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 8 CORPORATION as Receiver for
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 9

10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 * * *

13 FEDERAL DEPOSIT INSURANCE
 CORPORATION as Receiver for
 14 WASHINGTON MUTUAL BANK,

CASE NO. 2:14-cv-01567-GMN-GWF

15 Plaintiff,

**STIPULATED PROTECTIVE
 ORDER**

16 vs.

17 NEVADA TITLE COMPANY, a Nevada
 corporation,

18 Defendants.
 19

20 **I**

21 **PURPOSES AND LIMITATIONS**

22 Disclosure and discovery activity in this action are likely to involve production of
 23 confidential, proprietary or private information for which special protection from public
 24 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

25 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
 26 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
 27 protections on all disclosures or responses to discovery and that the protection it affords from
 28 public disclosure and use extends only to the limited information or items that are entitled to

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1 confidential treatment under the applicable legal principles. The parties further acknowledge
2 that nothing in this Stipulated Protective Order shall entitle them to file confidential information
3 under seal.

4 **II**

5 **DEFINITIONS**

6 A. Challenging Party: A Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 B. "CONFIDENTIAL" Information or Items: Information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
10 of Civil Procedure 26(c).

11 C. Counsel (without qualifier): Outside counsel of Record and House Counsel (as
12 well as their support staff).

13 D. Designating Party: A Party or Non-Party that designated information or items
14 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

15 E. Disclosure or Discovery Material: All items or information, regardless of the
16 medium or manner in which it is generated, stored, or maintained (including, among other things,
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
18 responses to discovery in this matter.

19 F. Expert: A person with specialized knowledge or experience in a matter pertinent
20 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
21 a consultant in this action.

22 G. House Counsel: Attorneys who are employees of a party to this action. House
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 H. Non-Party: Any natural person, partnership, corporation, association, or other
25 legal entity not named as a Party to this action.

26 I. Outside Counsel of Record: Attorneys who are not employees of a party to this
27 action, but are retained to represent or advise a party to this action and have appeared in this
28

1 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
2 that party.

3 J. Party: Any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 K. Producing Party: A Party or Non-Party that produces Disclosure or Discovery
6 Material in this action.

7 L. Professional Vendors: Persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
9 organizing, storing, or retrieving data in any form or medium) and their employees and
10 subcontractors.

11 M. Protected Material: Any Disclosure or Discovery Material that is designated as
12 "CONFIDENTIAL."

13 N. Receiving Party: A Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 III

16 SCOPE AND GOOD CAUSE

17 The protections conferred by this Stipulation and Order cover not only Protected Material
18 (as defined above), but also (1) any information copied or extracted from Protected Material;
19 (2) all copies, excerpts, summaries or compilations of Protected Material; and (3) any testimony,
20 conversations or presentations by Parties or their Counsel that might reveal Protected Material.

21 However, the protections conferred by this Stipulation and Order do not cover the
22 following information: (1) any information that is in the public domain at the time of disclosure
23 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving
24 Party as a result of publication not involving a violation of this Order, including becoming a part
25 of the public record though trial or otherwise; and (2) any information known to the Receiving
26 Party prior to this disclosure or obtained by the Receiving Party after the disclosure from a
27 source who obtained the information lawfully and under no obligation of confidentiality to the
28 Designating Party. Any use of Protected Material at trial shall be governed by a separate

1 agreement or order.

2 This action involves a contract dispute between the parties relating to mortgage loans,
3 and representations made in connection with the valuation and funding of said mortgage loans.
4 This litigation will involve the review and analysis of Loan Origination Files, Loan Servicing
5 Files, Foreclosure Files, and other Personal Records of individuals who applied for and obtained
6 mortgage loans at issue. Good cause exists to grant the parties' request for a Protective Order to
7 (1) preserve the privacy interests of third-party borrowers; (2) protect the confidential business
8 records and proprietary information of the plaintiff and defendants; and (3) allow the parties to
9 exchange information in the most expeditious fashion possible, with a minimum burden,
10 expense, dispute, and delay. Pursuant to 15 U.S.C. § 6802(e)(8), the production of non-public
11 personal financial information, protected by the measures set out in this Protective Order, shall
12 not constitute a violation of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, et seq.; *Marks v.*
13 *Global Mortgage Group, Inc.*, 218 F.R.D. 492, 496 (S.D. W.Va. 2003).

14 **III**

15 **DURATION**

16 Even after final disposition of this litigation, the confidentiality obligations imposed by
17 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
18 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
19 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
20 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
21 action, including the time limits for filing any motions or applications for extension of time
22 pursuant to applicable law.

23 **IV**

24 **DESIGNATING PROTECTED MATERIAL**

25 A. Exercise of Restraint and Care in Designating Material for Protection. Each Party
26 or Non-Party that designated information or items for protection under this Order must take care
27 to limit any such designation to specific material that qualifies under the appropriate standards.
28 The Designating Party must designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify – so that other portions of the material,
2 documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
6 unnecessarily encumber or retard the case development process or to impose unnecessary
7 expenses and burdens on other parties) expose the Designating Party to sanctions.

8 If it comes to a Designating Party’s attention that information or items that it designated
9 for protection do not qualify for such protection, such Designating Party must promptly notify all
10 other Parties that it is withdrawing the mistaken designation.

11 B. Manner and Timing of Designations: Except as otherwise provided in this Order
12 (*see, e.g.*, second paragraph of Section V(B), below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 1. For information in documentary form (*e.g.*, paper or electronic documents,
17 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
18 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
19 a portion or portions of the material on a page qualifies for protection, the Producing Party also
20 must clearly identify the protected portions (*e.g.*, by making appropriate markings in the
21 margins).

22 A Party or Non-Party that makes original documents or materials available for
23 inspection need not designate them for protection until after the inspecting Party has indicated
24 which material it would like copied and produced. During the inspection and before the
25 designation, all of the material made available for inspection shall be deemed
26 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and
27 produced, the Producing Party must determine which documents, or portions thereof, qualify for
28 protection under this Order. Then, before producing the specified documents, the Producing

1 notice must recite that the challenge to confidentiality is being made in accordance with this
2 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
3 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
4 forms of communication are not sufficient) within 14 days of the date of service of the notice. In
5 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
6 designation is not proper and must give the Designating Party an opportunity to review the
7 designated material, to reconsider the circumstances, and, if no change in designation is offered,
8 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
9 stage of the challenge process only if it has engaged in this meet and confer process first or
10 establishes that the Designating Party is unwilling to participate in the meet and confer process in
11 a timely manner.

12 C. Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the Designating Party shall file and serve a motion to retain confidentiality within
14 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet
15 and confer process will not resolve their dispute, whichever is earlier. In addition, the
16 Challenging Party may file a motion challenging a confidentiality designation at any time if there
17 is good cause for doing so, including a challenge to the designation of a deposition transcript or
18 any portions thereof.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating
20 Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
22 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
23 file a motion to retain confidentiality as described above, all parties shall continue to afford the
24 material in question the level of protection to which it is entitled under the Producing Party's
25 designation until the Court rules on the challenge.

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VI

ACCESS TO AND USE OF PROTECTED MATERIAL

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3 A. Basic Principles. A Receiving Party may use Protected Material that is disclosed
4 or produced by another Party or by a Non-Party in connection with this case only for
5 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
6 disclosed only to the categories of persons and under the conditions described in this Order.
7 When the litigation has been terminated, a Receiving Party must comply with the provisions of
8 Section X(D) below (Final Disposition).

9 Protected material must be stored and maintained by a Receiving Party at a location and
10 in a secure manner that ensures that access is limited to the persons authorized under this Order.

11 B. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
12 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
13 disclose any information or item designated "CONFIDENTIAL" only to:

14 a. the Receiving Party's Outside Counsel of Record in this action, as well as
15 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
16 information for this litigation;

17 b. the officers, directors and employees (including House Counsel) of the
18 Receiving Party to whom disclosure is reasonably necessary for this litigation;

19 c. Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this litigation and who have signed the
21 "Acknowledgement and Agreement to Be Bound" that is attached hereto as Exhibit A;

22 d. the Court and its personnel;

23 e. court reporters and their staff, professional jury or trial consultants, mock
24 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
25 and who have signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A);

26 f. during their depositions, witnesses in the action to whom disclosure is
27 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
28 (Exhibit A) unless otherwise agreed by the Designating Party or ordered by the Court. Pages of

1 transcribed deposition testimony or exhibits that may reveal Protected Material must be
2 separately bound by the court reporter and may not be disclosed to anyone except as permitted
3 under this Stipulated Protective Order.

4 g. the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information.

6 VII

7 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
8 **LITIGATION**

9 If a Party is served with a subpoena or a court order issued in other litigation that compels
10 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
11 Party must:

12 a. promptly notify in writing the Designating Party. Such notification shall
13 include a copy of the subpoena or court order;

14 b. promptly notify in writing the party who caused the subpoena or order to
15 issue in the other litigation that some or all of the material covered by the subpoena or order is
16 subject to this Protective Order. Such notification shall include a copy of this Stipulated
17 Protective Order; and

18 c. cooperate with respect to all reasonable procedures sought to be pursued
19 by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with the
21 subpoena or court order shall not produce any information designated in this action as
22 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
23 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
24 shall bear the burden and expense of seeking protection in that court of its confidential material
25 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
26 Party in this action to disobey a lawful directive from another court.

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VIII

UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgement and Agreement to Be Bound" that is attached hereto as Exhibit A.

IX

INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) & (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court and seek an approval of such incorporation by the Court. No modification to this Protective Order will have any force or effect unless and until the Court approves of such modification.

X

MISCELLANEOUS

A. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

B. Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing

1 any information or item on any ground not addressed in this Stipulated Protective Order.
2 Similarly, no Party waives any right to object on any ground to use in evidence any of the
3 material covered by this Stipulated Protective Order.

4 C. Filing Protected Material. Without written permission from the Designating Party
5 or a court order secured after appropriate notice to all interested persons, a Party may not file in
6 the public record in this action any Protected Material.

7 D. Final Disposition. Within 30 days after final termination of this case either by
8 consensual dismissal with prejudice, after final appellate review has been obtained, or after the
9 time for appeal has lapsed without the filing of an appeal by either of the parties, all material and
10 copies containing information designated CONFIDENTIAL shall be returned to the party
11 producing such information, together with any and all summaries, abstracts, notations and
12 compilations containing any Confidential Information. In the alternative, within 30 days after
13 final termination of this case, such materials and copes may be shredded or disposed of in a
14 manner to assure the destruction thereof and declaration certifying such destruction or disposal
15 shall be provided to the party producing such information. Notwithstanding the above, one copy

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1 of the files in this case may be retained by counsel of record for each party, subject to the terms
2 of this Order.

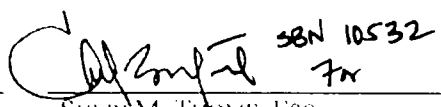
3 Dated this 19th day of ~~February~~ ^{MARCH}, 2015.

Dated this 17th day of ~~February~~ ^{MARCH}, 2015.

4 **KOLESAR & LEATHAM**

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

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11 Attorneys for Plaintiff, F.D.I.C.
12 as Receiver for WASHINGTON
13 MUTUAL BANK

Attorneys for Defendant,
NEVADA TITLE COMPANY

14 **IT IS SO ORDERED:**

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16 UNITED STATES MAGISTRATE JUDGE

17 Dated: March 24, 2015

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