.** The parties shall designate Confidential Documents by  
10 stamping or otherwise marking them with the legend "Confidential" or similar language. The  
11 terms of this Order are also applicable to Confidential Documents produced by a non-party in this  
12 action and designated as "Confidential," provided that such non-party signs a written agreement to  
13 be bound by this Order in the form attached as Exhibit A. Any document marked in this manner  
14 by either party or a non-party shall be subject to this Order.

15 **3. Disclosure of Confidential Documents Prohibited.** Confidential Documents  
16 shall be used only for the purpose of this action and for no other purpose. Except as provided by  
17 the express terms of this Protective Order, all persons subject to this Order shall refrain from  
18 disclosing in any manner any information set forth in any Confidential Documents. The  
19 transmission of Confidential Documents between the FDIC in its capacity as Receiver for the  
20 Bank and the FDIC acting in any other capacity shall not constitute disclosure for purposes of this  
21 Order. Any such Confidential Documents transmitted among various capacities of the FDIC shall  
22 remain subject to this Order and its prohibition on disclosure.

23 **4. Exceptions to Prohibition on Disclosure.** Counsel for a party to this action may  
24 disclose Confidential Documents to the following persons, to the limited extent such disclosure is  
25 necessary, under the following specified circumstances:

26 (a) Officers or employees of any party in this action who are assisting counsel in  
27 the prosecution or defense of this action to the extent necessary for such assistance (including, but  
28 not limited to, the parties' attorneys, investigators, paralegals and other employees);

1 (b) Personnel of or counsel to any insurance company that issued any insurance  
2 policy under which Defendant is an insured (including, but not limited to, the Board of Directors,  
3 in-house attorneys, outside attorneys, investigators, experts, consultants, senior executives, and  
4 employees of any such insurance company) conducting, assisting, monitoring, reviewing, or  
5 making determinations with regard or related to the litigation, provided that each such person  
6 signs a written agreement to be bound by this Order in the form attached as Exhibit A; and  
7 reinsurers, auditors, or regulators to which any such insurance company is required to respond or  
8 report in the ordinary course of business regarding the subject matter of this litigation, but only so  
9 long as such persons or entities are already subject to substantially similar confidentiality  
10 obligations;

11 (c) As to the FDIC-R: (i) auditors or examiners required or authorized by law to  
12 review materials that may include Confidential Material; (ii) persons to whom the information is  
13 required to be made available under FOIA or the FDIC's FOIA regulations, 12 C.F.R. 309.5, upon  
14 receipt of a proper FOIA request for such information; and (iii) individuals and entities permitted  
15 access to exempt information under 12 C.F.R. 309.6;

16 (d) Persons specially retained by any of the attorneys or parties to this action to  
17 assist in the preparation of this action, including but not limited to vendors, experts, consultants,  
18 mediators and arbitrators, provided that such persons require access to the Confidential  
19 Documents or information in order to perform the services for which they have been retained and  
20 provided that each such person signs a written agreement to be bound by this Order in the form  
21 attached as Exhibit A;

22 (e) Any person of whom testimony is to be taken in this litigation, provided that  
23 such a person may only be shown Confidential Documents to the extent necessary for such  
24 testimony and provided that such person is apprised of the confidential nature of the documents  
25 pursuant to Paragraph 5, below;

26 (f) Officers, employees and attorneys of any closing agent(s) identified in the  
27 Complaint provided that such person is apprised of the confidential nature of the documents  
28 pursuant to Paragraph 5, below; and

1 (g) Court reporters to the extent necessary for them to record testimony at  
2 deposition, trial, or court proceedings.

3 **5. Counsel's Obligation to Inform.** Prior to disclosing Confidential Documents to  
4 any person pursuant to paragraphs 4(a)-(e), counsel shall:

5 (a) Apprise that person of the confidential nature of the documents;

6 (b) Apprise that person that this Court, pursuant to this Order, has restricted the use  
7 of such documents; and

8 (c) Show that person a copy of this Order, specifically informing him of the  
9 contents of this Paragraph.

10 **6. Non-waiver of Privilege; Inadvertent Disclosure.** Nothing in this Order shall  
11 require the disclosure of any material that a producing or designating Party contends is protected  
12 from disclosure by any privilege, including, but not limited to, attorney-client communications or  
13 attorney work product ("Privilege"), or other objection to discovery. Pursuant to Rule 502(d) of  
14 the Federal Rules of Evidence, the Court hereby orders that no Privilege shall be waived by the  
15 production of documents or disclosure of information in this action, and the parties shall not have  
16 to meet the requirements of Federal Rule of Evidence 502(b)(1)-(3). The production of any  
17 document or information protected by, or claimed to be protected by, Privilege or other objection  
18 to discovery shall not prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of  
19 Privilege or other objection to discovery that any party would otherwise be entitled to assert. If a  
20 claim of Privilege is made with respect to documents or information then in the custody of a  
21 receiving party, the receiving party shall promptly return the documents or information and all  
22 copies thereof to the party asserting the Privilege and the receiving party shall not use such  
23 information for any purpose. A receiving party may promptly thereafter seek a ruling under seal  
24 from the Court with respect to the validity of the assertion of privilege, an issue on which the party  
25 asserting privilege shall bear the burden of persuasion. The producing party must preserve the  
26 information until the claim of privilege is resolved.

26 **7. Filing Confidential Documents.** In the event counsel for any of the parties wishes  
27 to file or submit to this Court any Confidential Documents (by way of pleadings, motions, briefs  
28 or any other papers or oral communication containing or making reference to such document or

1 information), counsel shall file the appropriate motion to seal in accordance with the procedures  
2 outlined in the Local Rules for the Northern District of California, including specifically Local  
3 Rule 79-5 and the party must seek leave of court before filing any Confidential Documents.  
4 Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of  
5 the specific Protected Material at issue. If a Receiving Party's request to file Protected Material  
6 under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party  
7 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise  
8 instructed by the court.

9 If, however, a Document has been marked "Confidential" due solely to the fact that such  
10 Document contains a bank or financial institution customer's name, address, social security  
11 number, date of birth, account number, credit card number, personal identification number,  
12 account balance, information relating to a deposit account, loan or borrower relationship, loan  
13 application materials, and/or any other identifying information, and such personal information can  
14 be protected by redaction prior to filing, such Document may be filed without leave of court so  
15 long as the Document is redacted and such redaction allows the nonpublic personal financial  
16 information to be kept confidential pursuant to federal and state law.

16 **8. Objections to Confidential Designation.** If any party objects to the designation of  
17 a particular document as confidential, the objecting party shall give written notice of its objection  
18 to the designating party. If, within ten (10) days from receipt of written notice, the parties have  
19 not reached an agreement concerning confidential status of the documents, the objecting party may  
20 apply to the Court for a ruling that the documents not be considered confidential and be deemed  
21 not subject to this Order. Until such time as the Court has ruled on the objecting party's  
22 application, all parties shall continue to treat the document as confidential pursuant to the terms of  
23 this Order. In any event, no confidential document or information shall lose its confidential status  
24 through its use in connection with any dispute over its confidential status, and the parties shall take  
25 all steps reasonably necessary to protect the confidentiality of such document during its use.

26 **9. Violation of this Order.** If a party has cause to believe that a violation of this  
27 Order has occurred or is about to occur, that party may petition this or any other proper court for  
28 appropriate relief. To the extent any party feels the protections of this Order are not adequate for

1 particular Confidential Documents or information, that party may petition the Court for an  
2 appropriate amendment to this Order.

3       **10. Production of Confidential Documents in Response to Subpoena or in**  
4 **Connection with Judicial Proceedings.** Nothing in this Order shall prohibit any party from using  
5 or disclosing Confidential Documents in response to a subpoena or court order seeking production  
6 of Confidential Documents or in connection with a criminal or administrative investigation by any  
7 government or governmental body, grand jury proceedings, or the trial or pretrial procedures and  
8 preparation of a criminal or administrative case.

9       **11. Return or Destruction of Confidential Documents.** At the conclusion of this  
10 action, all Confidential Documents and copies thereof in the possession, custody or control of the  
11 parties shall be either returned to the producing party or destroyed. All notes, memoranda,  
12 summaries or other documents in the possession, custody or control of the parties referring to,  
13 describing, or relating to Confidential Documents shall be destroyed, except that counsel to each  
14 party may retain one copy of pleadings, transcripts, exhibits, notes, memoranda, and  
15 correspondence even if such documents constitute or contain confidential information. Such  
16 material retained by counsel shall continue to be subject to the terms and conditions of this  
17 Protective Order, and shall be returned to the producing party or be destroyed upon the expiration  
18 of the applicable statute of limitations for claims related to that counsel's representation of the  
19 receiving party.

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1           **12. Other Provisions.** This Protective Order shall be binding upon the parties hereto  
2 from the date of execution, notwithstanding the date of entry of this Order by the Court. This  
3 Protective Order shall not be amended, modified, or terminated without prior written notice to all  
4 counsel or by Order of the Court.

5 DATED: November 25, 2015

MORTGAGE RECOVERY LAW GROUP LLP

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8 By: 

Lauren M. Gibbs

Attorneys for Plaintiff Federal Deposit Insurance  
9 Corporation as Receiver for BankUnited, F.S.B.

10 DATED: November 25, 2015

11  
12  
13 By: 

Jonathan Seigel

Scheer Law Group

155 N. Redwood Drive, Suite 100

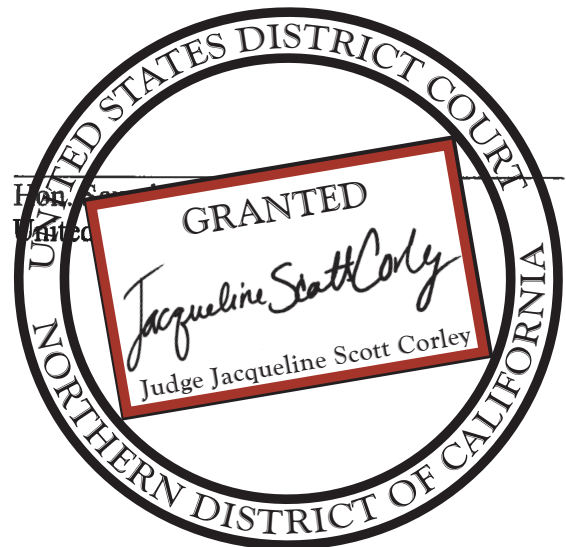
San Rafael, CA 94903

Attorneys for Defendant Pacific Mortgage Consultants,  
16 Inc.

17 **IT IS SO ORDERED**

18  
19 DATED: November 30, 2015

By: 



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**EXHIBIT A**

**AGREEMENT TO MAINTAIN CONFIDENTIALITY**

I have read the Agreed Protective Order issued on \_\_\_\_\_, 2015, in the action entitled *Federal Deposit Insurance Corporation as Receiver for BankUnited v. Pacific Mortgage Consultants, Inc.* (the "Order"), a copy of which is annexed hereto, and agree to abide by its terms. Additionally, I further agree to consent to the jurisdiction of the United States District Court for the Southern District of Florida for the purposes of enforcement of the Protective Order.

Name: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
(Printed) (Business)

Company: \_\_\_\_\_ Telephone: \_\_\_\_\_  
(Home)  
Telephone: \_\_\_\_\_  
(Cell)

Address 1: \_\_\_\_\_

Address 2: \_\_\_\_\_

City: \_\_\_\_\_

State/Zip Code: \_\_\_\_\_