

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEVADA

3 FEDERAL DEPOSIT
4 INSURANCE CORPORATION, AS
RECEIVER OF SILVER STATE BANK

Case No.: 2:12-CV-209

5 Plaintiffs,

STIPULATED PROTECTIVE ORDER

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7
8 COREY L. JOHNSON; DOUGLAS E.
9 FRENCH; GARY A. GARDNER; and
TIMOTHY S. KIRBY

10 Defendants.

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12 The parties to this litigation (the "Action") contemplate that discovery may require the
13 disclosure of documents and information that are confidential. The parties therefore stipulate to
14 and request that the Court grant the following proposed Protective Order:

15 1. **Scope of Order.** This Order shall govern Confidential Material, as defined in
16 this Order, which the Parties may produce in response to discovery requests and disclosure
17 obligations in this litigation.

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19 2. **Definition of Confidential Material.** For purposes of this Order, "Confidential
20 Material" shall mean certain documents, records, and information that are not publicly available
21 and are composed or stored in written, electronic, digital, or any other medium, provided by the
22 Parties pursuant to this Order, including any information identifying any names, addresses,
23 account information, personal information (such as social security number, date of birth, any
24 other personal identification information, and medical information) recognized by law as, or
25 required to be maintained as, confidential including, without limitation, the following:
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1 (a) **Regulatory:** Confidential Material related in any way to the regulation
2 or supervision of the Bank, in whatever form, whether preliminary or final, including
3 reports of examination or inspection, regulatory correspondence, reports, orders,
4 memoranda, or agreements by, from or with the FDIC, the NFID, or any other federal or
5 state regulatory authority, and any documents containing confidential information
6 obtained from any documents and records related to the supervision or regulation of the
7 Bank. The Parties understand and agree that the release of such regulatory documents
8 may require approval from independent government agencies, and that no regulatory
9 documents, however obtained, will be disclosed to anyone other than the Parties, and
10 other persons or entities identified in subparagraphs 5(a)-(g) below without approval by
11 the respective regulatory authority or a court order. Confidential Material includes
12 documents that are confidential or exempt from disclosure as provided in the Freedom
13 of Information Act, 5 U.S.C. § 552 (“FOIA”), the FDIC’s regulations governing the
14 disclosure of information, 12 C.F.R. Part 309, the laws of the State of Nevada, or any
15 other applicable federal or state laws.
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18 (b) **Bank and Bank Customers:** Confidential Material related to the Bank,
19 its customers, any trading company involved in placing orders for commodities futures
20 or options, or any other entity, including: Automated Clearing House items or
21 transactions, chargebacks, merchant processing, bank account information, signature
22 cards, bank statements, general ledger entries, deposit or reserve information,
23 commodity trading statements, loans and lending transactions, loan applications,
24 financial statements and credit reports, business and personal state and federal income
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1 tax forms, correspondence, and related loan documentation relating to any extension of
2 credit or loan to any borrower. Examples of “Confidential Material” include, without
3 limitation, documents containing a customer’s account number, credit card number,
4 personal identification number, account balance, information relating to a deposit
5 account, loan, or borrower relationship, and loan application materials.
6

7 (c) **Receivership:** Confidential Material related to the receivership of the
8 Bank, including any information on loss or estimates of such loss on the Bank’s assets
9 not publicly available. Notwithstanding the provisions of paragraph 5 of this Order, no
10 Confidential Material shall be disclosed to any person or entity (other than a Party
11 hereto) known to have any current or prospective interest in such assets, whether or not
12 that person or entity would otherwise be allowed access to documents and information
13 under the terms of this Order.
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15 (d) **Trade Secret/Proprietary Information:** Documents and information
16 that the Parties reasonably believe constitute, reflect, or disclose trade secrets,
17 proprietary data or commercially sensitive information of the Parties.
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19 The Parties further agree that all documents generated by them that summarize or otherwise
20 include Confidential Material are governed by this Order.

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

22 Confidential Material to be produced by any Party shall be designated by stamping them
23 with the legend “Confidential.” In the event that Confidential Material is provided
24 electronically, or on a specific medium such as a hard drive, thumb drive, or disc, the Party may
25 designate the material on such medium as confidential in an accompanying letter or email. In
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1 addition, all documents previous disclosed to date by any Party are hereby designated as
2 Confidential Material and are subject to this agreement. The failure to designate any documents
3 with such legend shall not constitute a waiver by the producing Party of the right to assert that
4 such documents contain Confidential Material. In the event that any Party inadvertently
5 produces confidential documents or information without designating the documents or
6 information as Confidential Material, and if the producing Party subsequently notifies the
7 receiving Party and their counsel within a reasonable time following production that the
8 documents or information should have been designated Confidential Material, the Parties agree
9 to treat any such subsequently identified documents or information as duly designated
10 Confidential Material and subject to this Order. Furthermore, if a non-producing party looks at a
11 document that has been disclosed and believes that it should be deemed confidential then it can
12 request that it be labeled as Confidential and it will be labeled as such. This does not affect the
13 rights of the producing party, however, as discussed in paragraph 4.
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16 In the event that any Party receiving Confidential Material disagrees with that
17 designation, the Party may raise that issue with the party seeking to maintain confidentiality. If
18 no agreement can be reached, the receiving/objecting Party may raise the issue with the Court
19 and shall maintain its copy(ies) of the challenged documents in confidence unless and until a
20 ruling is issued by the Court.
21

22 4. **Non-disclosure of Confidential Material.** All Confidential Material provided
23 pursuant to this Order is provided solely and exclusively for purposes of the Action. Absent
24 further written agreement between the Parties, all such materials shall be treated as strictly
25 confidential and shall not be disclosed, discussed with, or in any way divulged to any person, or
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1 used for any other purpose, except as permitted under this Order. Notwithstanding the
2 provisions of this section, a Party may disclose its own Confidential Material to any person it
3 deems appropriate with or without conditions to the disclosure and without waiving any claim
4 of protection under this Order.

5 **5. Exceptions to Non-disclosure:** Defendants. Except as provided in paragraph 2
6 and subject to Paragraph 7 below, the Defendants may disclose Confidential Material received
7 pursuant to this Order to the following persons or entities:
8

9 (a) Defendants and their outside counsel of record in this case (including, but
10 not limited to, outside counsel's -investigators, paralegals, and other employees);

11 (b) Defendants' insurance carrier and its outside counsel (including, but not
12 limited to, its personnel, Board of Directors, in-house attorneys, investigators, experts,
13 consultants, and senior executives) conducting, assisting, monitoring, reviewing, or
14 making determinations with regard or related to the Action;

15 (c) outside counsel (together with any employees of counsel), who are not
16 otherwise of record in this case, engaged by the Defendants to assist or participate in the
17 Action;
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19 (d) vendors, experts, consultants, mediators, and arbitrators engaged by the
20 Defendants and/or their respective counsel to assist or participate in the Action;
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22 (e) reinsurers, auditors or other entities to which the Defendants' insurance
23 carrier may be required to respond or report in the ordinary course of business regarding
24 the Action, but only so long as such persons or entities are already subject to
25 substantially similar confidentiality obligations;
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1 (f) regulators to which the Defendants' insurance carrier may be required to
2 respond or report in the ordinary course of business regarding the Action; and

3 (g) former Board Members and employees of Silver State Bank, as well as
4 witnesses in this Action and potential witnesses in this Action whom the attorney has a
5 good faith belief possess testimony that could be utilized at trial.

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7 **6. Exceptions to Non-disclosure:** FDIC. Notwithstanding anything to the contrary
8 herein, the FDIC may disclose Confidential Material received pursuant to this Agreement to the
9 following persons or entities:

10 (a) FDIC personnel (including, but not limited to, its Chairman, Board of
11 Directors, attorneys, investigators and senior executives) conducting, assisting,
12 monitoring, reviewing, or making determinations with regard or related to the Action;

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14 (b) counsel (together with any employees of counsel) engaged by the FDIC to
15 assist or participate in the Action;

16
17 (c) vendors, experts, consultants, mediators, and arbitrators engaged by the
18 FDIC or its counsel to assist or participate in the above Action;

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20 (d) auditors or examiners required or authorized by law to review materials that
21 may include Confidential Material;

22
23 (e) subject to the provisions of Paragraph 7 below, persons to whom the
24 information is required to be made available under the FOIA or the FDIC's FOIA
25 regulations, 12 C.F.R. §309.5, upon receipt of a proper FOIA request for such
26 information;

1 (f) individuals and entities permitted access to exempt information under
2 12 C.F.R. §309.6; and

3 (g) former Board Members and employees of Silver State Bank, as well as
4 witnesses in this Action and potential witnesses in this Action whom the attorney has a
5 good faith belief possess testimony that could be utilized at trial.

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7 **7. FDIC to Provide Notice of FOIA Request.** If the FDIC receives a FOIA request to
8 which Confidential Material is responsive, and the FDIC determines that the responsive
9 materials: (1) are agency records under the FOIA, and (2) that the FOIA may require disclosure
10 of all or part of the responsive records, the FDIC shall notify the producing Party, in writing, of
11 the FDIC's determination. Within five (5) business days of receipt of the FDIC's written
12 notification, the producing Party may request, in writing, that all or part of the records not be
13 disclosed. The written request shall state the reasons why the producing Party believes that the
14 records should not be disclosed. If the FDIC rejects the request of the producing party, the
15 FDIC will notify the producing Party in writing that it intends to disclose the records. The
16 producing Party shall have five (5) business days from receipt of this notice to petition this
17 Court to enter an order prohibiting the disclosure of the records, and the FDIC shall not disclose
18 the record pending disposition of such a petition.
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21 **8. Confidentiality Agreement Certificate.** Confidential Material may only be
22 disclosed to persons or entities identified in subparagraphs 5(b)-(d) and (g) and 6(c) and (g)
23 after that person or entity, personally or through an authorized representative, agrees to be
24 bound by this Order and signs a written Agreement to Maintain Confidentiality in the form
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1 attached as Attachment A. The Parties shall keep all of their respective Agreements to Maintain
2 Confidentiality containing original or electronic signatures.

3 **9. Demands by Others for Confidential Material.** If any other person demands
4 by subpoena, other judicial process, or by operation of law production by a Party of any
5 Confidential Material produced to it by another Party, the Party receiving such demand shall
6 promptly notify the producing Party of such demand. At its option, the producing Party may
7 elect to challenge the demand and assert any applicable protections. The burden and expense of
8 such challenge shall be borne solely by the producing Party. The producing Party shall notify
9 the recipient Party and issuing court or tribunal of its challenge within such time as required by
10 law, the subpoena, or other judicial process. The burden of proving that Confidential Material
11 is entitled to protection from disclosure shall lie with the Party making the challenge. The Party
12 who received the demand shall not produce any Confidential Material in the absence of consent
13 by the producing Party or an order by the issuing court or tribunal compelling production.
14 Nothing in this provision or this Order shall be interpreted as requiring any Party to violate any
15 applicable law.
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19 **10. Reservation of Rights.** Nothing in this Order confers upon the Defendants or
20 any other person or entity any further right of access to documents or information not provided
21 by the FDIC. Nothing in this Order confers upon the FDIC or any other person or entity any
22 further right of access to documents or information not provided by the Defendants. With
23 respect to Confidential Material thus produced, each Party reserves its rights under this Order,
24 and otherwise under law.
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1 11. **Return or Destruction of Documents.** Upon final resolution of the Action
2 through settlement or entry of a final, non-appealable judgment governing the rights and
3 obligations of the FDIC, the Defendants and the Defendants' insurance carrier with respect to
4 the Action, the persons and entities identified in subparagraphs 5(a)-(c) or 6(a)&(b) may retain
5 copies of any Confidential Material produced to them as reasonably necessary to comply with
6 future requests for review by reinsurers, auditors and regulators, or as necessary to exercise or
7 enforce any subrogation rights. When such retention is no longer needed, such persons and
8 entities shall return the retained documents or destroy those documents in accordance with their
9 standard record destruction procedures, subject to any applicable litigation hold or any other
10 document or information hold imposed by any governmental body or court order. Any person
11 or entity retaining such Confidential Material shall maintain its confidentiality in accordance
12 with this Order until such documents are returned or destroyed. This paragraph does not apply
13 to any documents or information ordered produced by a court without the limitations set forth in
14 this Order. To the extent any Party retains any Confidential Material pursuant to a separate
15 written agreement the terms of this Order will continue to govern.

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19 12. **Remedies.** To enforce rights under this Order, or in the event of an alleged
20 violation of this Order, the Parties shall first seek to resolve the issue through prompt and
21 reasonable discussion. In the event such efforts fail to promptly resolve the alleged violation,
22 the Parties reserve the right to seek relief in this Court for, inter alia, money damages, injunctive
23 relief, or any other relief as appropriate.

24
25 13. **No Waiver of Privileges.** This Order does not require the production of any
26 privileged documents and the Parties do not waive any privilege, including any attorney-client
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1 privilege, work product doctrine, or any other applicable privilege they might have with respect
2 to any of the documents and information produced. With respect to the FDIC, these privileges
3 include, but are not limited to, any privilege that the Bank may have had or any federal or state
4 regulatory agency may hold. In the event privileged documents are withheld, such withholding
5 will be subject to the procedures and rules generally governing the withholding of privileged
6 documents.
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8 Furthermore, in the event that a Party inadvertently produces attorney-client privileged
9 documents or information, and if the Party subsequently notifies the receiving Party that the
10 privileged documents or information should not have been produced, the receiving Party agrees
11 to immediately return the originals and all copies of the inadvertently produced privileged
12 documents and information.
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14 In addition, with regard to privileged and/or otherwise protected documents, Federal
15 Rule of Evidence 502 is hereby expressly incorporated into this Order.
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17 14. **Filing Confidential Material.** The Parties shall take necessary steps to protect
18 Confidential Material from public disclosure and shall file under seal in compliance with Civil
19 Local Rule 10-5(b) any affidavits, briefs, motions, or other papers that disclose such
20 Confidential Material.

21 All trials are open to the public. Absent Order of the Court, there will be no restrictions
22 on the use of any document that may be introduced by any party during the Trial. However, if a
23 party intends to present Confidential Material at trial, such party shall provide advance notice to
24 all parties at least ten (10) days prior to the commencement of trial.
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1 15. **Notice.** All notices required to be given under this Order shall be in writing and
2 delivered to the addressees set forth below. Notice shall be sent by overnight delivery or
3 registered or certified mail, return receipt requested, and shall be considered delivered upon
4 receipt.

5 If to the FDIC:

6 Bob Rogers
7 FDIC Legal Division
8 1601 Bryan Street, Room15068
9 Dallas, TX75201

10 and

11 David C. Mullin
12 Anthony W. Kirkwood
13 Mullin Hoard & Brown, LLP
14 500 S. Taylor, Suite 800
15 Amarillo, Texas79101

16 If to Corey Johnson:

17 John McMillan
18 Jessica K Peterson
19 Flangas McMillan Law Group
20 3275 South Jones Boulevard, Suite 105
21 Las Vegas, Nevada89146

22 If to Timothy Kirby:

23 Maureen Beyers
24 Grace Rebling
25 Osborn Maledon
26 2929 North Central Avenue
27 Phoenix, Arizona 85012-2793

28 And

///

///

1 **Submitted by**

2 //s// David C. Mullin
3 David Mullin
4 Anthony W. Kirkwood
5 Mullin Hoard & Brown LLP
6 500 South Taylor, Suite 800
7 Amarillo, TX 79101
8 Telephone: 806-372-5050
9 Fax: 806-372-5086
10 dmullin@mhba.com
11 tkirkwood@mhba.com

12 Stanley W. Parry
13 Ballard Spahr LLP
14 100 N. City Parkway, Suite 1750
15 Las Vegas, NV 89106
16 Telephone: 702-471-7000
17 Fax: 702-471-7070
18 parrys@ballardspahr.com

19 *Attorneys for Federal Deposit Insurance*
20 *Corporation*

21 Approved as to Form and Content

22 //s// Jessica K. Peterson (with permission)
23 John R. McMillan
24 Jessica K. Peterson
25 Flangas McMillan Law Group
26 3275 S. Jones Blvd., Suite 105
27 Las Vegas, NV 89146
28 Telephone: 702-307-9500
Fax: 702-382-9452
jrm@flangasmcmillan.com
jkp@flangasmcmillan.com

Attorneys for Corey L. Johnson

Approved as to Form and Content

//s// Eric E. Reed (with permission)
Patrick K. Egan
Eric E. Reed
Fox Rothschild LLP
2000 Market St., 20th Floor
Philadelphia, PA 19103
Telephone: 215-299-2000
Fax: 215-299-2150
pegan@foxrothschild.com
ereed@foxrothschild.com

Brett A. Axelrod
Fox Rothschild LLP
3800 Howard Hughes Pkwy., Suite 500
Las Vegas, NV 89169
Telephone: 702-262-6899
Fax: 702-597-5503
baxelrod@foxrothschild.com

Attorneys for Douglas E. French

Approved as to Form and Content

//s// Allen D. Emmel (with permission)
Allen D. Emmel
Emmel & Klegerman P.C.
5586 S. Fort Apache, Suite 110
Las Vegas, NV 89148
Telephone: 702-476-1000
Fax: 702-722-6185
aemmel@ekcounsel.com

Attorney for Gary A. Gardner

1 Approved as to Form and Content

2 //s// Maureen Beyers (with permission)

3 Maureen Beyers
4 Grace E. Rebling
5 Osborn Maledon
6 2929 North Central Avenue
7 Phoenix, Arizona 85012-2793

8 Martha J. Ashcraft
9 Law Offices of Martha J. Ashcraft
10 7251 W. Lake Mead Blvd., Suite 300
11 Las Vegas, NV 89128

12 *Attorneys for Timothy S. Kirby*

13 **ORDER**

14
15 IT IS SO ORDERED on this 14th day of August, 2012, that the Parties and their
16 respective counsel shall be governed by the terms and conditions of the above Order concerning
17 Confidential Material and in the above captioned case

18
19 
20 _____
21 UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

AGREEMENT TO MAINTAIN CONFIDENTIALITY

I hereby acknowledge that I have been provided and have read a copy of that certain Stipulated Protective Order dated August____, 2012, in the action between the Federal Deposit Insurance Corporation as Receiver of Silver State Bank, Corey Johnson, Tim Kirby, Gary Gardner, and Doug E. French (the "Order"), a copy of which is annexed hereto. I understand that any Confidential Material within the meaning of the Order shown to me is confidential, shall be used by me only as provided in the Order, and shall not be disclosed by me unless expressly permitted under the Order. I agree to abide by the terms of the Order, including its provisions concerning the return or destruction of such Confidential Material. I acknowledge that I may be subject to claims for monetary damages and/or injunctive relief for unauthorized disclosure or use of Confidential Material or if I violate any obligation of this Order.

Name: _____ Date: _____
(signature)

Name: _____
(printed)

Telephone: _____
(Business)

Company: _____

(Home)

Address 1: _____

(Cell)

Address 2: _____

City: _____

State/Zip Code: _____