

KOLESAR & LEATHAM
3320 West Sahara Avenue, Suite 380
Las Vegas, Nevada 89102
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 RANDOLPH L. HOWARD, ESQ.
Nevada Bar No. 006688
2 GEORLEN K. SPANGLER, ESQ.
Nevada Bar No. 003818
3 **KOLESAR & LEATHAM, CHTD.**
3320 W. Sahara Avenue, Suite 380
4 Las Vegas, Nevada 89102
Telephone: (702) 362-7800
5 Facsimile: (702) 362-9472
E-mail: rhoward@klnevada.com
6 gspangler@klnevada.com

7 Attorneys for FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR FIRST
8 NATIONAL BANK OF NEVADA, SUCCESSOR-
IN-INTEREST TO FIRST NATIONAL BANK OF
9 ARIZONA

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

11 FEDERAL DEPOSIT INSURANCE
12 CORPORATION, as Receiver for FIRST
NATIONAL BANK OF NEVADA, successor-
13 in-interest by merger to FIRST NATIONAL
BANK OF ARIZONA, N.A., a national
14 banking association

15 Plaintiff,

16 vs.

17 LAKE ELSINORE 521, LLC a Nevada limited
liability company; BRADLEY F. BURNS, an
18 individual; and DOES 1 through 100 inclusive,

19 Defendant.

Case No.: 2:11-cv-00386-GMN-LRL

**ORDER GRANTING
MOTION TO SEAL OR REDACT
EXHIBITS FROM FDIC'S
EMERGENCY MOTION TO QUASH
WRIT OF EXECUTION AND
COMPEL SATISFACTION OF
JUDGMENT**

20 THIS MATTER came before the Court on Plaintiff FDIC's Motion to Seal or Redact
21 Exhibits from FDIC's Emergency Motion to Quash Writ of Execution and Compel Satisfaction
22 of Judgment filed on April 19, 2011. The Court, having reviewed the motion and other
23 documents on file, being fully advised in the premises, and good cause appearing therefore,
24 hereby orders as follows:

25 IT IS HEREBY ORDERED that FDIC's Motion to Seal or Redact Exhibits from FDIC's
26 Emergency Motion to Quash Writ of Execution and Compel Satisfaction of Judgment is
27 GRANTED.

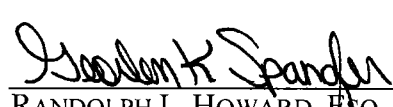
28 IT IS FURTHER ORDERED that the FDIC's Emergency Motion to Quash Writ of

1 Execution and Compel Satisfaction of Judgment [Doc. No. 19] be **SEALED** by the Clerk
2 of the Court.

3 **IT IS SO ORDERED** this 20th day of April, 2011.

4
5 
6 _____
7 Gloria M. Navarro
8 United States District Judge

9 **KOLESAR & LEATHAM, CHTD.**

10 By 
11 _____
12 RANDOLPH L. HOWARD, ESQ.
13 Nevada Bar No. 006688
14 GEORLEN K. SPANGLER, ESQ.
15 Nevada Bar No. 003818
16 3320 W. Sahara Avenue, Suite 380
17 Las Vegas, Nevada 89102

18
19
20
21
22
23
24
25
26
27
28
Attorneys for FEDERAL DEPOSIT
INSURANCE CORPORATION, AS
RECEIVER FOR FIRST NATIONAL
BANK OF NEVADA, SUCCESSOR-IN
-INTEREST TO FIRST NATIONAL
BANK OF ARIZONA

KOLESAR & LEATHAM
3320 West Sahara Avenue, Suite 380
Las Vegas, Nevada 89102
Tel: (702) 362-7800 / Fax: (702) 362-9472

KOLESAR & LEATHAM
3320 West Sahara Avenue, Suite 380
Las Vegas, Nevada 89102
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 RANDOLPH L. HOWARD, ESQ.
Nevada Bar No. 006688
2 GEORLEN K. SPANGLER, ESQ.
Nevada Bar No. 003818
3 **KOLESAR & LEATHAM, CHTD.**
3320 W. Sahara Avenue, Suite 380
4 Las Vegas, Nevada 89102
Telephone: (702) 362-7800
5 Facsimile: (702) 362-9472
E-mail: rhoward@knevada.com
6 gspangler@knevada.com

7 Attorneys for FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR FIRST
8 NATIONAL BANK OF NEVADA, SUCCESSOR-
IN-INTEREST TO FIRST NATIONAL BANK OF
9 ARIZONA

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

11 FEDERAL DEPOSIT INSURANCE
12 CORPORATION, as Receiver for FIRST
13 NATIONAL BANK OF NEVADA, successor-
in-interest by merger to FIRST NATIONAL
14 BANK OF ARIZONA, N.A., a national
banking association

15 Plaintiff,

16 vs.

17 LAKE ELSINORE 521, LLC a Nevada limited
liability company; BRADLEY F. BURNS, an
18 individual; and DOES 1 through 100 inclusive,

19 Defendant.

Case No.: 2:11-cv-00386-LRL

**FDIC'S EMERGENCY MOTION TO
QUASH WRIT OF EXECUTION
AND COMPEL SATISFACTION OF
JUDGMENT**

[REQUEST PURSUANT TO LR 6-1]

20 COMES NOW, Plaintiff, FEDERAL DEPOSIT INSURANCE CORPORATION, as
21 Receiver for FIRST NATIONAL BANK OF NEVADA, successor-in-interest by merger to
22 FIRST NATIONAL BANK OF ARIZONA, N.A., (hereinafter "FDIC") by and through its
23 counsel of record, and hereby submits this Emergency Motion to Quash Bradley F. Burns' Writ
24 of Execution and to Compel Satisfaction of Judgment. This Emergency Motion is based on and
25 necessitated by Bradley F. Burns having caused a Writ of Execution to issue and having
26 scheduled an execution sale of the FDIC's chose in action¹ for April 26, 2011, all in violation of
27 _____

28 ¹ The Notice of Marshal's Sale identifies the personal property to be sold as Plaintiffs'/Judgment Debtors' choses in action, causes of action, and claims brought in the United States District Court – District of Nevada Case

1 12 U.S.C. § 1821(d)(13).

2 This Motion is supported by the following Memorandum of Points and Authorities, the
3 Declaration of Georlen Spangler, Esq. ("Spangler Declaration") attached hereto as Exhibit 1, and
4 the papers and pleadings on file with the Court, all of which are incorporated herein by this
5 reference.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. ISSUE PRESENTED**

8 The issue before this Court on this Motion is whether there is any circumstance where the
9 judgment creditor, Bradley Burns, may execute upon his judgment against the FDIC on the
10 FDIC's personal property. As more fully forth below, there are no circumstances which would
11 allow execution on the judgment in the case at bar. 12 U.S.C. § 1821(d)(13) prohibits Bradley
12 Burns from executing upon his judgment, and the FDIC has also established that the judgment
13 has been satisfied. Accordingly, the FDIC respectfully requests that the instant emergency
14 motion be granted.

15 **II. STATEMENT OF FACTS**

16 On February 10, 2011, Defendant Bradley F. Burns filed a Certification of Judgment for
17 Registration in Another District [Doc. 1]. The final judgment at issue was an award for
18 attorney's fees granted to Burns by the United States District Court, Central District of
19 California. Thereafter, Burns filed a series of Affidavits and Requests for Issuance of Writ of
20 Execution [Doc. 2 - 6]. On February 24, 2011, a Writ of Execution in favor of Bradley F. Burns
21 and against the FDIC in the amount of \$116,491.76 [Doc. 7] was issued by the clerk. Upon
22 learning of the issuance of the Writ, the FDIC promptly filed a Request for 90-Day Stay pursuant
23 to 12 U.S.C. § 1821 (d)(12)(A)(ii) [Doc. 9] in order to assess the claims and consider issuance of
24 a Receiver's Certificate.

25 On March 22, 2011, the FDIC issued a Receivership Certificate of Proof of Claim to
26 Bradley Burns in satisfaction of the judgment at issue in this litigation. A true and correct copy
27

28 #: 2:08-cv-01571-PMP-GWF, entitled: Federal Deposit Insurance Corporation vs. Jason Halpern, et al. In this
pending case, the FDIC has brought a claim for deficiency judgment against the guarantors of a loan.

1 of the letter from the FDIC to Mr. Burns enclosing the Receivership Certificate of Proof of
2 Claim is attached hereto as Exhibit 2. It is well established that the FDIC as Receiver is entitled
3 to pay creditors with receiver's certificates. However, even after the Receivership Certificate
4 was provided to Burns, he has refused to dismiss or cease prosecution of the instant action for
5 enforcement of the judgment. Burns, through his attorneys, has subsequently filed an opposition
6 to the request for stay [Doc. 12].

7 On March 31, 2011, the FDIC's counsel contacted counsel for Burns regarding the Writ
8 of Execution. Mr. Burns' counsel was specifically informed that the Receiver's Certificate
9 satisfied the claim and that this action should be dismissed. *See* Spangler Declaration ¶ 3. In
10 response, counsel for Burns represented that he had not received a copy of the Receiver's
11 Certificate. Accordingly, a copy of the certificate was sent to Burns' counsel, and the FDIC
12 renewed its request that the action be dismissed. *Id.* ¶ 4. On April 1, 2011, Burns' counsel
13 responded by email stating, "I have not had the opportunity to discuss this with my client but I
14 am sure that he will not accept the certificate as satisfaction of his judgment." *Id.* ¶5.²

15 In light of the foregoing, the FDIC filed a Reply in response to Burns' Opposition to the
16 FDIC's Request for 90-Day Stay [Doc. No. 15]. The Reply advised the Court of the Receiver's
17 Certificate which was issued to satisfy the judgment. Furthermore, due to the fact that the
18 judgment has been paid via the certificate, the FDIC requested that the Court dismiss the instant
19 action as moot.

20 Notwithstanding the fact the judgment has been paid, Burns had a Notice of U.S.
21 Marshal's Sale of Personal Property issued, scheduling the sale of the FDIC's personal property
22 (as described therein) for April 26, 2011. A copy of the Notice is attached hereto as Exhibit 3.
23 For this reason, the FDIC now brings the instant emergency motion requesting that this Court
24 quash the Writ of Execution and issue an order prohibiting the Marshal from continuing with the
25 sale of personal property identified in the Notice of Sale. The FDIC further requests that the
26 Court issue an order compelling Mr. Burns and his attorneys to acknowledge the satisfaction of
27

28 ² Moreover, the original Receiver's Certificate has been sent to Burns' counsel via hand delivery
contemporaneously with the filing of this Motion. A receipt of copy verifying the delivery will be filed separately.

1 the judgment, as it is undisputed that the Receiver's Certificate has been issued to Burns in full
2 satisfaction of the judgment.

3 **III. LEGAL ARGUMENT**

4 **a. The Writ of Execution must be quashed and Mr. Burns must be prohibited**
5 **from proceeding with the Marshal's Sale.**

6 12 U.S.C. § 1821 (d)(12)(A) provides in pertinent part the following:

7 After the appointment of a conservator or receiver for an insured depository
8 institution, the conservator or receiver may request a stay for a period not to
9 exceed --

- 9 (i) 45 days, in the case of a conservator; and
10 (ii) 90 days, in the case of a receiver,

11 in any judicial action or proceeding to which such institution is or becomes a
12 party.

12 12 U.S.C. § 1821 (d)(12)(A). It is further provided that "[u]pon receipt of a request by
13 any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action
14 or proceeding in any court with jurisdiction of such action or proceeding, the court shall
15 grant such stay as to all parties." 12 U.S.C. § 1821(d)(12)(B). According to the plain
16 language of this statute, this action has been stayed, as the FDIC has duly filed a request
17 under 12 U.S.C. § 1821(d)(12).³ Therefore, Burns' Writ of Execution must be quashed in
18 order to prevent unlawful execution on the judgment during the stay.

19 Moreover, 12 U.S.C.A. § 1821(d)(13) prohibits Burns from executing upon the
20 judgment at issue in this litigation. Specifically, 12 U.S.C.A. § 1821(d)(13) states, "[n]o
21 attachment or execution may issue by any court upon assets in the possession of the
22 receiver." 12 U.S.C. §1821(d)(13). In *RTC v. Cheshire*, the Court held that "Section
23 1821(d)(13)(C) of FIRREA provides that '[n]o attachment or execution may issue by any
24 court upon assets in the possession of the receiver'" and that this "provision bars [the
25 judgment creditor] from registering its judgment against RTC, for it prevents the
26

27 ³ "[T]he task of interpretation begins with the text of the statute itself, and statutory language must
28 be accorded its ordinary meaning." *Telematics Int'l, Inc. v. NEMLC Leasing Corp.*, 967 F.2d 703, 706 (1st
Cir. 1992).

1 encumbrance of property owned by the RTC as receiver.” *Resolution Trust Corp. v.*
2 *Cheshire Mgmt. Co., Inc.*, 18 F.3d 330, 334 (6th Cir. 1994)(citing *GWN Petroleum Corp.*
3 *v. OK-Tex Oil & Gas, Inc.*, 998 F.2d 853, 857 (10th Cir.1993) (§§ 1821(d)(13)(C) and
4 1825(b)(2) prohibit any “ancillary remedy in aid of execution to obtain payment of a
5 judgment”). The Court further stated that a “judgment lien interferes with the receiver’s
6 ability to dispose of assets in much the same manner as an attachment or execution” and
7 to “allow a creditor to do so would frustrate Congress’s purpose in enacting §
8 1821(d)(13)(C), which is to preclude post-receivership improvement of position.” *Id.*

9 Therefore, Burns’ Writ of Execution must also be quashed pursuant to 12
10 U.S.C.A. § 1821(d)(13), as Burns is clearly prohibited from executing upon the assets in
11 possession of the FDIC. Furthermore, this Court must issue an order instructing the
12 Marshal to cancel the sale, as Burns must be prevented from unlawfully prosecuting the
13 instant Writ of Execution.

14 **b. The Receiver’s Certificate issued by the FDIC satisfies Burns’ judgment.**

15 There is no question that the FDIC as Receiver of a failed institution may pay creditors
16 with receiver’s certificates instead of cash. *Battista v. F.D.I.C.*, 195 F.3d 1113, 1116 (9th Cir.
17 1999), citing to *RTC v. Titan Fin. Corp.*, 36 F.3d 891, 891 (9th Cir. 1994)(per curium). Section
18 1821(d)(10)(A) authorizes the FDIC, as receiver, to “pay creditor claims . . . in such manner and
19 amounts as are authorized under this chapter.” In *Titan*, the Ninth Circuit reasoned that the
20 FDIC may use receiver’s certificates as its manner of payment because requiring cash payments
21 would subvert the comprehensive scheme of FIRREA including §1821(i)(2)’s limitation on an
22 unsecured general creditor’s claim to only a pro rata share of the proceeds from the liquidation of
23 the financial institution’s assets. *See Titan*, 36 F.3d at 892 (citing *Franklin Bank v. FDIC*, 850
24 F.Supp. 845 (N.D.Cal. 1994)). To require the FDIC to pay certain creditors in cash would allow
25 those creditors to “jump the line,” recovering more than their pro rata share of the liquidated
26 assets, if the financial institution’s debts exceed its assets. *Battista*, 195 F.3d at 1117. *See also:*
27 *F.D.I.C. v. Phoenix Casa Del Sol, LLC*, 2011 WL 81858, *2 (D.Ariz. March 3, 2011)(slip
28 opinion).

1 In the case at bar, the FDIC has issued a Receiver’s Certificate to Burns for the amount of
2 the judgment. Therefore, the judgment has been satisfied. *See* Receiver’s Certificate, attached
3 hereto as Exhibit 2, and Declaration of Georlen Spangler, Esq., attached hereto as Exhibit 1.
4 Because the judgment is satisfied, the FDIC is entitled to an entry of satisfaction of judgment.
5 FRCP 69(a) applies the state law of the state where the Court is located to post judgment
6 procedures on money judgments. NRS 17.200 provides, “[w]henever a judgment is satisfied in
7 fact, the party or attorney shall give such an acknowledgment, and the party who has satisfied the
8 judgment may move the court to compel it or to order the clerk to enter the satisfaction in the
9 docket of judgment.” NRS 17.200; *Arley v. Liberty*, 81 Nev. 411, 412, 404 P.2d 426, 427
10 (1965).

11 As set forth above, the judgment has been satisfied in fact by the Receiver’s Certificate.⁴
12 Therefore, the FDIC requests an order directing Burns and his attorneys to enter satisfaction of
13 judgment within ten days, or upon his failure to do so, an order directing the clerk to make such
14 entry.

15 **IV. CONCLUSION**

16 Based on the foregoing, it is clear that the Writ of Execution and the Marshal’s Sale
17 violate 12 U.S.C.A. § 1821(d)(12) and (13). Therefore, the FDIC respectfully requests that this
18 Court immediately issue an order quashing the Writ of Execution filed by Burns and issue an
19 order instructing the Marshal to cancel the sale scheduled for April 26, 2011. The FDIC further
20 requests that this Court immediately issue an order directing Burns and his attorneys to enter

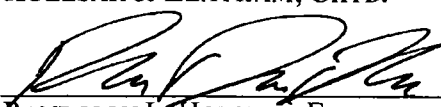
21 ///
22 ///
23 ///
24 ///

25
26
27 ⁴ “Section 1821(j) states that, except as otherwise provided, the courts shall lack the power to restrain or
28 affect the FDIC in the exercise of those powers.” *Telematics Int’l, Inc. v. NEMLC Leasing Corp.*, 967 F.2d 703, 706
(1st Cir. 1992).

1 satisfaction of judgment within ten days, or upon his failure to do so, an order directing the clerk
2 to make such entry.

3 DATED this 12 day of April, 2011.

4 **KOLESAR & LEATHAM, CHTD.**

5 By  #10006 for

6 RANDOLPH L. HOWARD, ESQ.
7 Nevada Bar No. 006688
8 GEORLEN K. SPANGLER, ESQ.
9 Nevada Bar No. 003818
10 3320 W. Sahara Avenue, Suite 380
11 Las Vegas, Nevada 89102

12 Attorneys for FEDERAL DEPOSIT
13 INSURANCE CORPORATION, AS
14 RECEIVER FOR FIRST NATIONAL BANK
15 OF NEVADA, SUCCESSOR-IN-INTEREST
16 TO FIRST NATIONAL BANK OF ARIZONA

17 **KOLESAR & LEATHAM**
18 3320 West Sahara Avenue, Suite 380
19 Las Vegas, Nevada 89102
20 Tel: (702) 362-7800 / Fax: (702) 362-9472

21
22
23
24
25
26
27
28

KOLESAR & LEATHAM
3320 West Sahara Avenue, Suite 380
Las Vegas, Nevada 89102
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Kolesar & Leatham, Chtd., and that on the
3 12 day of April, 2011, I caused to be served a true and correct copy of foregoing FDIC'S
4 EMERGENCY MOTION TO QUASH WRIT OF EXECUTION AND COMPEL
5 SATISFACTION OF JUDGMENT in the following manner:

6 (ELECTRONIC SERVICE) Pursuant to FRCP 5(b)(3) and LR 5-4, the above-referenced
7 document was electronically filed and served upon the parties listed below through the Court's
8 Case Management and Electronic Case Filing (CM/ECF) system:

9 Christopher H. Byrd, Esq.
10 Fennemore Craig
11 300 South Fourth Street, Suite 1400
12 Las Vegas, Nevada 89101
13 *Attorneys for Defendant/Judgment Creditor*
14 *Bradley F. Burns*

15
16
17
18
19
20
21
22
23
24
25
26
27
28

An Employee of KOLESAR & LEATHAM, CHTD.

EXHIBIT 1

EXHIBIT 1

KOLESAR & LEATHAM, CHTD.
3320 West Sahara Avenue, Suite 380
Las Vegas, Nevada 89102
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 RANDOLPH L. HOWARD, ESQ.
Nevada Bar No. 006688
2 GEORLEN K. SPANGLER, ESQ.
Nevada Bar No. 003818
3 **KOLESAR & LEATHAM, CHTD.**
3320 W. Sahara Avenue, Suite 380
4 Las Vegas, Nevada 89102
Telephone: (702) 362-7800
5 Facsimile: (702) 362-9472
E-mail: rhoward@klnevada.com
6 gspangler@klnevada.com

7 Attorneys for FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR FIRST
8 NATIONAL BANK OF NEVADA, SUCCESSOR-
IN-INTEREST TO FIRST NATIONAL BANK OF
9 ARIZONA

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 * * *

13 FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for FIRST
14 NATIONAL BANK OF NEVADA, successor-
in-interest by merger to FIRST NATIONAL
15 BANK OF ARIZONA, N.A., a national
banking association

16 Plaintiff,

17 vs.

18 LAKE ELSINORE 521, LLC a Nevada limited
19 liability company; BRADLEY F. BURNS, an
individual; and DOES 1 through 100 inclusive,

20 Defendant.

Case No.: 2:11-cv-00386-LRL

**DECLARATION OF GEORLEN K.
SPANGLER, ESQ. IN SUPPORT OF
FDIC'S EMERGENCY MOTION TO
QUASH WRIT OF EXECUTION
AND COMPEL SATISFACTION OF
JUDGMENT**

[REQUEST PURSUANT TO LR 6-1]

21
22 I, **GEORLEN K. SPANGLER, ESQ.**, do hereby declare:

23 1. I am a partner with the law firm of Kolesar & Leatham, Chtd., and am one of the
24 attorneys representing the Plaintiff in this matter. I have personal knowledge of the matters set
25 forth below and am fully competent to testify to all facts set forth in this Declaration.

26 2. I make this Declaration in support of Plaintiff FEDERAL DEPOSIT
27 INSURANCE CORPORATION, AS RECEIVER FOR FIRST NATIONAL BANK OF
28 NEVADA, SUCCESSOR-IN-INTEREST TO FIRST NATIONAL BANK OF ARIZONA 's

KOLESAR & LEATHAM, CHTD.
3320 West Sahara Avenue, Suite 380
Las Vegas, Nevada 89102
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 (“FDIC”) EMERGENCY MOTION TO QUASH WRIT OF EXECUTION AND
2 COMPEL SATISFACTION OF JUDGMENT (the “Motion”), filed concurrently herewith.

3 3. On March 31, 2011, I spoke with Christopher Byrd, Esq., counsel for Defendant
4 Bradley F. Burns regarding the Writ of Execution and the Receiver’s Certificate that was just
5 issued by the FDIC allowing Burns’ claim in the amount of \$116,491.76. I told Mr. Byrd that
6 the Receiver’s Certificate satisfied the claim and that this action should be dismissed.

7 4. Mr. Byrd advised me that he had not yet received the Receiver’s Certificate so I
8 sent him an email with the Receiver’s Certificate and accompanying cover letter attached. In the
9 email, I reiterated that “the Receiver’s Certificate satisfies the claim against the FDIC and,
10 therefore, the Writ of Execution, and we would like to have that action dismissed.” A true and
11 correct copy of my March 31, 2011 email is attached hereto as **Exhibit 1**.

12 5. On Friday, April 1, 2011 at 8:40 a.m., Mr. Byrd responded, by email, by stating:
13 “I have not had the opportunity to discuss this with my client but I am sure that he will not accept
14 the certificate as satisfaction of his judgment.” I immediately responded back at 9:00 a.m. as
15 follows: “Based on the case law it is not his choice.” A true and correct copy of the email chain
16 dated April 1, 2011 is attached hereto as **Exhibit 2**.

17 6. Thereafter, on April 4, 2011, the FDIC filed its Reply to Bradley Burns’
18 Opposition to the FDIC’s Request for 90-Day Stay [Doc. 15]. In the Reply, we advised this
19 Court that a Receiver’s Certificate had been issued and that according to *Battista v. FDIC*, 195
20 F.3d 1113, 1116 (9th Cir. 1999), the FDIC was authorized to pay creditors with Receiver’s
21 Certificates instead of cash. Therefore, Burns had been paid in full. The FDIC then asked this
22 Court to dismiss this action as moot.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 EXECUTED on April 11th, 2011 in Clark County, Las Vegas, Nevada.


25 
26 GEORLEN K. SPANGLER, ESQ.
27
28

EXHIBIT 1

EXHIBIT 1

Georlen K. Spangler

From: Georlen K. Spangler
Sent: Thursday, March 31, 2011 2:44 PM
To: cbyrd@fclaw.com
Cc: Randolph L. Howard; Natalie M. Cox; E. Daniel Kidd
Subject: FDIC adv. Burns: Receiver's Certificate (7211-5)

Attachments: PDF - Letter from FDIC to Burns re: Notice of Allowance of Claim and Receivership Certificate of Proof of



911642_1.pdf

Chris,

Attached is a copy of the letter dated March 22, 2011 to Bradley F. Burns c/o you sending the Receiver's Certificate in the amount of \$116,491.76, which is the amount we calculated to be due on the California Judgment. You said that you have not yet received this.

The Receiver's Certificate satisfies the claim against the FDIC and, therefore, the Writ of Execution, and we would like to have that action dismissed.

Please advise ASAP.

jori

Georlen K. Spangler, Esq.
Kolesar & Leatham, Chtd.
3320 West Sahara Ave., Suite 380
Las Vegas, NV 89102
Voice: 702-362-7800
Fax: 702-362-9472

This communication (including any attachments) is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any use of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately.



Federal Deposit Insurance Corporation
1601 Bryan Street, Dallas, TX 75201

Division of Resolutions and Receiverships

March 22, 2011

Bradley F. Burns
C/O Christopher H. Byrd, Esq.
300 South Fourth St
Suite 1400
Las Vegas, NV 89101

SUBJECT: 10008 – FIRST NATIONAL BANK OF NEVADA
RENO, NV – In Receivership
NOTICE OF ALLOWANCE OF CLAIM

Dear Claimant:

On July 25, 2008 (the "Closing Date"), the FIRST NATIONAL BANK OF NEVADA, 6275 NEIL RD, RENO, NV, 89511 (the "Failed Institution") was closed by the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (the "FDIC") was appointed Receiver (the "Receiver").

Enclosed you will find a Receiver's Certificate in the amount of \$116,491.76. The enclosed Receivership Certificate represents a formal record of your claim as allowed. As the FDIC acting as Receiver liquidates the assets of the Failed Institution, you may periodically receive payments on your claim through dividends. The Receiver pays dividends according to the priorities established by applicable law.

The Receiver will send your dividends to the address shown on your Receivership Certificate, please notify this office if your address changes.

If you have uninsured deposits, as established by the FDIC's insurance determination, you automatically have a claim for such funds. **In the event you disagree with the FDIC's determination with respect to your uninsured deposits, you may seek a review of the FDIC's determination in the United States District Court for the federal judicial district where the principal place of business of the Failed Institution was located. You must request this review no later than 60 days after the date of this letter.**

If you have any questions, please call (972) 761-8677.

Sincerely,



Claims Agent
Claims Department

RLS7213

10008 - FIRST NATIONAL BANK OF NEVADA RENO, NV
(Name and Location of Bank)

RECEIVERSHIP CERTIFICATE OF PROOF OF CLAIM - NO.383

March 22, 2011

THIS IS TO CERTIFY THAT Bradley F. Burns (Name) [Redacted] 6214 (Tax No.)

Of C/O Christopher H. Byrd, Esq., 300 South Fourth St, Suite 1400, Las Vegas, NV (Address)

has made satisfactory proof that Bradley F. Burns

is a creditor of the 10008 - FIRST NATIONAL BANK OF NEVADA in the amount of

One hundred sixteen thousand four hundred ninety one and seventy six /100

Dollars upon the following

claim to wit:

FDIC USE ONLY				
CLAIM NUMBERS	ACCOUNT NUMBERS	AMOUNTS	DPC#/TAX CODE	AMOUNTS
500009291-000		\$116,491.76	940.0	\$114,971.00
TOTALS		\$116,491.76	940.1	\$1,520.76
			TOTALS	\$116,491.76

Balance due in excess of any amount paid by and assigned the Federal Deposit Insurance Corporation and said creditor or the lawful assignee of this claim will alone be entitled to any distributions made hereon.

No assignment of this claim, or any portion thereof, will be recognized as to any distribution unless written notice of assignment has been given to the Receiver and accepted by it and entered thereon before such distribution has been paid. Please complete the section below only if you are assigning your claim to another person or entity.

Claimant should notify the Receiver promptly of any change in claimant's address.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER

By [Signature] (Receiver)

ASSIGNMENT OF RECEIVER'S CERTIFICATE Date: _____

For value received claimant herein named hereby transfers and assigns the within claim to:

(Name and Address)

(Original Claimant Signature) (Date Signed)

FDIC accepted/entered on Date: _____ by _____

EXHIBIT 2

SECRET

EXHIBIT 2

Georlen K. Spangler

From: Georlen K. Spangler
Sent: Friday, April 01, 2011 9:00 AM
To: CBYRD@FCLAW.com
Subject: Re: FDIC adv. Burns: Receiver's Certificate (7211-5)

Based on the case law it is not his choice.

Georlen K. Spangler, Esq.
Kolesar & Leatham, Chtd.
3320 West Sahara Ave., Suite 380
Las Vegas, NV 89102
Voice: 702-362-7800
Fax: 702-362-9472

This communication (including any attachments) is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any use of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately.

----- Original Message -----

From: BYRD, CHRIS <CBYRD@FCLAW.com>
To: Georlen K. Spangler
Sent: Fri Apr 01 08:40:34 2011
Subject: RE: FDIC adv. Burns: Receiver's Certificate (7211-5)

Jori:

Good morning. I have not had the opportunity to discuss this with my client but I am sure that he will not accept the certificate as satisfaction of his judgment.
Chris

Fennemore Craig, P.C
Denver | Las Vegas | Nogales | Phoenix | Tucson www.FennemoreCraig.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that, to the extent this communication (or any attachment) addresses any tax matter, it was not written to be (and may not be) relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter addressed herein (or in any such attachment). For additional information regarding this disclosure please visit our web site.

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

-----Original Message-----

From: Georlen K. Spangler [<mailto:gspangler@klnevada.com>]
Sent: Thursday, March 31, 2011 2:44 PM
To: BYRD, CHRIS
Cc: Randolph L. Howard; Natalie M. Cox; E. Daniel Kidd
Subject: FDIC adv. Burns: Receiver's Certificate (7211-5)

Chris,

Attached is a copy of the letter dated March 22, 2011 to Bradley F. Burns c/o you sending the Receiver's Certificate in the amount of \$116,491.76, which is the amount we calculated to be due on the California Judgment. You said that you have not yet received this.

The Receiver's Certificate satisfies the claim against the FDIC and, therefore, the Writ of Execution, and we would like to have that action dismissed.

Please advise ASAP.

jori

Georlen K. Spangler, Esq.
Kolesar & Leatham, Chtd.
3320 West Sahara Ave., Suite 380
Las Vegas, NV 89102
Voice: 702-362-7800
Fax: 702-362-9472

This communication (including any attachments) is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any use of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately.

EXHIBIT 2

EXHIBIT 2



Federal Deposit Insurance Corporation
1601 Bryan Street, Dallas, TX 75201

Division of Resolutions and Receiverships

March 22, 2011

Bradley F. Burns
C/O Christopher H. Byrd, Esq.
300 South Fourth St
Suite 1400
Las Vegas, NV 89101

SUBJECT: 10008 – FIRST NATIONAL BANK OF NEVADA
RENO, NV – In Receivership
NOTICE OF ALLOWANCE OF CLAIM

Dear Claimant:

On July 25, 2008 (the "Closing Date"), the FIRST NATIONAL BANK OF NEVADA, 6275 NEIL RD, RENO, NV, 89511 (the "Failed Institution") was closed by the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (the "FDIC") was appointed Receiver (the "Receiver").

Enclosed you will find a Receiver's Certificate in the amount of \$116,491.76. The enclosed Receivership Certificate represents a formal record of your claim as allowed. As the FDIC acting as Receiver liquidates the assets of the Failed Institution, you may periodically receive payments on your claim through dividends. The Receiver pays dividends according to the priorities established by applicable law.

The Receiver will send your dividends to the address shown on your Receivership Certificate, please notify this office if your address changes.

If you have uninsured deposits, as established by the FDIC's insurance determination, you automatically have a claim for such funds. **In the event you disagree with the FDIC's determination with respect to your uninsured deposits, you may seek a review of the FDIC's determination in the United States District Court for the federal judicial district where the principal place of business of the Failed Institution was located. You must request this review no later than 60 days after the date of this letter.**

If you have any questions, please call (972) 761-8677.

Sincerely,



Claims Agent
Claims Department

RLS7213

10008 - FIRST NATIONAL BANK OF NEVADA RENO, NV
(Name and Location of Bank)

RECEIVERSHIP CERTIFICATE OF PROOF OF CLAIM - NO.383

March 22, 2011

THIS IS TO CERTIFY THAT Bradley F. Burns [REDACTED]-6214
(Name) (Tax No.)

Of C/O Christopher H. Byrd, Esq., 300 South Fourth St, Suite 1400, Las Vegas, NV
(Address)

has made satisfactory proof that Bradley F. Burns
is a creditor of the 10008 - FIRST NATIONAL BANK OF NEVADA in the amount of

One hundred sixteen thousand four hundred ninety one and seventy six /100

Dollars upon the following

claim to wit:

FDIC USE ONLY				
CLAIM NUMBERS	ACCOUNT NUMBERS	AMOUNTS	DPC#TAX CODE	AMOUNTS
500009291-000		\$116,491.76	940.0	\$114,971.00
TOTALS		\$116,491.76	940.1	\$1,520.76
			TOTALS	\$116,491.76

Balance due in excess of any amount paid by and assigned the Federal Deposit Insurance Corporation and said creditor or the lawful assignee of this claim will alone be entitled to any distributions made hereon.

No assignment of this claim, or any portion thereof, will be recognized as to any distribution unless written notice of assignment has been given to the Receiver and accepted by it and entered thereon before such distribution has been paid. Please complete the section below **only** if you are assigning your claim to another person or entity.

Claimant should notify the Receiver promptly of any change in claimant's address.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER

By [Signature]
(Receiver)

ASSIGNMENT OF RECEIVER'S CERTIFICATE Date: _____

For value received claimant herein named hereby transfers and assigns the within claim to:

(Name and Address)

(Original Claimant Signature) (Date Signed)

FDIC accepted/entered on Date: _____ by _____

EXHIBIT 3

EXHIBIT 3

1 CHRISTOPHER H. BYRD, ESQ.
Nevada Bar No. 1633
2 LINDSAY A. HANSEN, ESQ.
Nevada Bar No. 11985
3 **FENNEMORE CRAIG, P.C.**
300 South Fourth Street, Suite 1400
4 Las Vegas, Nevada 89101
Telephone: (702) 692-8000
5 Facsimile: (702) 692-8099
Email: cbyrd@fclaw.com
6 Email: lhansen@fclaw.com

7 *Attorneys for Defendant Bradley F. Burns*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for FIRST
11 NATIONAL BANK OF NEVADA,
successor-in-interest by merger to FIRST
12 NATIONAL BANK OF ARIZONA, N.A.,
a national banking association,
13
14 **Plaintiffs,**
15
16 **vs.**
17 LAKE ELSINORE 521, LLC, a Nevada
limited liability company; BRADLEY F.
BURNS, an individual; and DOES 1
through 100 inclusive,
18
19 **Defendants.**

Case No.: 2:11-CV-00386-KJD-LRL
(formerly Case No.: 2:11-ms-00016-NA)

20 **NOTICE OF U.S. MARSHAL'S SALE OF PERSONAL PROPERTY**

21 On March 11, 2009, a Judgment was entered by the United States District Court for
22 the Central District of California, in favor of Defendant, BRADLEY F. BURNS
23 (hereinafter the "Judgment Creditor"), and against Plaintiffs, FEDERAL DEPOSIT
24 INSURANCE CORPORATION, as Receiver for FIRST NATIONAL BANK OF
25 NEVADA, successor-in-interest by merger to FIRST NATIONAL BANK OF
26 ARIZONA, N.A., a national banking association (hereinafter the "Judgment Debtors"), in
27 the amount of ONE HUNDRED FOURTEEN THOUSAND NINE HUNDRED
28 SEVENTY-ONE and 00/100 DOLLARS (\$114,971.00), plus post-judgment interest at the

1 Federal rate from the date of the Judgment until fully satisfied. Thereafter, pursuant to 28
2 U.S.C. § 1963, the Judgment was registered with the United States District Court for the
3 District of Nevada on February 10, 2011.

4 On February 24, 2011, the Clerk of the United States District Court for the District
5 of Nevada entered a Writ of Execution authorizing the Judgment Creditor to execute and
6 sell at a U.S. Marshal's sale all right, title and interest in the following personal property
7 of the Judgment Debtors: Plaintiffs'/Judgment Debtors' choses in action, causes of
8 action, and claims brought in the United States District Court – District of Nevada Case #:
9 2:08-cv-01571-PMP-GWF, entitled: FEDERAL DEPOSIT INSURANCE
10 CORPORATION vs. JASON HALPERN, et al.

11 The Writ of Execution was entered in favor of the Judgment Creditor and against
12 the Judgment Debtors. The amount due under the Judgment as of the date the Writ of
13 Execution was issued by the Court was ONE HUNDRED SIXTEEN THOUSAND FOUR
14 HUNDRED NINETY-ONE and 76/100 DOLLARS (\$116,491.76).

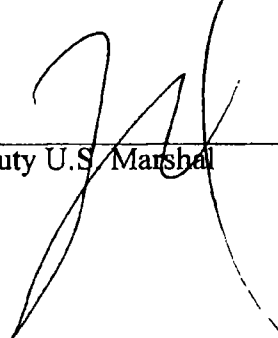
15 The personal property has been executed upon by the Judgment Creditor for the
16 satisfaction of the above described Judgment and will be sold by the US Marshal for the
17 District of Nevada to the highest bidder on April 26, 2011 at the hour of 9:00 a.m. on the
18 steps of the Entrance of the Lloyd D. George U.S. Courthouse, United States District
19 Court for the District of Nevada – Las Vegas, located at 333 S. Las Vegas Blvd, Las
20 Vegas, Nevada.

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///


1 All interested parties may bid on the property at the execution sale and the property
2 will be sold to the highest bidder. Any bidder wishing to make a bid must bring cash or
3 cashier's checks to the sale sufficient to cover the amount of its bid. The minimum bid is
4 \$25,000.00. Upon sale of the personal property, the purchaser shall be substituted for and
5 acquire all the right, title and interest of the Judgment Debtors in such property. The
6 purchaser shall be given a certificate of sale as provided by NRS § 21.180.

7 DATED this _____ day of March, 2011.

8 U.S. MARSHAL – DISTRICT OF NEVADA

9
10
11 
12 Deputy U.S. Marshal

13 Submitted by:
14 FENNEMORE CRAIG, P.C.

15 
16 CHRISTOPHER H. BYRD, ESQ.
17 Nevada Bar No. 1633
18 LINDSAY A. HANSEN, ESQ.
19 Nevada Bar No. 11985
20 300 South 4th Street, Suite 1400
21 Las Vegas, Nevada 89101

22 *Attorneys for Defendant Bradley F. Burns*