

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
CIVIL ACTION NO. 7:11 CV 00165-BO**

<b>FEDERAL DEPOSIT INSURANCE</b>	)
<b>CORPORATION, as Receiver for</b>	)
<b>COOPERATIVE BANK,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>FREDERICK WILLETTS III, PAUL G.</b>	)
<b>BURTON, JAMES D. HUNDLEY, HORACE</b>	)
<b>THOMPSON KING, III, OTTIS RICHARD</b>	)
<b>WRIGHT, JR., RICHARD ALLEN RIPPY,</b>	)
<b>FRANCIS PETER FENSEL, JR., DICKSON</b>	)
<b>B. BRIDGER, and OTTO C. "BUDDY"</b>	)
<b>BURRELL, JR.</b>	)
<b>Defendants.</b>	)

**AMENDED STIPULATED PROTECTIVE ORDER AND NON-WAIVER AGREEMENT**

Pursuant to Rules 26 and 29 of the Federal Rules of Civil Procedure, and the stipulations of the parties, IT IS HEREBY ORDERED:

1. This Amended Stipulated Protective Order and Non-Waiver Agreement ("Stipulation") shall be applicable to and govern the handling of all documents, testimony and other information, including all copies, excerpts and summaries thereof (collectively "Material"), produced, given or filed during discovery and/or produced by non-parties pursuant to subpoena, or voluntarily in lieu of subpoena, in the above-captioned action, which contain confidential and proprietary information.
2. The above-captioned Plaintiff and Defendants (collectively, the "Parties" and individually, a "Party") contemplate that in the course of this litigation they, and third-parties,

shall produce to one another certain Confidential Materials or portions of Confidential Materials in their possession. The term “Confidential Material” shall specifically include, but not be limited to:

- a. Personal Information. “Personal information” shall mean any documents and information concerning persons or entities related to the Bank and/or any of its predecessors or successors that contain any names, addresses, account numbers, social security numbers, dates of birth, or other identifying information, including, but not limited to, bank account information, customer bank records, signature cards, bank statements, general ledger entries, deposit information, and related records or documents. “Personal information” shall also include documents and information produced by the Defendants containing their own addresses, account numbers, social security numbers, dates of birth, or other identifying information such as the information described above.
- b. Loan Information. “Loan information” shall mean any documents or information of a confidential, personal or sensitive nature related to lending transactions, loans, or extensions of credit to any borrower, including, by way of illustration, loan applications, financial statements and credit reports, and tax forms.
- c. FDIC-C Information. “FDIC-C Information” shall mean information provided by the FDIC in its corporate capacity (“FDIC-C”) containing Personal Information, Loan Information, and/or any information which FDIC-C has determined to be exempt as set forth in 12 C.F.R. Part 309.

Irrespective of any confidential designation by a producing party, this Stipulation shall not apply to any documents independently obtained from a non-party on an unrestricted basis.

3. As used herein, "Person" includes the Parties and their counsel of record, the FDIC-C and its counsel of record, and other third-parties and their counsel of record who, with the consent discussed in Paragraph 7, below, have agreed to be bound by this Stipulation.

4. Any Person may designate, at any time, as "Confidential" any Material that it produces in the course of discovery proceedings herein when such Person in good faith believes such Material contains sensitive, personal, competitive, commercial, financial or proprietary business information. All Persons expressly agree that any Person may designate information and/or documents produced during discovery in this matter as "Confidential" pursuant to this Stipulation after it has already produced the information and/or documents. A Person may not designate as "Confidential" any document and/or information which is available to the public.

5. Confidential Material shall be subject to the following restrictions:

a. Confidential Material shall be used only for the purpose of the above-captioned litigation, and not for any business or other purpose whatsoever and shall not be given, shown, made available or communicated in any way to anyone except those to whom it is necessary that such Confidential Material be given or shown for the purposes permitted under this paragraph, as set forth in subparagraph (b) below.

b. Confidential Material may be disclosed, for the purposes set forth above, only to:

- i. the Parties;
- ii. in-house and outside counsel and their staff necessarily involved in the conduct of this litigation, personal attorneys for any of the Defendants, attorneys at Peters Nye, and the Cincinnati Insurance Company for purposes of investigating the allegations and/or negotiating the claims;
- iii. the Court (including court reporters, stenographic reporters and court personnel);
- iv. experts and/or consultants retained by the parties or counsel;

- v. outside vendors who are necessary to assist counsel in the action;
- vi. witnesses and deponents, including potential witnesses and potential deponents, and including use in connection with the preparation of said witnesses and deponents, whose review of Confidential Material is in good faith deemed necessary by an attorney in his/her sole discretion;
- vii. mediators, arbitrators or other persons providing litigation support services;
- viii. any other third-party as to whom the producing party agrees in writing; and
- ix. after notice to all Parties and the producing party, if applicable, and a hearing, Confidential Material may be disclosed upon showing of good cause to other persons authorized by the Court. Persons authorized by the Court to receive Confidential Material shall be informed of the terms of this Stipulation and shall be required to sign an Acknowledgement in the form attached hereto as Exhibit "A."

c. Only those portions of pleadings or other court filings that actually disclose Confidential Material shall be separately labeled "Documents Subject to Protective Order" and filed under seal and shall remain under seal until the Court orders otherwise.

d. Treatment of Confidential Material in connection with any trial or hearing shall be left to the Court's sound discretion.

e. Notwithstanding any of the foregoing provisions, this Stipulation shall not prevent or limit any Person from using or disclosing its own Confidential Material for any purpose.

6. Confidential Material shall be designated as follows:

a. In the case of documents, designation shall be made by placing the legend "CONFIDENTIAL" on the first page of any such document prior to production. In the

case of previously produced documents, a Person may identify in writing and by bates label number or other identifying marking those documents it believes contain Confidential Material. When a Person wishes to designate as containing Confidential Material a document produced by another party, such a designation shall be made by notifying the producing party in writing within thirty (30) days from the date that the designating Person receives notice that the document had been produced.

b. In the case of interrogatory answers, designation shall be made by placing the legend "CONFIDENTIAL" on each page of any answer that contains Confidential Material. In the case of previously served interrogatory answers, a Party may identify in writing to the other Parties any previously-served answers it believes contain Confidential Material.

c. Any Person may, no later than thirty (30) business days after receipt of a deposition transcript, designate by providing notice in writing to the other Persons obtaining copies of the deposition transcript all or any portion thereof as "Confidential" under the terms of the Stipulation. Prior to expiration of this thirty (30) business days-period, all transcripts and the information contained therein, in whatever form, will be deemed to be "Confidential" under the terms of this Stipulation and Protective Order. All copies of deposition transcripts that contain confidential matter shall be prominently marked "CONFIDENTIAL" on the cover thereof and, if and when filed with the Clerk, shall be filed under seal.

d. Depositions, or portions thereof, may also be designated as Confidential at the time the deposition is taken.

e. Where a Person is not able to redact briefs, pleadings or other filings with the Court so as to protect Confidential Material (e.g., social security numbers, addresses, bank account numbers, etc.), the portion containing the Confidential Material shall be filed under seal in accordance with the procedure set forth in Local Rule 79.2.

7. Prior to receiving, being shown or using Confidential Material, persons falling in the categories listed above, other than paragraphs 5(b)(i), 5(b)(ii) or 5(b)(iii), shall be shown a copy of this Stipulation, and shall agree in writing by signing an acknowledgement in the form of Exhibit A hereto, and, if during deposition or trial, by agreeing verbally on the record, to be bound by its terms. If a deponent refuses to assent, disclosure of such Confidential Material to the deponent during the deposition shall not constitute a waiver of confidentiality. Under such circumstances, the deponent shall be asked to waive signature or to sign the original deposition transcript under such circumstances that are mutually agreeable to the Parties and the deponent. The details of such agreement shall be recorded in the transcript. In the event the deponent refuses to agree to circumstances for signing the original deposition transcript, or in the event the deponent fails to sign the original deposition transcript pursuant to the terms set forth on the transcript, the deponent shall be deemed to have waived signature. In any event, no copy of the transcript or related exhibits shall be given to any deponent who does not agree to be bound by the terms of the Stipulation.

8. No Person shall be obligated to challenge the propriety of a designation of discovery materials marked CONFIDENTIAL when initially received, and a failure to do so shall not preclude a subsequent challenge thereto. If any Person challenges the designation of any Confidential Material, that Person shall notify all other interested parties in writing. All interested parties shall make best efforts to resolve disagreements as to confidentiality without

involving the Court. In the event that the interested parties are unable to resolve their disagreements as to confidentiality within ten (10) business days of the date the challenging Person notifies the other interested parties of the challenging in writing, the challenging Person may move the Court for relief with respect to the confidentiality designation of the challenged material. The disputed documents or materials will remain CONFIDENTIAL until the Court rules on such application. The burden of proof of confidentiality shall be on the Person asserting the same.

9. The inadvertent or unintentional production or failure to designate any information as Confidential shall not be deemed a waiver of the producing party's claim of confidentiality as to such information and the producing party may thereafter designate such information as Confidential.

10. A non-party to this matter from whom Material is sought and/or received may stipulate to this Order and may thereby obtain the benefits, rights, and protections of a designating party under this Order, regardless of whether the Order is amended to add a non-party. By so stipulating, the non-party agrees to be bound by and comply with all terms of this Order and consents to this Court's jurisdiction over it for purposes of enforcing this Order.

11. The production of Confidential Material shall not prejudice in any way the rights of any Person to object to the production of information, documents, materials or items it considers not subject to discovery, nor shall such actions prejudice in any way the rights of any party to apply to the Court for any modification of this Stipulation. Neither the provisions of this Stipulation, nor any disclosure by any party or witness pursuant to this Stipulation shall constitute a waiver at any time, or in any other litigation, of any attorney-client, work product or other privilege, including the protections afforded by Federal Rule of Evidence 501, that it

possesses which arises, or has arisen in litigation or other matters outside this proceeding.

Further, nothing herein constitutes an admission that any protected information is admissible as evidence in this case.

12. This Stipulation, insofar as it restricts the communication and use of Confidential Material, shall continue to be binding throughout and after the conclusion of this litigation including any appeals. Within ninety (90) days after final adjudication of this case, including appeals or resolution through settlement, unless otherwise agreed to in writing by an attorney of record for the producing party, each Person shall either: (a) assemble and return all Confidential Material, including all copies thereof, to the party that produced it; or (b) certify in writing that all such information has been destroyed or will be maintained as confidential until destroyed pursuant to any applicable document or data destruction procedures to such material. Any disputes concerning the applicability of this paragraph shall be resolved by this Court.

13. As used herein, the term "Quick Peek Production" refers to Plaintiff FDIC's production (as set forth in the Parties' ESI Protocol) where the FDIC makes available for inspection certain requested documents to the requesting Party without waiving any claim to privilege or other protection; the requesting Party reviews the documents, marking the documents it wishes to have produced; the FDIC reviews the selected documents for confidentiality, attorney-client privilege and/or attorney work-product privilege (collectively "Privilege") and, with respect to each document, either (a) produces the document, designating it as "Confidential" if appropriate; or (b) places the document on a privilege log.

14. In accordance with Federal Rule of Evidence 502(d), the disclosure of documents, information, materials or items in a Quick Peek Production shall not prejudice in any way the rights of the FDIC to object to the ultimate production of information, documents, materials or



items it considers not subject to discovery, nor shall such it prejudice in any way the rights of any party to apply to the Court for any modification of this Stipulation. The requesting Party shall not use or distribute any materials protected by Privilege (“Privileged Materials”), or information contained therein, that were disclosed during a Quick Peek Production, unless otherwise ordered by the Court.

15. **Non-Waiver Agreement.** All Persons expressly agree that, pursuant to Fed.R.Evid. 502(b), the production or disclosure of a document protected by the attorney-client privilege or work product doctrine shall not operate as a waiver of any such privilege or doctrine. Should a producing party learn that an inadvertent production or disclosure was made, the producing party shall send the receiving party a written request for return or destruction of the inadvertently produced or disclosed document. Within three business days of such request, the receiving party shall comply with the requirements of Fed.R.Civ.P. 26(b)(5)(B), return or destroy the original and any and all hard or electronic copies of such document, and not otherwise use or disclose any information contained in the document. Should the receiving party seek to challenge the claim that the document is protected by the attorney-client privilege or work product doctrine, the receiving party shall not use or disclose the contents of the document, argue that the producing party need satisfy the elements of Fed.R.Evid. 502(b) to establish inadvertent disclosure, or argue that the production or disclosure was a waiver of such privilege or doctrine. Upon request by the receiving party, the producing party shall furnish a copy of the document at issue to the Court for *in camera* review

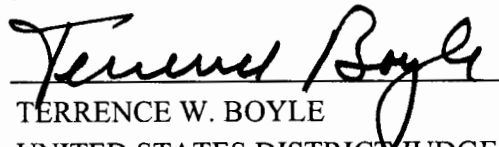
16. This Stipulation is intended to facilitate efficient litigation between the Parties and is not intended to alter resolution of any substantive issues or to affect the Parties' substantive rights.

17. This Stipulation may be entered as an Order by the Court by consent of the Parties and shall be binding on the Parties as of the date signed by their counsel on their behalf.

18. The restrictions imposed by this Stipulation may be modified or terminated only by written stipulation of the Parties that is approved by the Court, or by an Order of the Court. This Court shall retain jurisdiction for the purposes of resolving any dispute that may arise in relation to this Stipulation. This Stipulation shall survive termination of this action.

19. Willful violation of this Order may be punishable by the contempt power of the Court and otherwise as the Court may deem appropriate.

SO ORDERED this 20 day of May, 2013.

  
\_\_\_\_\_  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE

**AGREED AND APPROVED:**

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May 9, 2013

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
CIVIL ACTION NO. 7:11 CV 00165-BO**

**FEDERAL DEPOSIT INSURANCE )  
CORPORATION, as Receiver for )  
COOPERATIVE BANK, )  
 )  
                                  **Plaintiff,** )  
 )  
                                  **v.** )  
 )  
**FREDERICK WILLETTS III, PAUL G. )  
BURTON, JAMES D. HUNDLEY, HORACE )  
THOMPSON KING, III, OTTIS RICHARD )  
WRIGHT, JR., RICHARD ALLEN RIPPY, )  
FRANCIS PETER FENSEL, JR., DICKSON )  
B. BRIDGER, and OTTO C. "BUDDY" )  
BURRELL, JR. )  
                                  **Defendants.** )****

**CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_ represent and agree as follows:

I reside at \_\_\_\_\_  
(Street Address)

\_\_\_\_\_, \_\_\_\_\_  
(City) (State)

\_\_\_\_\_ and I am employed as \_\_\_\_\_  
(Zip Code) (Title)

by \_\_\_\_\_  
(Employer)

\_\_\_\_\_, \_\_\_\_\_  
(Street Address) (City)

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(State) (Zip Code) (Daytime Telephone)

1. I have read and know the contents of the Amended Stipulated Protective Order and Non-Waiver Agreement (“Amended Protective Order”), dated \_\_\_\_\_, 2013 filed in the above entitled action, agree to be bound by its terms and conditions, and submit myself to the jurisdiction of the U.S. District Court for the Eastern District of North Carolina relative to assuring enforcement of the terms and conditions of this Amended Protective Order.

2. I am one of the persons described in Paragraph 5(b) of the Amended Protective Order, and I am signing this Confidentiality Agreement and agreeing to enter into this Confidentiality Agreement in order to satisfy the conditions provided for in the Amended Protective Order prior to the disclosure to me of any Confidential Material as said term is defined and described in the Amended Protective Order.

3. I expressly agree that:

- a. I have read and shall be fully bound by the terms of the Amended Protective Order;
- b. All such Confidential Material as is disclosed to me pursuant to the Amended Protective Order shall be maintained by me in strict confidence, and I shall not disclose or use the original or any copy of, or the subject matter of, the Confidential Material except in accordance with the Amended Protective Order;
- c. I shall not use or refer to any Confidential Material, or copies thereof, other than in connection with the above entitled action and as provided in the Amended Protective Order; and
- d. I shall, upon being notified of the termination of the above entitled action proffer the return of all copies of all Confidential Material to the counsel for the party who furnished such Confidential Material to me, and I shall destroy any notes and memoranda I have regarding the same.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signed Name