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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
11 FRONTIER BANK,

12 Plaintiff,

13 v.

14 MICHAEL J. CLEMENTZ, et al.,

15 Defendants.

CASE NO. C13-737 MJP

ORDER DENYING PLAINTIFF'S  
MOTION FOR A PROTECTIVE  
ORDER

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17 THIS MATTER comes before the Court on the Parties' Local Rule 37 Joint Submission  
18 regarding Plaintiff's Motion for a Protective Order. (Dkt. Nos. 144, 147.) Having considered  
19 the briefing and the related record, the Court DENIES the motion but does not order production  
20 of the documents.

21 Plaintiff seeks a protective order allowing it to withhold twelve documents that include  
22 information about the FDIC-Corporate's regulatory enforcement actions against Frontier Bank  
23 under the "law enforcement investigatory privilege." (Dkt. No. 147 at 13-14.) Plaintiff argues  
24 the law enforcement investigatory privilege prohibits the release of governmental information

1 that would harm an agency's investigative or enforcement efforts, and contends that producing  
2 the twelve documents here would harm the FDIC's investigatory and enforcement efforts. (Id.)  
3 (citing Hassan v. United States, 2006 WL 681038, at \*3 (W.D. Wash. Mar. 15, 2006), and SEC  
4 v. Rosenfeld, 1997 U.S. Dist. LEXIS 13996 (S.D.N.Y. 1997)).

5 Assuming a law enforcement investigatory privilege applies in this context, Plaintiff has  
6 failed to demonstrate how or why production of these documents could harm any investigatory  
7 or enforcement efforts. The FDIC's investigation of Frontier Bank concluded long ago, and  
8 Frontier Bank has been closed and placed into receivership. Pursuant to the terms of the  
9 Stipulated Protective Order, these documents will not be released to the public and thus cannot  
10 harm future FDIC investigations of other banks. The Court finds that the law enforcement  
11 investigatory privilege does not shield these documents from production because their  
12 production would not harm any current or future investigatory or enforcement actions, and  
13 consequently Plaintiff's request for a protective order on this basis is DENIED.

14 The Court, however, does not order that these documents be produced to Defendants.  
15 Defendants represented to the Court multiple times during a September 2, 2015 telephone  
16 conference regarding this discovery dispute that Defendants sought the production of "any  
17 materials that are being withheld based on any privileges other than the law enforcement  
18 privilege." (Dkt. No. 135 at 7) (emphasis added). Defendants represented to the Court that they  
19 were "not pressing on the suspicious activity report data" because Defendants "understand that  
20 that's protected." (Id. at 16.) Plaintiff's privilege log identifies ten of the twelve withheld  
21 documents as suspicious activity reports, and the two other documents as "pertain[ing] to SARs  
22 information." (Dkt. No. 147 at 23.) Defendants have provided no explanation as to why they  
23 have changed their position on these documents, or why the Parties have burdened the Court's  
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1 docket with multiple lengthy filings and telephonic requests regarding the production of  
2 documents Defendants indicated they neither needed nor wanted. The Court finds that any  
3 entitlement Defendants may have had to these documents has been waived. Because the Court is  
4 not ordering the production of any additional documents at this time, the Court DENIES  
5 Defendants' request for relief from the current case schedule.

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7 The clerk is ordered to provide copies of this order to all counsel.

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9 Dated this 29th day of September, 2015.

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12 Marsha J. Pechman  
13 Chief United States District Judge  
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