SETTLEMENT AGREEMENT, ASSIGNMENT, AND COVENANT NOT TO EXECUTE

This Settlement Agreement, Assignment and Covenant Not to Execute ("Agreement") is entered into as of January 30, 2015 (the "Effective Date"), by and between the Federal Deposit Insurance Corporation (the "FDIC") in its capacity as Receiver of Carson River Community Bank (hereinafter "FDIC-R") and Charlie Glenn ("Glenn"). The FDIC-R and Glenn are hereinafter referred to as "Settling Parties".

RECITALS

WHEREAS, Glenn is the former Chief Credit Officer for Carson River Community Bank ("Bank");

WHEREAS, BancInsure, Inc. (now Red Rock Insurance Company hereinafter individually and collectively referred to as "BancInsure") issued Extended Professional Liability
(b)(4) Insurance Policy, No. [redacted] ("Policy") with a policy period effective from October 8, 2009 to October 8, 2010 which provides coverage to, among others, former directors and officers of the Bank according to the terms, provisions, and exclusions of the Policy;

WHEREAS, Glenn is an insured person under the Policy;

WHEREAS, the Financial Institutions Division of the Nevada Department of Business and Industry closed the Bank on February 26, 2010 and the FDIC-R accepted appointment as the Bank's receiver;

WHEREAS, in accordance with 12 U.S.C. §1821(d), the FDIC-R succeeded to all rights, titles, powers, and privileges of the Bank and its stockholders, accountholders, and depositors;

WHEREAS, before the closure of the Bank and during the policy period of the Policy, the FDIC gave notice of circumstances to the Bank that might give rise to claims against Glenn relating to his conduct as a former officer of the Bank, and the Bank forwarded the letter to BancInsure ("Notice of Circumstances Letter");

WHEREAS, BancInsure acknowledged receipt of the Notice of Circumstances Letter;

WHEREAS, on January 7, 2013, the FDIC-R asserted claims against Glenn relating to his conduct as a former officer of the Bank ("Claims Letter"), the potential of which was identified in the Notice of Circumstances Letter;

WHEREAS, on January 31, 2013, BancInsure sent a letter to Glenn advising him that BancInsure denied coverage for Glenn under the Policy for the claims asserted by the FDIC-R in the Claims Letter;

WHEREAS, on June 13, 2013, the FDIC-R filed its First Amended Complaint and asserted the claims set forth in the Claims Letter against Glenn in a case styled *FDIC v. Jacobs, et al*, 3:13-CV-84 (Dist. Nevada) (the "FDIC-R Lawsuit");

WHEREAS, the FDIC-R seeks tort damages in the FDIC-R Lawsuit against Glenn;

WHEREAS, BancInsure refused to provide Glenn a defense, refused to pay for Glenn's costs of defense, and refused to indemnify Glenn for any adverse judgment entered in the FDIC-R Lawsuit;

WHEREAS, on June 7, 2013, BancInsure filed a lawsuit against Glenn and other officers and directors of the Bank in a case styled *BancInsure, Inc. v. Jacobs, et al*, 3:13-CV-302 (Dist. Nevada) (the "Insurance Coverage Action") wherein it seeks a determination that it is not obligated under the Policy to provide coverage for Glenn and the other officers and directors of the Bank;

WHEREAS, the FDIC-R substituted into the Insurance Coverage Action as a defendant and counterclaimed for a determination that the Policy provided coverage for Glenn and the other officers and directors of the Bank;

WHEREAS, on August 21, 2014, the District Court of Oklahoma County, State of Oklahoma, placed BancInsure into receivership and ordered its liquidation in a case styled *State of Oklahoma, ex rel. John D. Doak, Insurance Commissioner v. Red Rock Insurance Company*, No. CJ-2014-4353;

WHEREAS, this Agreement is entered into to settle (1) the claims asserted by the FDIC-R against Glenn in the Claims Letter and (2) the FDIC-R Lawsuit against Glenn;

WHEREAS, the FDIC-R and Glenn are also entering into this Agreement because of (1) BancInsure's refusal to defend, to advance defense costs, and to indemnify Glenn in connection with the claims set forth in the Claims Letter and the FDIC-R Lawsuit, and (2) BancInsure's failure to protect the interests of Glenn by failing and refusing to settle the claims set forth in the Claims Letter and the FDIC-R Lawsuit;

WHEREAS, in reaching this Agreement, the FDIC-R and Glenn have specifically relied upon a letter written on behalf of BancInsure by Ted Equals, dated January 31, 2013,wherein BancInsure advised that it "has determined the FDIC's monetary demand and lawsuit which the FDIC is threatening to file against you are not covered claims under [the Policy]." The FDIC-R and Glenn believe that the conduct of BancInsure is wrongful and violates the principles of good faith and fair dealing under Nevada law and breaches the Policy; and

WHEREAS, the FDIC-R and Glenn deem it in their respective best interests to enter into this Agreement to avoid the uncertainty, trouble, risk and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, assignments, and covenants stated herein, the sufficiency of which consideration is hereby acknowledged, the FDIC-R and Glenn agree, each with the other, as follows:

1. **Entry of Final Judgment Against Glenn.** The FDIC-R and Glenn agree to the entry of a final judgment in the FDIC-R Lawsuit in favor of the FDIC-R and against Glenn in the amount of $1,742,798.94 in the form attached hereto as Exhibit A, or in such other form as directed by the Court ("Final Judgment") based upon facts set forth in the FDIC-R's Second Amended Complaint, attached hereto as Exhibit B. Within five (5) business days from the execution of thisAgreement, counsel for the FDIC-R and Glenn shall file a joint motion for entry of the Final Judgment in the FDIC-R Lawsuit substantially in the form attached hereto as Exhibit C. The Settling Parties agree to take all reasonable steps to have the Final Judgment entered. **Entry of the Final Judgment by the Court is a condition precedent to this Agreement and if the Court does not enter the Final Judgment, this Agreement is void.**

2. **Waiver of Rights to Appeal.** Upon entry of the Final Judgment, the FDIC-R and Glenn waive their rights of appeal and/or to vacate the Final Judgment on any grounds or legal theory whatsoever.

3. **Assignment of Claims by Glenn to the FDIC-R.** For valuable consideration, receipt of which is hereby acknowledged by Glenn, and as set out in the unconditional Assignment attached as Exhibit D, Glenn irrevocably assigns to the FDIC-R all of his rights, interests, claims, defenses, and causes of action (hereinafter collectively "rights") against BancInsure, its receiver, any state insurance guaranty insurance associations, any insurers or reinsurers, and their respective agents, brokers, employees, and officers with respect to the following matters: (A) any rights arising out of the Policy, including but not limited to Glenn's right to coverage under the Policy; (B) any rights arising out of BancInsure's conduct regarding the Policy, including but not limited to, BancInsure's conduct in denying coverage under the Policy, and BancInsure's refusal to settle and pay on behalf of Glenn the claims asserted in the Claims Letter and the FDIC-R Lawsuit; (C) any rights to insurance coverage or payment for the claims asserted in the Claims Letter and FDIC-R Lawsuit; (D) any rights to prosecute or defend the Insurance Coverage Action; and (E) any rights to be indemnified or insured for the Final Judgment. In addition, to the extent, if any, that Glenn is or was a shareholder of the Bank and by virtue thereof is or may have been entitled to a dividend, payment, or other prorata distribution upon resolution of the receivership of the Bank, Glenn hereby knowingly assigns to the FDIC-R any and all rights, titles and interest in and to any and all such dividends, payments or other prorata distributions. The foregoing assigned rights are hereinafter referred to as the "Assigned Claims." The Assigned Claims shall be effective upon entry of the Final Judgment.

Upon the entry of Final Judgment, the FDIC-R shall have sole and unfettered discretion, ownership, and control of the prosecution of the Assigned Claims, including without limitation, the right to settle and dismiss the Assigned Claims. The FDIC-R also may, in its sole discretion, continue to prosecute the Assigned Claims in the name of Glenn unless otherwise required by federal or state law. The FDIC-R shall have the sole right to select counsel to prosecute the Assigned Claims. The FDIC-R is solely responsible for all efforts relating to the Assigned Claims and such efforts, fees and costs will be undertaken solely at its own risk and expense.

Nothing in this paragraph is intended to affect Glenn's obligations and/or the FDIC-R's rights under Paragraph 11.

4. **Covenant Not to Execute.** In consideration for the Assigned Claims and other good and valuable consideration, the FDIC-R and its successors, assignees, agents, and any other person or entity acting on or in the FDIC-R's behalf, do hereby covenant and agree not to take or attempt any action of any kind to collect the Final Judgment against Glenn personally, including any action to document, record, register as a lien, or report to any credit agency the Final Judgment in an effort to collect the Final Judgment from Glenn personally. Rather, the FDIC-R will attempt to recover and collect the Final Judgment from BancInsure, its receiver, any state insurance guaranty association, any insurer or reinsurer, and any of their respective agents, brokers, employees, and officers. The FDIC-R is solely responsible for all efforts to collect the Final Judgment. The FDIC-R agrees that all such efforts will be undertaken solely at its own risk and expense. Nothing in this paragraph is intended to affect Glenn's obligations and/or the FDIC-R's rights under paragraph 11. **This covenant not to execute shall be effective immediately after the Final Judgment is entered by the Court.**

5. **Recitals.** The Recitals are incorporated into and constitute a part of this Agreement.

6. **Covenant Not To Sue.** Effective as of the Effective Date, Glenn on behalf of himself individually and his heirs, executors, administrators, representatives, agents, attorneys, successors and assigns, hereby covenants and agrees not to bring any judicial proceeding or make any claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, against any person arising out of the Assigned Claims.

Upon entry of the Final Judgment, the FDIC-R for itself, its successors and assigns, hereby stipulates, promises, and covenants not to pursue any of the claims asserted in the Claims Letter or the FDIC-R Lawsuit against Glenn and his heirs, executors, representatives, agents and successors or any other claims that are or could have been at issue in the FDIC-R Lawsuit, whether known or unknown, with the following exceptions:

A. The FDIC-R expressly preserves fully and to the same extent as if the Agreement had not been executed, rights to sue upon any claims or causes of action: (a) against any person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by the FDIC-R as successor in interest to the Bank or any person or entity other than the Bank; (b) against any person or entity not expressly subject to the covenant in this Agreement; and (c) which are expressly provided in paragraph 11.

B. Notwithstanding any other provision, this Agreement does not preclude any claims or actions that could be brought by any agency or instrumentality of the United States government, other than the FDIC-R.

C. Notwithstanding any other provision herein, this Agreement does not purport to waive or release, or intend to waive or release, any claims which could be brought by the FDIC-R against any other individual or entity and the FDIC-R expressly reserves such claims.

7. **Execution in Counterparts.** This Agreement shall not be binding on any party until signed and delivered by all Settling Parties; provided, however, it may be executed in one or more counterparts and delivered by facsimile or email, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party subscribed thereto upon execution by all Settling Parties to this Agreement. Such counterparts when so executed shall together constitute the final Agreement. Photocopies and/or facsimile and/or e-mail transmissions of original signatures shall be considered in all respects equivalent to original signatures.

8. **Binding Effect.** The FDIC-R and Glenn represent and warrant that they are a party hereto or the persons executing this Agreement are authorized to sign this Agreement on behalf of the respective party, and that the persons executing this Agreement have the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Settling Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

9. **Choice of Law.** This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Nevada.

10. **Entire Agreement and Amendments.** This Agreement, including exhibits, constitutes the entire agreement and understanding between the FDIC-R and Glenn concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Settling Parties, or by their respective authorized attorney(s) or other representative(s). This Agreement shall survive and not be merged in the Final Judgment.

11. **Specific Representations Warranties and Disclaimer.** The Settling Parties expressly acknowledge that in determining to settle the claims here, the FDIC-R has reasonably and justifiably relied upon the accuracy of financial information in the financial statements and/or affidavits submitted. If, in his financial statements and/or affidavits, Glenn has intentionally or recklessly failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, the FDIC-R in its sole discretion, may exercise one or more of all of the following remedies: (i) the FDIC-R may declare any covenant not to execute granted to Glenn as null and void; and (ii) the FDIC-R may sue Glenn for damages, an injunction, and specific performance for the breach of this Agreement. Glenn agrees that if, in his financial statement and/or affidavits, he has failed to disclose any interest, legal, equitable, or beneficial, in any material asset, Glenn waives any statute of limitations that would bar any of the FDIC-R's claims against him that were otherwise not time barred as of the Effective Date.

12. **No Prior Transfer of Claims.** Glenn warrants and covenants that he has not assigned, sold, or otherwise transferred or disposed of, and will not assign, sell, or otherwise transfer or dispose of, any interest in the Policy or Assigned Claims to any person or entity other

than the FDIC-R. The FDIC-R warrants and represents that it (i) owns the claims asserted against Glenn in the Claims Letter and in the FDIC-R Lawsuit, and (ii) has not assigned, sold, or otherwise transferred or disposed ofany of thoseclaims.

13. **Reasonable Cooperation.** The Settling Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry of any documents necessary to perform the terms of this Agreement. In addition, Glenn will, upon request of the FDIC-R or its attorneys, provide the FDIC-R with reasonable cooperation and assistance in the FDIC-R Lawsuit against others, the Insurance Coverage Action and/or in the FDIC-R's efforts to collect the Final Judgment from BancInsure, its receiver, any state insurance guaranty association, any insurer or reinsurer, and their respective agents, brokers, employees, and officers. This cooperation shall include but is not limited to responding to discovery requests, providing access to relevant non-privileged documents, giving truthful affidavits and deposition testimony upon reasonable notice and at convenient locations and times, and testifying truthfully at trial and hearings. Glenn will refrain from taking any actions that will prejudice the FDIC-R's ability to prosecute the FDIC-R Lawsuit against others, to prosecute the Insurance Coverage Action and/or to collect the Final Judgment.

14. **Advice of Counsel.** Each party hereby acknowledges that such party has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that party by his or her counsel. Furthermore, Glenn agrees, after consultation with his attorneys, that reasonable and prudent insureds in his position would enter into this Agreement to avoid the risk of liability to the FDIC-R as alleged in the Claims Letter and the FDIC-R Lawsuit.

15. **Notices.** Any notices relating to or arising out of this Agreement shall be sent by regular mail and e-mail, shall be considered delivered when received by the party to whom it was sent, and shall be addressed to the following recipients:

To the FDIC-R:

Bob J. Rogers, Esq.
Senior Attorney
Professional Liability Unit, Legal Division
Federal Deposit Insurance Corporation
1601 Bryan Street
Room 15068
Dallas, Texas 75201
(b)(6) [redacted]

with a copy to

Joel R. Hogue, Esq.
SprouseShrader Smith PLLC
701 S. Taylor, Suite 500
Amarillo, TX 79101
(b)(6) [redacted]

To Charlie Glenn:

2610 West Wren Avenue
Visalia, California 93291

16. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of the Settling Parties and their respective attorneys. The Settling Parties represent and warrant that each of them has had the unfettered opportunity to fully consult with an attorney of their own choice. This Agreement shall, therefore, be construed without regard to the authorship of the language and without any presumption or interpretation or construction in favor of any person, entity or party.

17. **Costs and Expenses.** All costs and expenses incurred in closing and carrying out the transactions contemplated by this Agreement shall be borne by the respective party incurring such costs and expenses.

18. **Survival.** All representations and warranties made herein shall continue and survive the execution of this Agreement, and remain binding upon the person or persons making the representation or warranty, even after this Agreement is executed.

19. **Severability.** In the event that any provision of this Agreement is declared or deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement. Notwithstanding this, if the Court does not enter the Final Judgment, this Agreement is void as specified in paragraph 1.

20. Attorneys' Fees. If any lawsuit is brought to enforce any term or provision of this Agreement, or in connection with any dispute arising from or relating to this Agreement or to the alleged breach of this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs incurred in connection with any such lawsuit or proceeding, throughout trial and all appeals.

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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR CARSON RIVER COMMUNITY BANK

(b)(6)

Date: January 30, 2015

By: [redacted]

Printed Name: Robert S. Stackton

Title: Resolutions & Closings Manager

(b)(6)

Date: 1-30-2015

By: [redacted]

Charlie Glenn

APPROVED AS TO FORM AND CONTENT:

Date: 1/30/15

SPROUSESHRADER SMITH, PLLC

(b)(6)

By [redacted]

Joel R. Hogue
Attorney for Federal Deposit Insurance Corporation, as Receiver of Carson River Community Bank

Date: 1-30-15

SUTTON HAGUE LAW CORPORATION

(b)(6)

By [redacted]

Brett Sutton or Jared Hague
Attorneys for Charlie Glenn

Gregory F. Wilson, Esq.
Nevada Bar No. 2517
GREGORY F. WILSON & ASSOCIATES, P.C.
1495 Ridgeview Drive, Suite 120
Reno, NV 89519
(775) 360-4910 Telephone
(775) 360-4911 Facsimile
(b)(6) [redacted]
and
Joel R. Hogue, Esq., (*pro hacvice*)
Texas Bar No. 09809720
M. Chase Hales, Esq., (*pro hac vice*)
Texas Bar No. 24083124
Andrew Evans, Esq., (*pro hac vice*)
Texas Bar No. 00796519
SPROUSESHRADER SMITH, PLLC
701 Taylor, Suite 500
Amarillo, TX 79101
(806) 468-3300
(806) 373-3454 Facsimile
(b)(6) [redacted]
ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL DEPOSITINSURANCECORPORATION, as RECEIVER OF CARSON RIVER COMMUNITY BANK Plaintiff and Counter Claim Defendant, vs. JAMES M. JACOBS, Defendant and Counterclaimant, CHARLIE GLENN, Defendant, JAMES M. JACOBS, Crossclaimant vs. DANIEL DYKES, CHARLIE GLENN, RICHARD MCCOLE, AND BYRON WAITE Crossclaim Defendants.	Case No.: 3:13-CV-00084-RCJ (VPC) **FINAL JUDGMENT AGAINST DEFENDANT CHARLIE GLENN**

This matter comes before the Court on the Joint Motion for Entry of Judgment ("Motion") filed by Plaintiff Federal Deposit Insurance Corporation, as Receiver of Carson River Community Bank ("FDIC-R") and Defendant Charlie Glenn ("Glenn") based upon a settlement

Exhibit A

agreement entered into between the FDIC-R and Glenn. Having considered the Motion and the exhibits thereto, the Court **FINDS AS FOLLOWS:**

1. Defendant Glenn stipulates to the truth of the allegations against him contained in the Second Amended Complaint filed by the FDIC-R;

2. The FDIC-R's allegations against Glenn state a claim upon which relief may be granted;

3. This Court has jurisdiction of the subject matter of this action and personal jurisdiction over the FDIC-R and Glenn. Venue in the District of Nevada is proper;

4. The damages sustained by the FDIC-R on the Merrill Construction loan, after giving credit for settlements achieved with others, is $1,842,798.94;

5. Entry of this judgment is fair, reasonable, and equitable and does not violate the law or public policy; and

6. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, there is no just reason to delay entry of judgment against Glenn.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this motion is granted and judgment is entered against Glenn in favor of the FDIC-R in the amount of $1,842,798.94, with post judgment interest accruing at the rate of ___% per annum, along with costs. This judgment is final as to all claims between the FDIC-R and Glenn. All relief between the FDIC-R and Glenn not addressed herein is denied.

DATED: _____

_____
Honorable United States District Judge

APPROVED AS TO FORM AND CONTENT:

Authorized Agent for Federal Deposit
Insurance Corporation, As Receiver for
Carson River Community Bank

Joel R. Hogue, *Attorneys for Plaintiff*
Federal Deposit Insurance Corporation, as
Receiver for Carson River Community Bank
SPROUSESHRADER SMITH, PLLC
701 Taylor, Suite 500
Amarillo, TX 79101
(806) 349-4711

Charlie Glenn

(b)(6) [redacted]

Brett Sutton or Jared Hague
SUTTON HAGUE LAW CORPORATION
9600 Gateway Dr., Suite 100
Reno, NV 89521
(775) 284-2770
Attorneys for Charlie Glenn

Gregory F. Wilson, Esq.
Nevada Bar No. 2517
GREGORY F. WILSON & ASSOCIATES, P.C.
1495 Ridgeview Drive, Suite 120
Reno, Nevada 89519
Telephone: 775.360.4910
Facsimile: 775.360.4911
(b)(6) [redacted]
and
Joel R. Hogue, Esq. (Admitted *Pro Hac Vice*)
Texas Bar No. 09809720
M. Chase Hales (Admitted *Pro Hac Vice*)
Texas Bar No. 24083124
Andrew R. Evans (Admitted *Pro Hac Vice*)
Texas Bar No. 00796519
SPROUSE SHRADER SMITH, PLLC
701 Taylor, Suite 500
Amarillo, TX 79101
Telephone 806.468.3300
Facsimile 806.373.3454
(b)(6) [redacted]

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF CARSON RIVER COMMUNITY BANK **Plaintiff,** **vs.** **JAMES M. JACOBS AND CHARLIE GLENN** **Defendants.**	**Case No.: 3:13-CV-00084**

SECOND AMENDED COMPLAINT
JURY DEMAND

The Federal Deposit Insurance Corporation ("FDIC"), in its capacity as Receiver of Carson River Community Bank ("Carson River" or "the Bank"), files its Second Amended

Exhibit B

Complaint against the defendants James M. Jacobs and Charlie Glenn (collectively referred to hereinafter as the Defendants").

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 12 U.S.C. § 1819(b)(1)-(2)(a) and 28 U.S.C. §§ 1331 and 1345. Supplemental jurisdiction over the FDIC's state law claims may be exercised by the Court under 28 U.S.C. § 1367.

2. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the District of Nevada because the claims and causes of action asserted in this Second Amended Complaint arose in this district.

II. THE PLAINTIFF

3. The FDIC is an instrumentality of the United States, established under the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1833(e).

4. Carson River was chartered on October 16, 2006 by the State of Nevada. Carson River was a state nonmember bank whose shares of stock were widely held. The Bank operated out of a single location in Carson City, Nevada. Since its inception, the Bank was jointly examined by the FDIC and the State of Nevada.

5. On February 26, 2010, the Nevada Department of Business and Industry, Financial Institutions Division closed the Bank, and the FDIC accepted appointment as receiver pursuant to 12 U.S.C. § 1821(c). As set forth in 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC succeeded to all rights, titles and privileges of Carson River, and its stockholders, account holders and depositors.

III. DEFENDANTS

6. Defendant James M. Jacobs ("Jacobs") was a co-founder and stockholder of the Bank. He served as a director and member/chairman of the Senior Loan Committee of the Bank from its inception until his resignation from both positions in December 2008. Jacobs also served as a member of the boards of directors and had ownership interests in three Oklahoma banks that participated in the loan sued upon in this case. Jacobs is also an attorney. Jacobs has been served and has appeared in this case.

7. Defendant Charlie Glenn ("Glenn") served as the Bank's Chief Credit Officer and member of the Senior Loan Committee from the inception of the Bank until his resignation from both positions in December 2008. Glenn has been served and has appeared in this case.

IV. NATURE OF THE SUIT

8. By this suit, the FDIC seeks to recover approximately $2 million in damages for losses incurred by Carson River in connection with a loan transaction as described more particularly below. The losses were caused by the grossly negligent breaches of fiduciary duties of the Defendants Jacobs and Glenn, acting jointly and in concert with other members of the Senior Loan Committee, as well as their independent conduct, all of which were substantial factors in proximately causing the losses sued upon in this case.

9. Defendants Jacobs and Glenn, as members of the Bank's Senior Loan Committee, acted in concert with other members of the Senior Loan Committee to approve the loan to a non-creditworthy borrower for the purpose of paying off an existing troubled loan at another bank. The prior lender did not desire to renew the matured and already-extended loan.

10. Through their votes to approve this loan, the Defendants Jacobs and Glenn, and other members of the Senior Loan Committee, departed from the Bank's business plan and loan

policies, violated regulatory and Bank loan policy requirements relating to appraisals, and chose to proceed despite substantial and accumulating known risks.

11. After loan approval but before funding, Defendant Jacobs, who owned interests in three Oklahoma banks, helped arrange for two of his Oklahoma banks to buy loan participations in the loan, but Jacobs sacrificed the interests of Carson River by voting in the Oklahoma bank board meetings in favor of a provision in the participation agreement that assured repayment to his two Oklahoma banks before Carson River. The consequence of this was that the two Oklahoma banks were paid in full and Carson River shouldered the bulk of the loss on the loan. Defendant Glenn helped facilitate these preferential arrangements. None of the other Senior Loan Committee members or the Bank's Board of Directors were advised of this arrangement until well after the loan was funded.

12. Furthermore, Defendant Glenn ordered and received an appraisal after loan approval, but well in advance of loan funding, that complied with federal regulations and the Bank's loan policy that revealed a value that was approximately $1 million less than the approved loan amount and $2 million less than the appraisals relied upon to approve the loan. Glenn did not share the results of this appraisal with other members of the Senior Loan Committee or the Board of Directors.

V. FACTUAL BACKGROUND

A. Carson River Background

13. Carson River received its charter on October 16, 2006. It failed a little over three years later on February 26, 2010.

14. The seeds of the Bank's failure were planted almost immediately after it was chartered. The Bank's Board of Directors created a committee called the "Senior Loan

Committee" and delegated lending authority to it. The Defendants Jacobs and Glenn constituted two of the members of the five-member Senior Loan Committee and Defendant Jacobs served as chairman.

15. Between February 22, 2007 and August 23, 2007, the Senior Loan Committee approved four large residential real estate multi-lot loans to real estate developers that were refinances of acquisition and development loans extended by other lenders who wished not to renew the matured loans. These four loans were extended in succession to Dayton Valley Land, LLC ("Dayton Valley"), Building Energetix Corp. ("Building Energetix"), C Grant Development, LLC ("C Grant"), and Merrill Construction, Inc. ("Merrill Construction"). While the FDIC only sues to recover for losses incurred on the last of these four loans, Merrill Construction, all four resulted in substantial losses to the Bank and all four fit into a similar pattern. With the approval of each of the loans, the Bank's risk profile increased. These four loans constituted, in dollar amount, over one-quarter of the Bank's loan portfolio at the end of 2007.

16. The Defendants Jacobs and Glenn knew by the time of the August 23, 2007 approval of the Merrill Construction loan and by the time of its funding on or about December 19, 2007 that there were significant problems associated with the proposed loan. The Senior Loan Committee minutes and the credit memos presented to the committee before approval of the four loans include comments such as the following:

- The prior lender "is discouraging the renewal of contractor lot loans."
- "Real estate market is uncertain right now."
- "We are feeling (sic) the need for developers in the community seeking bridge loans to get them by during slow times."
- The market has "softened."
- The prior lender "no longer has an appetite for this type of loan."

17. Carson City newspaper articles in late 2006 through 2007 also painted an uncertain and dismal view for the residential housing market in Nevada in general, and in the Carson City area in particular, as reflected by the following representative statements:

- "Fewer Carson City homes sold in August [2006] than a year ago...The data also shows houses are also spending more time on the market and costing 11 percent less than a year ago."—*Nevada Appeal*, October 2, 2006.
- "Industry analysts predict prices will continue to decrease as sellers become more desperate and buyers hold out for more competitive pricing while interest rates for a 30-year mortgage stay under 7 percent."—*Nevada Appeal*, October 2, 2006.
- "After a five-year national housing boom the market had started to slow over the year into a hot pool of uncertainty."— *Nevada Appeal*, October 7, 2006.
- "House flippers in Carson City are in trouble, according to a forecast by Moody's Economy.com, a private research firm. Its predictions are called, 'one of the starkest views yet of the housing slow-down.'"—*Nevada Appeal*, October 7, 2006.
- "Boom areas of Nevada could have the most dismal price slump in the nation."—*Nevada Appeal*, October 7, 2006.
- "Carson City is on the list of metropolitan areas projected to have the largest decline in median housing prices."—*Nevada Appeal*, October 7, 2006.
- "The U.S. will dodge the recession bullet, but a weakening national housing market will continue to be felt throughout the nation in 2007..."— *Nevada Appeal*, November 29, 2006.
- "The number of mortgage defaults by Carson City homeowners increased 47% from 2004 to 2006,...'[The real estate market in Carson City] was way over priced and people got in on interest only loans and 100% loans and got in way over their heads'...In late 2005 and 2006, the speculators ran out of buyers... '[I]n 2006 things got worse, most people shrugged their shoulders, they couldn't find a buyer, so they let the lender take it'...'I do believe we are going to see more defaults and foreclosures due to lending, the 100 percent loans and the ARMs (adjustable rate mortgages), because people are overburdened with interest rates that have gone up...I think for the next six months we'll be seeing that. Then we'll see how the economy does.'"—*Nevada Appeal*, January 13, 2007.
- "Last year, Carson City's housing market saw the fewest amount of homes sold in 18 years . . ." — *Nevada Appeal*, January 28, 2007.
- "The market is full of homes from speculators who bought intending to resell soon after at a huge profit that they'll never see. Many of those homes are likely to become rental properties."—*Nevada Appeal*, January 30, 2007.

- "Nevada's foreclosure rate led the nation when it rose 220% from a year earlier to 4,738 filings, or one in every 183 households."—*Nevada Appeal*, April 28, 2007.
- "Booms are always followed by busts, and those who don't heed this reality are doomed to be busted the worst...Now, the boom—and the bust—is in the housing market."— *Nevada Appeal*, August 11, 2007.
- "Nevada now leads the nation in the percentage of foreclosures, with one out of every forty homeowners losing their home."— *Nevada Appeal*, August 11, 2007.
- "Now that the party is over, all that's left is the mess, and the mess threatens to take down the entire economy. It could make the dot com meltdown look like a picnic."— *Nevada Appeal*, August 11, 2007.

B. Merrill Construction, Inc.

1. The Loan Request

18. Merrill Construction requested a $4,000,000 loan from Carson River on August 16, 2007. The purpose of the loan was to refinance the development of 25 lots in Saratoga Springs Estates in Minden, Nevada. The loan was to pay off an existing loan extended by Business Bank of Nevada (now City National Bank). City National wanted out of the loan or at least wanted to reduce its exposure on the loan. While the lots were located in an established development, it represented yet another large residential lot loan and, if approved, would add substantially to the Bank's accumulation of risk in the refinancing of stalled residential real estate developments.

2. The Loan Underwriting

19. Defendant Glenn prepared the credit authorization memo for circulation to the members of the Senior Loan Committee, including Defendant Jacobs, and stated that, "The market is slow, but there is sign of increased buyers' activity for newly constructed homes." The memo also stated that the loan would be "written for 24 months with review of maturity for an extension."

20. The proposed loan provided for an interest reserve so that the interest only payments (no principal was due unless lots were sold or the loan matured) were made from the loan, as opposed to the borrower's independent funds, for a period that could extend up to two years.

21. The loan was to be collateralized by a deed of trust lien covering the 25 lots. Defendant Glenn obtained individual retail appraisals of each of the lots totaling $5,000,000. The calculated loan to value ratio, using this appraisal, was 80%, an amount that exceeded both the Bank's loan policy and federal regulations. No bulk value appraisal was obtained before the loan was presented to the Senior Loan Committee and this fact was noted in Glenn's credit authorization memo.

22. The Bank's business plan submitted in connection with its application for FDIC insurance indicated the Bank's intention to market to "contractors and developers in order to capitalize on the area's primary growth sector," but it made no mention of the Bank's intention to market to troubled developers and contractors whose loans were rejected by other lenders. The business plan expressly stated that the "Bank has no plans to engage in speculative activities or high risk lending, such as sub-prime, high loan-to-value or speculative lending." Yet, the Merrill Construction loan described herein relied for its success almost solely on speculation that the real estate market would turnaround and that Merrill Construction, with the benefit of up to two years of deferred interest, would ultimately be able to service the debt to the Bank.

23. The Bank's loan policy recognized the value of the following loan attributes:

- "The value of having a diversified loan portfolio as a method of minimizing risk is recognized by the Board of Directors."
- "It is prudent to diversify assets so that a recession in one industry will have only a limited impact on the total assets of the Bank."

- Acquisition and development loans "are to be granted on a very selective basis to qualified developers of substantial net worth and considerable experience."

24. The Bank's loan policy also included a section on appraisals. The appraisal policy required that the Bank's standards for appraisals meet federal regulations and guidelines. The Bank relied on individual retail lot appraisals. Under the circumstances of the Merrill Construction loan, a "bulk value" appraisal was more appropriate since the loans were to real estate developers and not individual owners. A bulk value appraisal was particularly important in the circumstances of the Merrill Construction loan because the loan was to a troubled developer during a time when there were recognized problems in the residential real estate market.

25. The failure of the Defendants Jacobs and Glenn, as members of the Senior Loan Committee, to require a bulk value appraisal in the case of the Merrill Construction loan violates the minimum appraisal standards that require the bank to "[a]nalyze and report appropriate deductions and discounts for . . . tract developments with unsold units." 12 C.F.R §323.4 (c). This specific language is carried over into the Bank's loan policy manual. This is further explained by Interagency Appraisal and Evaluation Guidelines (1994) that states with respect to the above standard as follows:

> This standard is designed to avoid having appraisals prepared using unrealistic assumptions and inappropriate methods in arriving at the property's market value . . . For proposed developments that involve the sale of individual houses, units, or lots, the appraiser must analyze and report appropriate deductions and discounts for holding costs, marketing costs and entrepreneurial profit.

Bulk value appraisals take these deductions and discounts into account, whereas retail appraisals, do not.

26. The secondary sources for repayment were the borrower and the guarantors. Defendant Glenn compiled financial information in the credit authorization memo about the borrower and guarantors.

27. This compiled information reflected that the borrower, Merrill Construction, lost $153,000 in 2005 and lost another $379,000 in 2006. By the end of 2006, Merrill Construction reported a negative net worth of $29,000. Hence, Merrill Construction was not a viable secondary source for repayment.

28. The principals of Merrill Construction, a husband and wife, guaranteed the loan. Defendant Glenn compiled financial information in the credit authorization memo on the guarantors which oddly showed an identical balance sheet for the guarantors for each of the years ending December 31, 2004, 2005, and 2006. The summary reflected a net worth of $3,753,000 for each of those years, but the vast majority of this reported net worth was tied up in assets such as their homestead and retirement accounts that were exempt from execution and therefore were not available to satisfy the guaranties. The rest of their reported net worth was tied up in two pieces of real estate with outstanding liens, debt owed by Merrill Construction to the guarantors, and various personal belongings. Little analysis of the guarantors' financial situation was performed to determine the validity or accuracy of the information supplied and, even if accepted at face value, collection would have been difficult, expensive, and likely fruitless.

3. The Approval

29. The Senior Loan Committee meeting minutes for August 23, 2007 reflect that Defendants Jacobs and Glenn and other members of the Senior Loan Committee, who were acting jointly and in concert with one another, voted unanimously to approve the loan. They did

so despite knowledge of the information described above, as well as a caution from fellow committee member and Bank president, Dan Dykes, that the bank was growing too quickly in the number and amount of lot loans and despite the fact the minutes also reflect that "City National Bank is discouraging the renewal of contractor lot loans. Loan will be written for 24 months to include interest reserve." The loan was approved, along with two others, in a meeting that lasted one hour and 45 minutes.

4. Post Approval Events

a. The Conflict of Interest and the Oklahoma Loan Participations

30. While the Senior Loan Committee approved the loan on August 23, 2007, there was no binding commitment with the borrower to fund the loan unless and until all the formal loan documents were approved and signed. Because the proposed loan amount exceeded the Bank's legal lending limit to one borrower, it required selling loan participations to other lenders. Consequently, after approval of the loan Defendant Glenn undertook to find loan participants. At least four potential participants rejected the opportunity.

31. Defendant Glenn worked with Defendant Jacobs in an effort to line up Jacobs' three Oklahoma banks as participants. The three banks were First Pryority Bank, Pryor, Oklahoma (which did business in Nevada through an affiliate known as Nevada Lenders, Inc.), Bank of Locust Grove, and Lakeside Bank of Salina. Defendant Jacobs and his family held majority ownership interest in all three Oklahoma banks and he sat on the boards of directors of all three banks. These banks typically conducted their board meetings in succession on the same date in the same location.

32. Late in the afternoon of September 11, 2007, Defendant Glenn faxed the form of a proposed participation agreement to the Oklahoma banks on a standard form utilized in the past

by the Bank that provided for an equal sharing, based on their respective pro rata percentage, of the obligations to fund and the rights to receive payments and recoveries. Glenn requested that the Oklahoma bankers "sign and fax back" when they were ready.

33. The following day, on September 12, 2007, in the first of the regularly-scheduled Oklahoma bank board meetings, the president of Lakeside Bank of Salina rightly determined that the loan was risky for his bank and conditioned approval on receiving a preferential right to repayment. Consequently, participation in the Merrill Construction loan by Lakeside Bank of Salina in the amount of $250,000 (i.e. 6.25% of the approved loan amount) was approved with the board minutes reflecting "with our part last in and first out" meaning Lakeside Bank would be last to participate, but be the first to be paid. On that same date, the board of directors of the second Oklahoma bank, Bank of Locust Grove, approved its participation on the same basis. Defendant Jacobs attended both meetings via video teleconference and voted in favor of both loan participations on the "last in, first out" basis in direct contravention of the interests of Carson River and in violation of federal banking conflict of interest regulations and Jacobs' fiduciary duties of care and loyalty. Defendant Glenn helped facilitate these breaches of fiduciary duty by revising the loan participation agreement to include the preferential rights for the two Oklahoma banks.

34. When the Merrill Construction loan was considered by Carson River's Senior Loan Committee it was understood that loan participants would be required and that Defendant Jacobs' Oklahoma banks might participate, but it was not discussed or understood by other members of the Senior Loan Committee that some of the loan participants, including two of Defendant Jacobs' banks would be granted the right to be paid first in the event of default to the prejudice of Carson River.

35. In January 2009, it became apparent to Carson River's Senior Loan Committee that the Merrill Construction loan would soon be in default so the loan documents were reviewed in preparation for attempts to collect the debt. By this time, Defendant Jacobs and Defendant Glenn had resigned from their positions with Carson River. As a result of the review, it was discovered that Lakeside Bank, Bank of Locust Grove, and City National Bank (the prior lender) were entitled to be paid their collective $1,000,000 contributions, before Carson River was paid anything.

36. This shocking revelation was revealed to Carson River's Board of Directors by May 2009. The Bank's Executive Vice President was directed by the Board of Directors to send a letter to Defendant Jacobs about the matter. Among other things, the Executive Vice President stated that, "The Board and Loan Committee members were unaware [the last in, first out language] had been inserted into the participation agreement and stated they did not approve this clause at all." The tone of the letter was respectful but direct as she advised that the Bank had consulted with outside counsel who raised conflict of interest issues and possible "interested director" violations. The Executive Vice President further requested Defendant Jacobs' cooperation in hopes that they might avoid the need "to determine if there is a reportable event for potential [directors and officers' liability insurance coverage] as well as notice to the regulators by all of the banks involved."

37. Defendant Jacobs responded vigorously by e-mail. Among other things, Jacobs stated as follows:

> [The Bank's attorney] makes these interested director accusations based upon his theory that I knew about the [last in, first out] contract and that I should have complied with various Nevada requirements relating to a conflict of interest. If I did have the advance knowledge, then I would legally agree. Once again, the facts bear me out that I had no knowledge of this arrangement until long after the participation agreement had been arranged between Oklahoma and [the chief

> credit officer]. . . If my recollection is faulty relating to the time sequence and I was asked about participation in advance of approval by the loan committe (sic), I can assure you that ABSOLUTELY NOTHING was ever discussed about preferential treatment for CitiBank, Salina or Locust Grove. . . I do not and can not agree that this requires a [directors and officers] insurance claim and I take stringent exception to notifying regulators and bonding companies that I violated ANY conflicts of interest. I have to have had knowledge in advance and you are sorely lacking in the ability to prove a non existent knowledge.

38. Defendant Jacobs' strident denials are belied by the board minutes of Lakeside Bank of Salina, the testimony of the presidents of Lakeside Bank of Salina and Bank of Locust Grove, Jacobs' signature on the participation agreement, and his now-grudging admission that he was present in the two Oklahoma bank board meetings when the issue was discussed. The best Jacobs can now say is that he was perhaps "day dreaming," "looking at something else," "considered it inconsequential," or was "in the bathroom."

39. Carson River's Board of Directors believed Defendant Jacobs' denials of knowledge of the preferential arrangement and pursued no further investigation. Neither was any report made to regulators, nor was any sort of claim pursued on the Bank's directors and officers liability insurance or fidelity bond.

b. The City Bank Participation and Bulk Value Appraisal

40. Even with the Oklahoma loan participations procured in September 2007, the Bank still needed another $500,000 participant in order to bring the loan into lending limit compliance. Defendant Glenn tried several of his banking contacts, but no one was interested. With few, if any prospects, City National (the current lender to Merrill Construction) agreed to participate the remainder of the loan, but it also requested that it be granted last in, first out protection. City National was a willing participant because the participation arrangement, even without the last in, first out arrangement, reduced its exposure on its loan from $3,500,000 to $500,000.

41. City National, however, insisted that a bulk value appraisal be obtained before it would agree to participate. Hence, Defendant Glenn ordered a bulk value appraisal. That appraisal, as of November 5, 2007, and which was received by Glenn within days thereafter, valued the property at $3,050,000, or an amount that was $950,000 less than the $4,000,000 approved loan amount and almost $2 million less than the retail appraised amount.

42. Defendant Glenn chose not to share the results of this appraisal with anyone else on the Senior Loan Committee or the Bank's Board of Directors.

43. Had this type of appraisal been relied upon to underwrite the loan, as it should have been, the Defendants would have seen that the loan-to-value ratio was 131%, far in excess of the maximum permitted under the Bank's loan policy and by federal regulation. The loan had been approved, but there was nothing that prevented the Senior Loan Committee from withdrawing approval and halting funding of the loan.

44. Notwithstanding this clear red flag, the loan to Merrill Construction was closed and funded on or about December 19, 2007. Had all the relevant information regarding the preferential rights to repayment to the two Oklahoma banks and the bulk value appraisal been known to the entire Senior Loan Committee the loan approval would have been reversed, the loan would have never been funded, and the losses would have been averted. Hence, the accumulated conduct of the Defendants Jacobs and Glenn were substantial factors in proximately causing the losses associated with the Merrill Construction loan.

e. The Collection Efforts

45. The Bank sold the collateral securing the debt at a foreclosure sale conducted on January 14, 2010. The Bank made a credit bid of $1,800,000 and was the only bidder at the sale. In a letter to the loan participants, the Bank's new chief credit officer, stated as follows:

> We now have a six month period to seek a deficiency if we wish. . . [W]e suspect the enforcement of a large judgment will result in a bankruptcy filing and that the deficiency effort is not worth the additional fees/costs.

Because a deficiency judgment is necessary under Nevada law in order to pursue guarantors, this was tantamount to saying the guaranties were worthless.

5. The Gross Negligence and Breaches of Fiduciary Duties

46. The Defendants Jacobs and Glenn, acting jointly and in concert with one another and with the other members of the Senior Loan Committee, approved the Merrill Construction loan on August 23, 2007 despite at least the following:

- No bulk appraisal of the 25 lots was obtained prior to the loan approval, in violation of the Bank's loan policy and banking regulations, under circumstances where lot sales in the market area had slowed, the borrower was experiencing financial trouble and the prior lender wanted out of the loan, and the likelihood that foreclosure would be required was high.
- The appraisals relied upon by the Defendants Jacobs and Glenn and the other members of the Senior Loan Committee were retail in nature.
- Bank president, Dan Dykes, previously warned about the accumulation of too many lot loans and made this point again in the August 23rd Senior Loan committee meeting.
- Contemporaneous Carson City news accounts reflected record residential foreclosure rates, declining values, historically slow sales rates, and other disquieting news.
- The guarantors' financial statements reflected a $3.7 million net worth, but that was composed almost entirely of property that was exempt from execution or was illiquid, reported equity in real estate and miscellaneous personal items.

Following approval of the loan, but before funding Defendants Jacobs and Glenn engaged in the following conduct:

- Defendant Jacobs subordinated the interests of Carson River in favor of his Oklahoma banking interests in breach of his duties of loyalty and care. He did so by voting to approve the two Oklahoma bank's participations on terms that granted them preferential rights to repayment and without disclosing this clear conflict of interest to anyone other than Defendant Glenn.
- Defendant Glenn helped facilitate the preferential rights to repayment by the two Oklahoma banks by revising the loan participation agreement with the preferential rights and signing on behalf of Carson River, all without advising other members of the Senior Loan Committee or the Board of Directors.

Defendant Glenn ordered and received a bulk value appraisal after loan approval, but before execution of any contract documents and funding of the loan. The appraisal clearly demonstrated the collateral was of inadequate value to cover the approved loan amount, yet Defendant Glenn chose not to share the results of this appraisal with other members of the Senior Loan Committee thus facilitating the closing and funding of the loan.

d. The Damages

47. The estimated losses associated with the Merrill Construction loan proximately caused by the actions and failures to act of the Defendants Jacobs and Glenn as members of the Senior Loan Committee are approximately $2,000,000.

VI. CLAIMS FOR RELIEF

(Count One – Gross Negligence Based on Breach of Fiduciary Duty of Care)

48. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 1-47.

49. Defendants Jacobs and Glenn, as directors and officers of the Bank had fiduciary obligations to the Bank. As fiduciaries, Defendants Jacobs and Glenn had a duty of care to act as a reasonably prudent person would act in a similar position under similar circumstances. The duty of care includes an obligation to act on an informed basis. The failure to act as a reasonably prudent person on an informed basis constitutes ordinary negligence.

50. Officers and directors of a bank are liable if their conduct is grossly negligent. 12 U.S.C. §1821(k). Gross negligence is much more than ordinary negligence. Gross negligence demonstrates a failure to exercise even a slight amount of care. Gross negligence is very aggravated and extreme negligence that demonstrates that the person gave little, if any thought to

the consequences of his behavior. The failure to exercise a slight amount of care may be proved by an accumulation of ordinary acts of negligence.

51. Although the conduct of Defendants Jacobs and Glenn is described in detail above, the conduct by Defendants rendering them liable includes, but is not limited to, the following:

Jacobs

52. Voting to approve the Merrill Construction loan to a troubled borrower on a residential real estate project whose loan was rejected for renewal by a prior lender, based on an appraisal that did not meet Bank and regulatory requirements resulting in violations of loan-to-value requirements and otherwise failing to satisfy the fiduciary standard of due care.

53. Failing to review or acquaint himself with the Bank's loan policies or take steps to familiarize himself with the local real estate market.

54. Failing to require the use of an appraisal that took into account appropriate deductions and discounts given the circumstances of the troubled loan the Bank was refinancing.

55. Failing to adequately analyze financial information associated with the secondary sources for repayment for the above-described loan.

56. Failing to recognize the increasing risk to the Bank with the approval of the Merrill Construction loan, and subsequent funding of the loan, particularly in view of the crumbling residential real estate market and warnings from the Bank's president about the accumulation of too many lot loans.

57. Failing to disclose to the other members of the Senior Loan Committee and the Board of Directors all material facts surrounding the preferential participation rights of Jacobs'

Oklahoma banks in the Merrill Construction loan and thus subordinating the interests of Carson River to the two Oklahoma Banks.

58. The decisions made by Defendant Jacobs as described above were not good faith business decisions made on an informed basis and deliberate manner. As a direct and proximate result of the grossly negligent breach of his fiduciary duty of care, Defendant Jacobs' actions and inactions were a substantial factor in proximately causing the losses sustained by the Bank on the Merrill Construction loan.

Glenn

59. Recommending and voting to approve the Merrill Construction loan to a troubled borrower on a residential real estate project whose loan was rejected for renewal by the prior lender, based on an appraisal that did not meet Bank and regulatory requirements resulting in violations of loan-to-value requirements and otherwise failing to satisfy the fiduciary standard of due care.

60. Failing to require the use of an appraisal that took into account appropriate deductions and discounts given the circumstances of the troubled loan the Bank was refinancing.

61. Failing to adequately analyze financial information associated with the secondary sources for repayment for the above-described loans.

62 Failing to recognize the increasing risk to the Bank with the approval of the Merrill Construction loan and subsequent funding of the loan, particularly in view of the crumbling residential real estate market and warnings from the Bank's president about the accumulation of too many lot loans.

63. Failing to disclose to the other members of the Senior Loan Committee and the Board of Directors all material facts surrounding the preferential participation rights of

Defendant Jacobs' two Oklahoma banks in the Merrill Construction loan and the fact that this subordinated the interests of Carson River to the two Oklahoma banks.

64. Failing to disclose to the other members of the Senior Loan Committee and the Board of Directors about the results of the bulk value appraisal obtained in November 2007.

65. The decisions made by Defendant Glenn as described above were not good faith business decisions made on an informed basis and deliberate manner. As a direct and proximate result of the grossly negligent breach of his fiduciary duty of care, the Defendant Glenn's actions and inactions were a substantial factor in proximately causing the losses sustained by the Bank on the Merrill Construction loan.

(Count Two – Gross Negligence Against Defendant Jacobs Based on Breach of Fiduciary Duty of Loyalty)

66. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 1-65.

67. As a fiduciary, Defendant Jacobs also had a duty of loyalty to the Bank that imposed upon him an obligation to act in good faith, with honesty, and to make full disclosure. He was also obligated to exercise his powers in good faith with a view to the interests of the corporation.

68. Defendant Jacobs breached his duty of loyalty by failing to fully disclose to all the members of the Senior Loan Committee and the Board of Directors the material facts surrounding the preferential participation rights that he voted to approve on behalf of two of his Oklahoma banks in the Merrill Construction loan and the fact that this subordinated the interests of Carson River to the two Oklahoma Banks.

69. The decisions made by Defendant Jacobs not to disclose the conflict of interest regarding the superior interest granted to his two Oklahoma to the prejudice of the Bank as

described above was not a good faith business decision made on an informed basis and deliberate manner. As a direct and proximate result of the grossly negligent breach of his fiduciary duty of loyalty, the Defendant Jacobs' actions and inactions were a substantial factor in proximately causing the losses sustained by the Bank on the Merrill Construction loan.

VII. STATUTE OF LIMITATIONS

70. The claims asserted herein against Defendant Glenn might otherwise be barred by applicable statutes of limitation, except that prior to the expiration of the applicable limitations period the FDIC and Defendant Glenn entered into an agreement to suspend the running of the statute of limitations. In accordance with the provisions of that agreement, the claims asserted herein against Defendant Glenn are deemed to have been filed as of February 22, 2013.

VIII. JURY DEMAND

71. The FDIC respectfully demands a trial by jury for all issues in this case that are triable by the jury.

IX. PRAYER

WHEREFORE, the FDIC prays for relief as follows:

A. For a joint and several judgment awarding compensatory and consequential damages (together with prejudgment interest and post judgment interest) against Defendants Jacobs and Glenn for their grossly negligent breaches of fiduciary duty associated with the Merrill Construction loan;

B. For its costs of suit against Defendants Jacobs and Glenn; and

C. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Gregory F. Wilson, NV No. 2517
GREGORY F. WILSON & ASSOCIATES, P.C.
1495 Ridgeview Drive, Suite 120
Reno, Nevada 89519
Telephone: 775.360.4910
Facsimile: 775.360.4911
(b)(6) [redacted]

SPROUSE SHRADER SMITH, PLLC
Joel R. Hogue, TX No. 09809720
701 S. Taylor, Suite 500
Amarillo, Texas 79101
Main: (806) 468-3300
Fax: (806) 373-3454
(b)(6) [redacted]

By: */s/ Joel R. Hogue*
Joel R. Hogue
ATTORNEYS FOR PLAINTIFF
FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER OF CARSON RIVER COMMUNITY BANK

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2014, a copy of the foregoing has been sent first class and electronic mail to:

James M. Jacobs
(b)(6) [redacted]
(b)(6) [redacted]

Brett Sutton
SUTTON HAGUE LAW CORP., PC
9600 Gateway Dr., Suite 100
Reno, NV 89521
(b)(6) [redacted]

Daniel Dykes, Pro Se
(b)(6) [redacted]
(b)(6) [redacted]

Byron Waite, Pro Se
(b)(6) [redacted]
(b)(6) [redacted]

Richard McCole, Pro Se
(b)(6) [redacted]
(b)(6) [redacted]

By: */s/ Liz L'Esperance*
Liz L'Esperance, an employee of
SPROUSE SHRADER SMITH, PLLC

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