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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
COMMUNITY BANK OF NEVADA,

Plaintiff,

vs.

26 FLAMINGO, LLC; OUTBACK
STEAKHOUSE OF FLORIDA, LLC, a Foreign
Limited Liability Company; DOE
INDIVIDUALS 1 through 10; and ROE
CORPORATIONS 1 through 10,

Defendants.

CASE NO. 2:11-cv-01936-JCM-RJJ

STIPULATED PROTECTIVE ORDER

**AS MODIFIED
(Paragraph 18)**

1 Pursuant to Federal Rule of Civil Procedure 26(c), Defendant/Counterclaimant 26
2 FLAMINGO, LLC (“Defendant”), by and through counsel, the law firms of Gordon Silver;
3 Brownstein Hyatt Farber Schreck; and the Law Offices of Glenn Ward Calsada, and
4 Plaintiff/Counterdefendant Federal Deposit Insurance Corporation, as Receiver for Community
5 Bank of Nevada (“Plaintiff,” together with Defendant, the “Parties”), by and through counsel, the
6 law firm of Meier & Fine, LLC, hereby stipulate and agree that discovery in this Civil Action
7 (“Action”) may involve the disclosure of certain documents, things and information that
8 constitute or contain trade secrets or other confidential research, development or commercial
9 information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure (“Fed. R.
10 Civ. P.”), which must be protected in order to preserve legitimate business or privacy interests.
11 Accordingly, good cause exists for the entry of this Protective Order pursuant to Fed. R. Civ. P.
12 26(c) to protect against improper disclosure or use of confidential information produced or
13 disclosed in this case. The Parties further stipulate and agree, subject to the approval of the
14 Court, that the terms and conditions of this Stipulated Protective Order shall govern the handling
15 of documents, depositions, pleadings, exhibits and all other information exchanged by the parties
16 in this Civil Action, or provided by or obtained from non-parties in this Action.

17 SCOPE

18 1. This Stipulated Protective Order shall apply to all documents, depositions, pleadings,
19 exhibits and all other material or information subject to discovery in this Action, including
20 responses to requests for production of documents, answers to interrogatories, responses to
21 requests for admissions, deposition testimony, expert testimony and reports, and all other
22 discovery taken pursuant to the Federal Rules of Civil Procedure, matters in evidence and any
23 other information hereafter furnished, directly or indirectly, by or on behalf of any party, non-
24 party or witness in connection with this Action (“Discovery Material”).

25 2. As used herein, “Producing Party” shall refer to any party to this Action and to any non-
26 party who produces Discovery Material, and “Receiving Party” shall refer to any individual who
27 properly receives, is shown or is exposed to Discovery Material.

28

1 **DESIGNATION**

2 3. Any Producing Party may designate Discovery Material as “CONFIDENTIAL” in
3 accordance with this Stipulated Protective Order if such party in good faith believes that such
4 Discovery Material contains CONFIDENTIAL information as defined in Paragraph 4. The
5 burden of establishing that Discovery Material is CONFIDENTIAL as defined herein shall be on
6 the Producing Party. The designation of any Discovery Material as CONFIDENTIAL shall be
7 deemed effective unless and until the Court orders otherwise or the Producing Party withdraws
8 the designation.

9 4. As used herein, CONFIDENTIAL Discovery Material refers to information that a
10 Producing Party claims to be proprietary business information or information relating to the
11 personal records or information of individuals or entities that are not parties to the above
12 captioned matter.

13 **USE**

14 5. Discovery Material designated CONFIDENTIAL under this Stipulated Protective Order
15 may be used only for purposes of this litigation and any appeal therefrom, and shall not be used
16 for any other purpose including, but not limited to, any business, proprietary, commercial,
17 governmental or other legal purpose, including in connection with any other litigation, arbitration
18 or claim. Nothing in this Stipulated Protective Order precludes a Producing Party from using or
19 disseminating its own CONFIDENTIAL information.

20 6. During the course of preparing for a deposition or trial, unless otherwise entitled to
21 access under this Protective Order, a fact deponent or witness may be shown CONFIDENTIAL
22 Discovery Material of another party or third party if, and only if, the Discovery Material reveals
23 on its face that the deponent or witness authored or received the Discovery Material in the
24 ordinary course of business and outside the context of this litigation. Nothing in this Paragraph
25 shall preclude a Producing Party from showing Discovery Material that it has produced to its
26 own deponent or witness, regardless of whether the Producing Party has designated the
27 Discovery Material it produced as CONFIDENTIAL, and regardless of whether such deponent
28 or witness is an author or recipient of the Discovery Material.

1 7. During the course of a deposition or trial, unless otherwise entitled to access under this
2 Protective Order, a fact deponent or witness may be shown CONFIDENTIAL Discovery
3 Material of another party or third party, if and only if, the Discovery Material reveals on its face
4 that the deponent or witness authored or received the Discovery Material in the ordinary course
5 of business and outside the context of this litigation, or alternatively if foundation testimony or
6 other Discovery Material establishes that the deponent or witness authored or received the
7 Discovery Material in the ordinary course of business and outside the context of this litigation, or
8 until such person has executed the Declaration and Undertaking to Be Bound by Stipulated
9 Protective Order in the form attached as Exhibit A. A fact deponent or witness who is an officer,
10 director or employee of a Producing Party may be shown any CONFIDENTIAL Discovery
11 Material of the Producing Party of which he or she is an officer, director or employee.

12 8. All Discovery Material designated CONFIDENTIAL shall be protected from disclosure
13 as specified herein, unless a party obtains an Order of the Court declaring that all or certain
14 portions of such Discovery Material are not, in fact, protected.

15 9. Third parties may designate as CONFIDENTIAL transcripts of depositions of their
16 witnesses and any documents or information they produce, whether voluntarily or by subpoena,
17 to the same extent and in the same manner as parties to this Action, and any such Discovery
18 Material shall be treated by parties to this Action in the same manner as materials and
19 information so designated by a party. Third parties shall have the same rights and obligations
20 under this Stipulated Protective Order as parties and may move the Court to enforce the
21 provisions of this Stipulated Protective Order.

22 DISCLOSURE

23 10. Unless otherwise directed by the Court or authorized in writing by the Producing Party,
24 Discovery Material designated as CONFIDENTIAL may be disclosed by the Receiving Party
25 only to the following persons:

- 26 (a) any outside counsel of record in this Action, including any attorneys
27 employed by firms of record even if not otherwise identified specifically on
28 pleadings;

- 1 (b) support personnel for counsel identified in Paragraphs 10(a), such as law
2 clerks, analysts, paralegals, litigation assistants, secretaries and support staff;
- 3 (c) any outside expert or consultant who is expressly retained or sought to be
4 retained by counsel identified in Paragraph 10(a) to assist in the preparation of
5 this Action for trial, with disclosure only to the extent necessary to perform such
6 work;
- 7 (d) any court reporter, shorthand reporter or typist recording or transcribing
8 testimony;
- 9 (e) service contractors such as document copy services, trial technology
10 consultants, jury consultants and graphic artists;
- 11 (f) personnel of the Court and all appropriate courts of appellate jurisdiction;
12 and
- 13 (g) any other person agreed to by the Producing Party in writing.

14 11. CONFIDENTIAL Discovery Material shall not be disclosed to any person described in
15 Paragraphs 10(c), (e) or (g) unless and until such person has executed the Declaration and
16 Undertaking to Be Bound by Stipulated Protective Order in the form attached as Exhibit A.
17 CONFIDENTIAL Discovery Material shall not be disclosed to any person unless such person is
18 authorized to receive CONFIDENTIAL Discovery Material pursuant to Paragraph 10 of this
19 Stipulated Protective Order.

20 12. As a condition precedent to disclosure of CONFIDENTIAL Discovery Material, at least
21 seven (7) calendar days before the disclosure of any CONFIDENTIAL Discovery Material of
22 any Producing Party is made to an individual described above in Paragraphs 10(a) or (c), counsel
23 for the Receiving Party shall serve a Notice on the Producing Party identifying the individual by
24 name and including a *curriculum vitae* or equivalent resume disclosing the individual's
25 employment history, past or present relationship with any of the parties, and an executed
26 acknowledgement from the individual to whom the disclosure is to be made, in the form of
27 Exhibit A attached hereto. Prior to disclosure of any CONFIDENTIAL Discovery Material
28 produced by another party, the other party shall have seven (7) calendar days from receipt of the

1 executed acknowledgement and curriculum vitae or resume to object to such disclosure. In the
2 event of an objection to the proposed disclosure, the parties shall promptly confer in good faith
3 to resolve the concerns giving rise to the objection. If the parties are unable to reach agreement
4 regarding such disclosure, the objecting party must notify the Court on an expedited basis, and in
5 no event later than fifteen (15) calendar days after receipt of the executed acknowledgement and
6 curriculum vitae or resume. The burden shall be on the objecting party to demonstrate to the
7 Court why the proposed disclosure should not be made. CONFIDENTIAL Discovery Material
8 shall not be disclosed to such an individual pending the Court's resolution of the dispute. The
9 foregoing seven (7) and fifteen (15) calendar day periods may be extended by agreement of the
10 parties or by Order of the Court.

11 13. The recipient of any CONFIDENTIAL Discovery Material that is provided under this
12 Stipulated Protective Order shall maintain such information in a secure and safe area and shall
13 exercise reasonable and proper care with respect to the storage, custody, use and/or
14 dissemination of such information.

15 **INADVERTENT PRODUCTION/DESIGNATION**

16 14. The inadvertent production of a document subject to attorney-client privilege or work
17 product immunity will not waive attorney-client privilege or work product immunity. In
18 addition, the fact that a document was inadvertently produced shall not be used in any manner as
19 evidence in support of any alleged waiver of attorney-client privilege or work product immunity.
20 If a party has inadvertently produced a document subject to a claim of attorney-client privilege or
21 work product immunity, upon request, the document and all copies thereof shall be returned
22 promptly, and in no event later than five (5) calendar days, after a request is made by the
23 Producing Party, as required by Fed. R. Civ. P. 26(b)(5)(B). Moreover, any notes or summaries,
24 other than those expressly permitted under this section, referring to or relating to any such
25 inadvertently produced document subject to a claim of attorney-client privilege or work product
26 immunity shall be destroyed. Nothing herein shall prevent the Receiving Party from preparing a
27 record for its own use containing the date, author, address(es) and other such information as is
28 reasonably necessary to identify the document and generally describe its nature to the Court in

1 any motion to compel production of the document. Such a record of the identity and nature of a
2 document may not be used for any purpose other than preparation of a motion to compel in this
3 Action. After return of the document(s), the Receiving Party may challenge the Producing
4 Party's claim(s) of attorney-client privilege or work product immunity by making a motion to the
5 Court.

6 15. The inadvertent failure by a Producing Party to designate Discovery Material as
7 CONFIDENTIAL shall not be a waiver of such designation provided that the Producing Party
8 promptly informs the Receiving Party that such Discovery Material is CONFIDENTIAL, and in
9 any event not more than five (5) business days from when the failure to designate first became
10 known to the Producing Party. The inadvertent failure by a party to designate Discovery
11 Material as CONFIDENTIAL shall not preclude the filing of a motion at a later date seeking to
12 impose such designation or challenging the propriety thereof. The party receiving Discovery
13 Material that the Producing Party inadvertently failed to designate as CONFIDENTIAL shall not
14 be in breach of this Order for any use made of such Discovery Material before the Receiving
15 Party is informed of the inadvertent failure to designate. Once the Receiving Party has been
16 informed of the inadvertent failure to designate pursuant to this Paragraph, the Receiving Party
17 shall take reasonable steps to, at the Producing Party's option, either ensure that all copies of any
18 such Discovery Materials are returned promptly to the Producing Party or ensure that all copies
19 of any such Discovery Materials are marked with the proper designation and distributed only as
20 permitted under this Stipulated Protective Order.

21 16. In the event of disclosure of Discovery Material designated CONFIDENTIAL to any
22 person not authorized to such access under this Stipulated Protective Order, the party responsible
23 for having made such disclosure, and each party with knowledge thereof, shall immediately
24 inform counsel for the party whose Discovery Material has been disclosed of all known relevant
25 information concerning the nature and circumstances of the disclosure. The party responsible for
26 improperly disclosing such Discovery Material shall also promptly take all reasonable measures
27 to retrieve the improperly disclosed Discovery Material and to ensure that no further or greater
28 unauthorized disclosure and/or use thereof is made.

1 Material shall certify in writing that all such material has been returned or destroyed.

2

3 IT IS SO STIPULATED.

4 DATED this _____ day of February, 2013.

DATED this _____ day of February, 2013.

5 GORDON SILVER

MEIER & FINE, LLC

6 /s/ Joel Z. Schwarz

/s/ Peter Dunkley

7 _____
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21 IT IS HEREBY ORDERED:

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United States Magistrate Judge

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Dated: February 11, 2013

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EXHIBIT A
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR COMMUNITY BANK OF NEVADA,

Plaintiff,

vs.

26 FLAMINGO, LLC; OUTBACK STEAKHOUSE OF FLORIDA, LLC, a Foreign Limited Liability Company; DOE INDIVIDUALS 1 through 10; and ROE CORPORATIONS 1 through 10,

Defendants.

CASE NO. 2:11-cv-01936-JCM-RJJ

**DECLARATION AND UNDERTAKING
TO BE BOUND BY STIPULATED
PROTECTIVE ORDER**

I, _____, declare that:

1. My residence address is _____.

2. My current employer is _____

and the address of my current employment is _____.

3. My current occupation or job description is _____.

4. [Experts Only] A copy of my *curriculum vitae* is attached hereto.

5. I have received and read the Stipulated Protective Order in this Action dated _____, and I understand its provisions. I agree (a) to be bound by the terms of the Stipulated Protective Order, (b) to use CONFIDENTIAL Discovery Material solely for this action and (c) not to disclose any CONFIDENTIAL Discovery Material to any person, firm, corporation or other entity not qualified to have access to such information pursuant to the terms of the Stipulated Protective Order.

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6. Upon termination of this Action, I will destroy or return to retaining counsel all CONFIDENTIAL Discovery Material and summaries, abstracts and indices thereof that come in my possession, and documents of things that I have prepared relating thereto.

7. I hereby submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcement of the Stipulated Protective Order. I understand that if I violate the provisions of the Stipulated Protective Order, I will be in violation of a Court Order and subject to sanctions or other remedies that may be imposed by the Court and may be liable in civil action by one or more of the parties in this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date

Signature