IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB, Plaintiffs v. CERTUS BANK, N.A. AND CERTUSHOLDINGS, INC., Defendants AND FEDERAL DEPOSIT INSURANCE CORPORATION, Intervenor	)	Case Number: 6:18-cv-00849-DCC

RECEIVED
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SC Court of Appeals

FDIC'S NOTICE OF REMOVAL

COMES NOW the Federal Deposit Insurance Corporation (the "FDIC"), and pursuant to 12 U.S.C. §1819(b)(2)(A) and (B), files this Notice of Removal of all proceedings in the case styled *Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs v. CertusBank, N.A. and CertusHoldings, Inc., Defendants, and Federal Deposit Insurance Corporation as Intervenor*, pending in the Greenville County Court of Common Pleas, civil action number 2015-CP-23-05554, and also *Milton Jones, Jr., Walter Davis, and Angela Webb, Respondents v. CertusBank, N.A. and CertusHoldings, Inc., Appellants, Ex Parte: Federal Deposit Insurance Corporation, Intervenor*, pending

in the South Carolina Court of Appeals, appellate case number 2018-000212 (hereinafter the "Removed Case"). A statement of the grounds for removal is as follows:

1. This is a breach of contract case, where Milton Jones, Jr., Walter Davis, and Angela Webb (hereinafter "the Former Executives") each seek twelve months' severance pay related to their work with a bank and a bank holding company. Because the Former Executives' employment was terminated after the bank and the bank holding company were deemed to be in a "troubled condition," the FDIC determined that the severance pay was an impermissible "golden parachute" payment. The FDIC determined the severance pay could not be made to the Former Executives and communicated this denial by correspondence dated April 7, 2017. The twelve months' severance pay is presently in escrow with the Greenville County Clerk of Court.

2. The state court granted the FDIC's motion to intervene as a party defendant on January 11, 2018, ruling "[t]he Court has authorized FDIC intervention to participate in supplemental proceedings where they may raise arguments that the payment of severance to Plaintiffs [the Former Executives] is prohibited and cannot be made based on the FDIC determination letters." January 11 Order, page 6. These supplemental proceedings have now been essentially commenced in this Court in an action styled *CBSUB, LLC, and CertusHoldings, Inc., Plaintiffs, v. Federal Deposit Insurance Corporation, Milton Jones, Jr., Walter Davis, and Angela Webb, Defendants*, case number: 6:18-cv-00390-DCC, in which Plaintiffs seek in part a review of the FDIC's

determinations under the Administrative Procedure Act (hereinafter the "APA Litigation").

3. The FDIC files this Notice of Removal to relate the present case to the APA Litigation, so that one court may adjudicate whether the FDIC's determinations bar the payments the Former Executives' seek. The FDIC's determinations are subject to review solely in federal court.

4. As indicated by the Complaint, the Former Executives brought the state court action styled *Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs v. CertusBank, N.A. and CertusHoldings, Inc., Defendants*, civil action number 2015-CP-23-05554 on September 9, 2015 in the Court of Common Pleas, County of Greenville, State of South Carolina (hereinafter the "State Court Action").

5. On January 6, 2016, the parties to the State Court Action filed a Joint Motion to Stay Proceeding Pending Arbitration.

6. On March 17, 2017, the Arbitrator issued an Arbitration Award.

7. On March 23, 2017, the Former Executives filed a Motion for an Order Confirming Arbitration Award and Entering Judgment in the State Court Action.

8. On March 29, 2017 the Court entered an Order Granting Former Executives' Motion for an Order Entering Judgment of the Arbitration Awards in the State Court Action.

9. On May 23, 2017, the FDIC filed Motions to Intervene, Modify the March 29 Judgment to Conform It With the Terms of the Arbitrator's Award or in the

Alternative to Set Aside the March 29 Judgment and Render Unenforceable Any Obligation to Make Payments of the Proposed Severance Payments in the State Court Action.

10. Following an attempt by the Former Executives to collect the severance pay, the parties to the State Court Action placed the severance pay in escrow with the Greenville County Clerk of Court, South Carolina.

11. On January 11, 2018, the Court ruled on the FDIC's Motions. The Court granted FDIC's motion to intervene. The Court denied the request for relief from the March 29 Judgment. As noted above, the Court denied, without prejudice, the FDIC's motion to render unenforceable any obligation to make severance payments to the Former Executives, ruling in part: "The Court has authorized FDIC intervention to participate in supplemental proceedings where they may raise arguments that payment of severance to Plaintiffs [the Former Executives] is prohibited and cannot be made based on the FDIC determination letters." January 11 Order, page 6. The Court also ruled: "The money being held by the Clerk of Court in escrow shall remain in escrow pending final resolution of this action." *Id.*

12. On February 9, 2018, CertusBank, N.A. and CertusHoldings, Inc. filed a Notice of Appeal with the South Carolina Court of Appeals related in part to the Court's January 11, 2018 Order. The related State Court Appellate Matter was denominated *Milton Jones, Jr., Walter Davis, and Angela Webb, Respondents v. CertusBank, N.A. and CertusHoldings, Inc., Appellants, Ex Parte: Federal Deposit Insurance Corporation,*

Intervenor, South Carolina Court of Appeals, appellate case number 2018-000212 (hereinafter the "State Appellate Court Action").

13. On February 9, 2018 CBSUB, LLC and CertusHoldings, Inc. filed a complaint in the United States District Court for the District of South Carolina: *CBSUB, LLC, and CertusHoldings, Inc., Plaintiffs, v. Federal Deposit Insurance Corporation, Milton Jones, Jr., Walter Davis, and Angela Webb, Defendants*, case number: 6:18-cv-00390-DCC.

14. The FDIC is a government corporation and an agency of the United States organized pursuant to the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811, *et seq.*; *see also Veluchamy v. FDIC*, 706 F.3d 810, 812 (7th Cir. 2013) ("The FDIC is most typically known as the federal agency that insures the accounts of a bank's depositors, but it also serves as a bank overseer and regulator."); *Alter v. FDIC*, 57 F. Supp. 3d 1325, 1328 (D. Utah 2014) ("FDIC is an agency chartered by federal law with, among other duties, administering the Federal Deposit Insurance Act and the federal bank deposit insurance system.").

15. Under 12 U.S.C. §1819(b)(2)(A), civil lawsuits in which the FDIC, "in any capacity, is a party shall be deemed to arise under the laws of the United States."

16. Removal is authorized under 12 U.S.C. § 1819(b)(2)(B), which gives the FDIC a statutory right to remove to the United States District Court cases in which it is a party, as follows:

> Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court

> to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

17. The pendency of the appellate court case does not bar the removal of the state court and appellate court action under 12 U.S.C. § 1819(b)(2)(B). *FDIC v. Keating*, 12 F.3d 314, 316 (1st Cir. 1993); *see also RTC v. Allen*, 16 F.3d 568, 573 (4th Cir. 1994).

18. Removal here is timely. The FDIC was added as a party to the State Court Action on January 11, 2018 and to the State Appellate Court Action on February 9, 2018. Accordingly, the FDIC has filed this Notice of Removal within ninety (90) days of becoming a party to the Removed Case. 12 U.S.C. § 1819(b)(2)(B); *see also Heaton v. Monogram Credit Card Bank of Ga.*, 297 F.3d 416, 426 (5th Cir. 2002) ("Because the FDIC is entitled to intervene in this case, it is a party for the purposes of § 1819(b)(2)(A), which conferred instant subject matter jurisdiction over the case").

19. Attached as exhibits hereto are copies of all process, pleadings, and orders from the Removed Case.

20. The FDIC certifies that promptly after the filing of the Notice of Removal, it shall give written notice to all counsel for all the parties to the Removed Case and shall file a copy of the Notice of Removal with the Clerk of Court for the Greenville County Court of Common Pleas and the Clerk of Court for the South Carolina Court of Appeals.

21. The State Court Action is presently pending in Greenville County, South Carolina which is embraced by the division and district of the Greenville Division of the United States District Court for the District of South Carolina. The State Appellate Court

Action is related to the State Court Action and therefore venue is appropriate in this Court. As well, the State Appellate Court Action is pending within the District of South Carolina.

22. This action is not a non-removable action as described in 28 U.S.C. §1445.

WHEREFORE, the Federal Deposit Insurance Corporation respectfully requests this Court accept the removal.

Respectfully submitted,

THOMERSON FREEMAN & ROGERS P.C.

March 28, 2018
Greenville, South Carolina

s/ William S. F. Freeman
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ATTORNEYS FOR DEFENDANT FEDERAL DEPOSIT INSURANCE CORPORATION

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL S. WICKENSIMER
2015 SEP 9 AM 9:02

Milton Jones, Jr., Walter Davis, and Angela Webb,) SUMMONS
Plaintiff,)
)
vs.) FILE NO. 2015-CP-23-05554
)
CertusBank, N.A., and CertusHoldings, Inc.,)
Defendant.)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: September 9, 2015

Plaintiff/Attorney for Plaintiff

Address: Richard A. Harpootlian, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, SC 29202

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO.
PAUL B. MCKENSIMER
2015 SEP 9 AM 9 09

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2015-CP-23-03554

Milton Jones, Jr., Walter Davis, and Angela Webb,

Plaintiffs,

v.

CertusBank NA, and CertusHoldings, Inc.,

Defendant.

C/A NO.: ~~2014~~-CP-23-_____

COMPLAINT
(Jury Trial Requested)

The Plaintiffs, complaining of the Defendants named above, would respectfully show unto the Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Milton Jones, Jr. ("Jones") is a citizen and resident of the State of Georgia. At different relevant times herein, Jones was Chairman of the Board, President, CEO and CFO of CertusBank.

2. Plaintiff Walter Davis ("Davis") is a citizen and resident of the State of South Carolina. At different relevant times herein, Davis was the CEO, Co-CEO, Chief Credit Officer and Vice Chairman of CertusBank.

3. Plaintiff Angela Webb ("Webb") is a citizen and resident of the State of North Carolina. At different relevant times herein, Webb was the President, and Sr. Executive Vice-President and Chief Administrative Officer of CertusBank.

4. Defendant CertusBank N.A. (hereinafter "CertusBank") is a Delaware corporation, a full-service, nationally chartered bank with a presence in twelve states and with its principal place of business in Greenville, South Carolina. CertusBank, N.A. is a subsidiary of

CertusHoldings, Inc. (formerly Blue Ridge Holdings, Inc.) a corporation organized and existing in the state of Delaware.

5. Jurisdiction exists within this Court as one or more parties are citizens and residents of the State of South Carolina and the causes of action arise pursuant to the South Carolina common law.

6. Venue is proper in Greenville County pursuant to S.C. Code Ann. § 15-7-30(C) because many of the acts and omissions giving rise to this action occurred in Greenville County.

FACTUAL BACKGROUND

7. Milton Jones was born and raised in Atlanta, Georgia. Prior to becoming a founding member of CertusBank, Jones worked at Bank of America for over 30 years where he held senior roles in finance, technology, banking and sales units and process improvement. As President of Bank of America's Mid-south Banking Group, Jones took this $15 billion organization from next to last in rankings within the Company to second place in just 18 months. Jones later led the Quality and Productivity (six-sigma) organization for Bank of America for three years, reporting to CEO Ken Lewis and resulting in more than $1 billion in revenue improvement and expense reduction. In his last two years at Bank of America, Jones transformed the CFO organization, served on a senior executive committee focused on Patriot Act compliance, led the Supply Chain Management worldwide and served as Georgia Market President. Jones led CertusBank's management team at different relevant times as Chairman of the Board, President, CEO and CFO.

8. Walter Davis is a native of Greenville, South Carolina. Davis began his banking career in 1987 in Greenville, South Carolina. Davis was recruited to join Bank of America's predecessor (NationsBank) in 1993 and eventually moved to its corporate home office in Charlotte, North Carolina, where he accepted a national position in the bank's Community Development

Banking department. Davis eventually became responsible for the syndication of large real estate transactions for Bank of America. In 2005, Wachovia recruited Davis. Prior to founding CertusBank, Davis headed the Retail Credit Unit for Wachovia Bank and managed Wachovia's Golden West portfolio. While at Wachovia, Davis was responsible for $70 billion in bank assets and was appointed to co-lead and manage loss mitigation for a $125 billion asset portfolio. As a member of CertusBank's executive team, Davis served at different relevant times as CEO, Co-CEO, Chief Credit Officer and Vice Chairman.

9. Angela Webb was born and raised in Mocksville, North Carolina. She joined Wachovia Bank in 1987 and worked at Wachovia and its affiliate institutions for the next 20 years where she served in virtually every capacity, including, sales, collections, dealer and sales finance, underwriting, scorecard management, branch management, and human resources. Webb was eventually persuaded by Davis to leave her position as head Wachovia Bank's mortgage unit human resources department to co-found CertusBank.

10. In addition to Jones, Davis and Webb, Charles Williams ("Williams") is the remaining founding member of CertusBank. Williams served as Chief Administrative Officer of Bank of America's Global Capital Markets Division before co-founding CertusBank. Williams was the former Co-CEO of CertusBank before his departure in early 2014.

11. CertusBank originally organized under Blue Ridge Holdings, Inc., a Delaware corporation ("Blue Ridge"). In December 2009, Blue Ridge applied for shelf registration to operate a new bank.

12. Within six months of applying for the shelf charter, Blue Ridge, which later changed its name to CertusBank,[1] received conditional approval for its application and $500 million in commitments from a small group of equity investors.

13. CertusBank's Board of Directors ("Board") consisted of eight (8) members, including Davis, Jones and Williams with Jones elected as Chair.

14. The remaining five (5) members were outsiders, most of whom had no executive banking experience but came from other business sectors or academia. They include Doug Johnson, current chair for the Audit Committee for Aaflac; Hildy Teegen, former dean of the USC Darla Moore School of Business; Veronica Biggins, board member for Southwest Airlines; Bob Brown; and Bob Wright, former lead independent director for Aflac.

15. In addition to their board positions, Davis, Jones, and Webb were also hired as key executive employees, first of Blue Ridge and later CertusBank. Their compensation, approved by the Board, reflected their respective experience and record as highly successful bank executives.

16. Davis, Jones and Webb were collectively referred to as the "Executive Leadership Team" due to their positions within the bank and their significant expertise.

17. Plaintiffs' compensation packages were memorialized by written employment agreements reviewed and approved by the Board and investors. Copies of each Plaintiff's Amended and Restated Executive Employment Agreement are attached as **Exhibit A**, pp. 5-60.

18. In a complimentary lawsuit[2], wherein the Plaintiffs pursue causes of action against CertusBank for libel and civil conspiracy, CertusBank affirms the execution and enforceability of each Plaintiff's employment contract. The affidavit of CertusBank's Chief Human Resources

[1] "Certus" is Latin for "certain."

[2] *Milton Jones, Jr. et al. v. CertusBank, N.A., et al.*, 6:14-CV-01633-TMC (D.S.C.).

Officer, Colletta E. Bryce is attached as Exhibit 1 to a Motion to Compel Arbitration in that matter.[3] The affidavit states, "Attached hereto as Attachments A, B, and C, are the Amended and Restated Executive Employment Agreements of Milton Jones, Jr., Walter Davis and Angela Webb, respectively, entered into and agreed upon as of February 22, 2011, with Blue Holdings, Inc. . . . [which] were the applicable agreements for their employment with CertusBank, N.A., as of their last day of employment."[4]

19. The Amended and Restated Executive Employment Agreements between Plaintiffs and Blue Holdings, Inc. constitute binding and enforceable employment contracts between Plaintiffs and Defendant CertusBank, N.A.

Defendant CertusBank Terminates the Plaintiffs Without Cause

20. On January 21, 2011, CertusBank acquired Community South Bank, a failing bank located outside of Greenville, South Carolina, through FDIC auction. Consistent with its plan, CertusBank used a combination of investor and public funding (paid by the FDIC as an incentive to rescue failed institutions). The Community South Bank acquisition allowed the Bank to acquire approximately $450 million in assets while tapping into very little of its available equity investment fund.

21. Later that year, CertusBank purchased two more failing banks in Georgia and two mortgage lending operations; bringing its total assets under management to approximately $1.8 billion and its total branches to 30, all while only utilizing $218 million of its available $500 million in equity investment.

[3] *Milton Jones, Jr. et al.*, Doc. 10-1 at 2, attached hereto as **Exhibit A**, pp. 1-3.

[4] *Id.*

22. CertusBank purchased three additional banks using a $62 million profit from 2011 and without using any of the initial capital committed by the investors or raising new capital.

23. Due to the Bank's rapid growth, the Board decided to move the Bank's executive offices to Greenville's business district. The Bank made the strategic decision to locate its corporate headquarters in Greenville, South Carolina; believing Greenville provided convenient access to the I-85 Corridor, a vibrant economy, and distance from the crowded banking sector in Charlotte, North Carolina.

24. Given the inherent uncertainty of the distressed assets the Bank was acquiring, the Bank's executives, Board, and investors anticipated tumultuous early years and likely losses from the liquidation of non-performing assets and the cost of building, at the insistence of regulatory authorities, technology, risk and compliance infrastructure to meet the needs of a $5 billion institution.

25. Notwithstanding the clear expectation that the Bank would suffer losses, it, incredibly, reported a net gain of $62 million during its first full year of operation.

26. Within 18 months, the Bank became the 17th largest of 2500 Small Business Administration (SBA) lenders in the country and the number one SBA lender in South Carolina.

27. The Board rewarded Plaintiffs for their hard work and strong performance with a performance bonus in excess of $500,000 each.

28. While these early gains were encouraging, Plaintiffs regularly communicated to the Board beginning in early 2012 that accounting losses were on the horizon and that it was not realistic to expect CertusBank to grow on a steady diet of failed banks without suffering some accounting losses.

29. In 2013, the anticipated losses finally arrived. Notably, these accounting losses had nothing to do with the operational integrity of CertusBank. Instead, these losses merely reflected what the Bank already knew: that some of the troubled assets it purchased would not fully perform, hence their status as "troubled."

30. The board of directors held a meeting on April 8, 2014 at which time the outside directors asked the Executive Leadership Team to address concerns raised in shareholder letters and press coverage regarding the financial performance of the CertusBank. The following morning, on April 9, 2014, the outside directors gave the Plaintiffs an ultimatum: either submit resignation letters or a resolution for termination would be sought.

31. However, after consulting with counsel, the Plaintiffs chose not to submit resignation letters, and the Plaintiffs were terminated *without cause*.

32. Plaintiffs were not provided thirty (30) day's written notice specifying the alleged violations in reasonable detail prior to their termination and were not provided thirty (30) days in which to cure any alleged violation. The failure to provide such written notice constitutes a termination without cause, and constitutes a breach of the employment agreement.[5]

33. In the aforementioned complimentary lawsuit[6], Defendant CertusBank admits that the Plaintiffs were terminated without cause in its Answer, which states,

> On the morning of April 9, 2014, the outside directors asked for the resignation of [the 'Executive Leadership Team' – Jones, Davis, and Webb], or indicated that a resolution for termination would be pursued. The ELT left the meeting, and after consulting with their personal counsel for hours, determined that they would not resign and that they would not rejoin the Board meeting and thus did not cast a vote on the termination resolution. *The Plaintiffs were terminated without cause under their Amended and Restated Executive Employment Agreements on April 9, 2014.*"

[5] *See* Ex. A at 11, 30, and 49.

[6] *Milton Jones, Jr. et al.*, 6:14-CV-01633-TMC (D.S.C.).

Milton Jones, Jr. et al., Doc. 11 at 4-5 (emphasis added).

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

34. Each and every preceding paragraph is included by reference as if contained herein.

35. The Plaintiffs' Amended and Restated Executive Employment Agreements constitute valid and binding contracts with Defendants.

36. Defendants unjustifiably breached the employment agreements by terminating Plaintiffs' employment without cause on April 9, 2014.

37. Plaintiffs have suffered significant monetary damages as a direct and proximate result of Defendants' breach.

38. As a direct and proximate result of Defendants' breach, Plaintiff Walter Davis has suffered damages calculated as follows:

1.	Remaining salary (22 months):	$595,833.32
2.	Medical benefits (22 months):	$46,312.49
3.	Termination without cause penalty:	$325,000.00
4.	Attorney's fees:	$50,000.00
5.	Total damages:	$1,017,145.81

39. As a direct and proximate result of Defendants' breach, Plaintiff Milton Jones has suffered damages calculated as follows:

1.	Remaining salary (22 months):	$623,333.33
2.	Medical benefits (22 months):	$35,755.94
3.	Termination without cause penalty:	$340,000.00
4.	Attorney's fees:	$50,000.00

5.	Total damages:	$1,049,089.27

40. As a direct and proximate result of Defendants' breach, Plaintiff Angela Webb has suffered damages calculated as follows:

1.	Remaining salary (22 months):	$550,000.00
2.	Medical benefits (22 months):	$20,348.17
3.	Termination without cause penalty:	$300,000.00
4.	Attorney's fees:	$50,000.00
5.	Total damages:	$920,348.17

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants in the form of:

i. An award of actual damages to Plaintiff Walter Davis in the amount of $1,017,145.81;

ii. An award of actual damages to Plaintiff Milton Jones in the amount of $1,049,089.27; and

iii. An award of actual damages to Plaintiff Angela Webb in the amount of $920,348.17; and

iv. Such further relief as the Court may deem just and proper.

(signature page follows)

Respectfully submitted by:

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ATTORNEY FOR PLAINTIFFS

September 9, 2015
Columbia, South Carolina.

EXHIBIT A

(Affidavit and Employment Agreements)

Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A., Benjamin Weinger and 3-Sigma Value Financial Opportunities, L.P., Defendants

C.A. No. 6:14-cv-01633-TMC

MOTION TO COMPEL ARBITRATION

Exhibit 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF COLLETTA E. BRYCE

I, Colletta E. Bryce, having been duly sworn, hereby depose and state the following:

1. I am over the age of 18 and competent to give this Affidavit. All information contained herein is based upon my personal knowledge unless specifically stated otherwise.

2. I am the Chief Human Resources Officer for CertusBank, N.A. As Chief Human Resources Officer for CertusBank, N.A., I am responsible for overseeing retention of corporate records such as employment agreements for company employees.

3. Attached hereto as Attachments A, B, and C, are the Amended and Restated Executive Employment Agreements of Milton Jones, Jr., Walter Davis and Angela Webb, respectively, entered into and agreed upon as of February 22, 2011, with Blue Ridge Holdings, Inc.

4. These Amended and Restated Executive Employment Agreements were the applicable agreements for their employment with CertusBank, N.A. as of their last day of employment.

Pursuant to 28 U.S.C. 1746, I certify under penalty of perjury that the foregoing affidavit is true and correct.

Executed on this 15th day of May, ~~2013~~ 2014

Colletta E. Bryce

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 15th DAY OF MAY, ~~2013~~ 2014

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11/28/2021

1767907.1

Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A., Benjamin Weinger and 3-Sigma Value Financial Opportunities, L.P., Defendants

C.A. No. 6:14-cv-01633-TMC

Attachment A

AMENDED AND RESTATED
EXECUTIVE EMPLOYMENT AGREEMENT

This **AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and Milton H. Jones Jr., an individual resident of the State of Georgia ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Chairman, President and Chief Executive Officer of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

II. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Forty Thousand Dollars ($340,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (ii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase 270,351 shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of 118,135 shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms

and conditions of that agreement and the Plan. The shares of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

e. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of his duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Chairman, President and Chief Executive Officer of the Company and shall faithfully devote his best efforts and all of his business time to his position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by his position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of

directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts. In addition, the new duties and responsibilities must be consistent with the Executive's role as the Chairman, President and Chief Executive Officer of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, he has a fiduciary duty of loyalty to the Employer and its affiliates, and that he will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on his own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for himself or herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of his employment with the Employer, he will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In his position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of his employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by

this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that he has no agreements with, or obligations to, any party, and during the term of this Agreement he will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of his employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees

that during the continuation of this Agreement and for a period of one year following the termination of this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that his obligations under this Section D shall not be assignable by him or her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which he may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting

bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason; (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or his estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing his duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of his duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of his duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform his duties will be final and binding. During any period prior to termination during which the Executive fails to perform his duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive his full salary at the rate then in effect for such period until his employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to his estate in the event of his subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to his estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with his duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in his possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-57 shall survive the termination of this Agreement.

G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

I. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that his rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to him under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and

other applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing, and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(b)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

42. The Executive acknowledges and agrees that his obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. **THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.**

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly to stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to his employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make himself or herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that his service as an employee of the Employer will not violate any agreement: (i) he has made that prohibits him or her from disclosing any information he acquired prior to him or her becoming employed by the Employer; or (ii) he has made that prohibits him or her from accepting employment with the Employer or that will interfere with his compliance with the terms of this Agreement. Executive further represents that he has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed him or her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chief Operating Officer

If to Executive:
233 Peachtree Circle, NE
Atlanta, Georgia 30309

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte NC

MILTON H. JONES, JR.

BLUE RIDGE HOLDINGS, INC.

By: H. Angela Webb

Name: H. Angela Webb

Title: Senior Executive Vice President

Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A., Benjamin Weinger and 3-Sigma Value Financial Opportunities, L.P., Defendants

C.A. No. 6:14-cv-01633-TMC

Attachment B

AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This **AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and Walter L. Davis, an individual resident of the State of North Carolina ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Vice Chairman and Chief Credit Officer of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Twenty-Five Thousand Dollars ($325,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase 270,351 shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of 118,135 shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms

and conditions of that agreement and the Plan. The shares of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

c. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of his duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Vice Chairman and Chief Credit Officer of the Company and shall faithfully devote his best efforts and all of his business time to his position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by his position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of

directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts. In addition, the new duties and responsibilities must be consistent with the Executive's role as the Vice Chairman and Chief Credit Officer of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, he has a fiduciary duty of loyalty to the Employer and its affiliates, and that he will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on his own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for himself or herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of his employment with the Employer, he will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In his position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of his employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by

this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that he has no agreements with, or obligations to, any party, and during the term of this Agreement he will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of his employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees

that during the continuation of this Agreement and for a period of one year following the termination of this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that his obligations under this Section D shall not be assignable by him or her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which he may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting

bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or his estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing his duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of his duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of his duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform his duties will be final and binding. During any period prior to termination during which the Executive fails to perform his duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive his full salary at the rate then in effect for such period until his employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to his estate in the event of his subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to his estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with his duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in his possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-37 shall survive the termination of this Agreement.

G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

I. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that his rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to him under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and other

applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing, and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(h)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

42. The Executive acknowledges and agrees that his obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. **THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.**

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to his employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make himself or herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that his service as an employee of the Employer will not violate any agreement: (i) he has made that prohibits him or her from disclosing any information he acquired prior to him or her becoming employed by the Employer; or (ii) he has made that prohibits him or her from accepting employment with the Employer or that will interfere with his compliance with the terms of this Agreement. Executive further represents that he has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed him or her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chairman

If to Executive:
9521 Greyson Ridge Drive
Charlotte, North Carolina 28277

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte NC

WALTER L. DAVIS

BLUE RIDGE HOLDINGS, INC.

By:

Name: Milton H. Jones Jr.

Title: Chairman, CEO & President

Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A., Benjamin Weinger and 3-Sigma Value Financial Opportunities, L.P., Defendants

C.A. No. 6:14-cv-01633-TMC

Attachment C

AMENDED AND RESTATED
EXECUTIVE EMPLOYMENT AGREEMENT

This **AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and K. Angela Webb, an individual resident of the State of North Carolina ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Executive Vice President, Treasurer and Assistant Secretary of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Thousand Dollars ($300,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase ninety thousand five hundred forty-seven (90,547) shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of forty-six thousand eight hundred fifty (46,850) shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms and conditions of that agreement and the Plan. The shares

of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

e. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of her duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Executive Vice President, Treasurer and Assistant Secretary of the Company and shall faithfully devote her best efforts and all of her business time to her position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by her position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts.

In addition, the new duties and responsibilities must be consistent with the Executive's role as the Executive Vice President, Treasurer and Assistant Secretary of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, she has a fiduciary duty of loyalty to the Employer and its affiliates, and that she will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on her own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 15, 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of her employment with the Employer, she will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In her position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of her employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective

customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that she has no agreements with, or obligations to, any party, and during the term of this Agreement she will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of her employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees that during the continuation of this Agreement and for a period of one year following the termination of

this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that her obligations under this Section D shall not be assignable by her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which she may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions

to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or her estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing her duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of her duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of her duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform her duties will be final and binding. During any period prior to termination during which the Executive fails to perform her duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive her full salary at the rate then in effect for such period until her employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to her estate in the event of her subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to her estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with her duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in her possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-57 shall survive the termination of this Agreement.

G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

L. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that her rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to her under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and

other applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing; and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(h)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

42. The Executive acknowledges and agrees that her obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to her employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that her service as an employee of the Employer will not violate any agreement: (i) she has made that prohibits her from disclosing any information she acquired prior to her becoming employed by the Employer; or (ii) she has made that prohibits her from accepting employment with the Employer or that will interfere with her compliance with the terms of this Agreement. Executive further represents that she has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chairman

If to Executive:
6005 Oxfordshire Road
Waxhaw, North Carolina 28173

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte NC

K. ANGELA WEBB

BLUE RIDGE HOLDINGS, INC.

By:

Name: Milton H. Jones, Jr.

Title: Chairman, CEO and President

STATE OF SOUTH CAROLINA)
) **IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAULA HARRELSON-TIMMERMAN
2015 SEP 9 AM 9 08

Milton Jones, Jr., Walter Davis, and Angela Webb,)
Plaintiff(s)) **CIVIL ACTION COVERSHEET**

2015-CP - 23- 05554

vs.)

CertusBank, N.A. and CertusHoldings, Inc.,)
Defendant(s))

Submitted By: Richard A. Harpootlian
Richard A. Harpootlian, PA
Address: 1410 Laurel Street
Columbia, South Carolina 29201

SC Bar #: 2725
Telephone #: 803-252-4848
Fax #: 803-252-4810
Other:
E-mail: rah@harpootlianlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- [X] **JURY TRIAL** demanded in complaint. [ ] **NON-JURY TRIAL** demanded in complaint.
- [X] This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- [ ] Constructions (100)
- [ ] Debt Collection (110)
- [ ] General (120)
- [X] Breach of Contract (140)
- [ ] Fraud/Bad Faith (150)
- [ ] Failure to Deliver/ Warranty (160)
- [ ] Employment Discrim (170)
- [ ] Employment (180)
- [ ] Other (199)

Torts - Professional Malpractice
- [ ] Dental Malpractice (200)
- [ ] Legal Malpractice (210)
- [ ] Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-____-____

- [ ] Notice/ File Med Mal (230)
- [ ] Other (299)

Torts - Personal Injury
- [ ] Conversion (310)
- [ ] Motor Vehicle Accident (320)
- [ ] Premises Liability (330)
- [ ] Products Liability (340)
- [ ] Personal Injury (350)
- [ ] Wrongful Death (360)
- [ ] Assault/Battery (370)
- [ ] Slander/Libel (380)
- [ ] Other (399)

Real Property
- [ ] Claim & Delivery (400)
- [ ] Condemnation (410)
- [ ] Foreclosure (420)
- [ ] Mechanic's Lien (430)
- [ ] Partition (440)
- [ ] Possession (450)
- [ ] Building Code Violation (460)
- [ ] Other (499)

Inmate Petitions
- [ ] PCR (500)
- [ ] Mandamus (520)
- [ ] Habeas Corpus (530)
- [ ] Other (599)

Administrative Law/Relief
- [ ] Reinstate Drv. License (800)
- [ ] Judicial Review (810)
- [ ] Relief (820)
- [ ] Permanent Injunction (830)
- [ ] Forfeiture-Petition (840)
- [ ] Forfeiture—Consent Order (850)
- [ ] Other (899)

Judgments/Settlements
- [ ] Death Settlement (700)
- [ ] Foreign Judgment (710)
- [ ] Magistrate's Judgment (720)
- [ ] Minor Settlement (730)
- [ ] Transcript Judgment (740)
- [ ] Lis Pendens (750)
- [ ] Transfer of Structured Settlement Payment Rights Application (760)
- [ ] Confession of Judgment (770)
- [ ] Petition for Workers Compensation Settlement Approval (780)
- [ ] Other (799)

Appeals
- [ ] Arbitration (900)
- [ ] Magistrate-Civil (910)
- [ ] Magistrate-Criminal (920)
- [ ] Municipal (930)
- [ ] Probate Court (940)
- [ ] SCDOT (950)
- [ ] Worker's Comp (960)
- [ ] Zoning Board (970)
- [ ] Public Service Comm. (990)
- [ ] Employment Security Comm (991)
- [ ] Other (999)

Special/Complex /Other
- [ ] Environmental (600)
- [ ] Automobile Arb. (610)
- [ ] Medical (620)
- [ ] Other (699)
- [ ] Sexual Predator (510)
- [ ] Pharmaceuticals (630)
- [ ] Unfair Trade Practices (640)
- [ ] Out-of State Depositions (650)
- [ ] Motion to Quash Subpoena in an Out-of-County Action (660)
- [ ] Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** September 9, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Milton Jones, Jr., Walter Davis, and Angela Webb,

Plaintiffs,

v.

CertusBank N.A. and CertusHoldings, Inc.,

Defendants.

C/A NO.: 2015-CP-23-05534

$455

FILED-CLERK OF COURT
2015 OCT 6 PM 3:03

NOTICE OF FILING

ENTERED COMPUTER

Please take notice that the Plaintiffs hereby file a proof of service, by certified mail – return receipt (United States Postal Service PS Form 3811), as evidenced by the attached **Exhibit A.**

The Defendants was served with the Summons and Complaint on September 11, 2015.

Respectfully submitted,

Richard A. Harpootlian, SC Bar #2725
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ATTORNEY FOR THE PLAINTIFFS

Columbia, South Carolina
September 30, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB, Plaintiffs v. CERTUS BANK, N.A. AND CERTUSHOLDINGS, INC., Defendants AND FEDERAL DEPOSIT INSURANCE CORPORATION, Intervenor	)	Case Number: 6:18-cv-00849-DCC

FDIC'S RESPONSE TO
LOCAL CIV. RULE 26.01 (D.S.C.) INTERROGATORIES

COMES NOW Intervenor Federal Deposit Insurance Corporation (hereinafter the "FDIC") and responds to the Local Civ. Rule 26.01 (D.S.C.) Interrogatories as follows:

1. EXEMPTION

This matter is before the Court on the removal of a State Court trial matter (Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs v. CertusBank, N.A. and CertusHoldings, Inc., Defendants, and Federal Deposit Insurance Corporation as Intervenor, Greenville County Court of Common Pleas, civil action number 2015-CP-23-05554) and the related State Appellate Court matter (Milton Jones, Jr., Walter Davis, and Angela Webb, Respondents v. CertusBank, N.A. and CertusHoldings, Inc., Appellants,

Ex Parte: Federal Deposit Insurance Corporation, Intervenor, South Carolina Court of Appeals, appellate case number 2018-000212), hereinafter the "Removed Case."

The central issue in the Removed Case is the determination by the FDIC that Milton Jones, Jr., Walter Davis, and Angela Webb (hereinafter the "Former Executives") cannot receive payment of twelve months' severance because such pay is an impermissible "golden parachute" payment. The mechanism for challenging the FDIC's determination is via the Administrative Procedure Act ("APA"). Congress made clear that the only vehicle to review final agency action, like the FDIC's determination here, is through the APA. Under the APA, the reviewing court "shall review the whole record." 5 U.S.C. § 706. Under 5 U.S.C. § 706(2)(A), a final agency decision should be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." *See Vieux Carre Prop. Owners, Residents & Assocs., Inc. v. Brown,* 875 F.2d 453, 456 (5th Cir. 1989) (noting that the APA is "a route through which private plaintiffs can obtain federal court review" where they otherwise lack a private right of action); *Batchelor v. Cornerstone Bank,* No. 5: 13-CV-78-D, 2013 WL 5309578, at *3 (E.D.N.C. Sept. 17, 2013) (request for injunctive relief against FDIC in golden parachute case subject to APA review); *see also Camp v. Pitts,* 411 U.S. 138, 142 (1973).

Since the APA governs, the FDIC will file the Administrative Record and the parties can present arguments from the information found in the Administrative Record. Accordingly, the Removed Case is "an action for review on an administrative record" under Rule 26(a)(1)(B)(i) and is therefore exempt from the requirement to file various Rule 26 disclosures, including the Local Civ. Rule 26.01 interrogatories.

2. **RESPONSES**

For the reasons set forth above, this case is "an action for review on an administrative record" under Rule 26(a)(1)(B)(i) and is therefore exempt from the requirement to file various Rule 26 disclosures. To the extent the Local Civ. Rule 26.01 (D.S.C.) responses are applicable to this case (which is denied), the FDIC provides the following responses:

(A) State the full name, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of that interest.

RESPONSE:

The FDIC is unaware of any person or legal entity who may have a subrogation interest in any claim.

(B) As to each claim, state whether it should be tried jury or nonjury and why.

RESPONSE:

The Removed Case has essentially one remaining claim: a challenge to the FDIC's determination that the severance pay cannot be made to the Former Executives. The FDIC's determination is reviewed under the APA. Since all the issues fall within the ambit of the APA, this matter should be resolved without a jury.

(C) State whether the party submitting these responses is a publicly-owned company and separately identify (1) any parent corporation and any publicly-held corporation owning ten percent (10%) or more of the party's stock; (2) each publicly-owned company of which it is a parent; and (3) each publicly-owned

company in which the party owns ten percent (10%) or more of the outstanding shares.

RESPONSE:

The FDIC is not a publicly-owned company. There is no person or entity for which identification is necessary.

(D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division). *See* Local Civ. Rule 3.01 (D.S.C.).

RESPONSE:

The FDIC does not challenge the appropriateness of this division.

(E) Is this action related in whole or in part to any other matter filed in this district, whether civil or criminal? If so, provide (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases that *may be* related regardless of whether they are still pending. Whether cases *are* related such that they should be assigned to a single judge will be determined by the clerk of court based on a determination of whether the cases arise from the same or identical transactions, happenings, or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges [footnote omitted].

RESPONSE:

This matter is related to the following civil matter filed in this District: *CBSUB, LLC, and CertusHoldings, Inc., Plaintiffs, v. Federal Deposit Insurance Corporation, Milton Jones, Jr., Walter Davis, and Angela Webb, Defendants*, 6:18-cv-00390-DCC (hereinafter the "Related Case").

The matters are related because they involve the same legal issue: the Former Executives' challenge to the FDIC's prohibition on payment of the severance pay. The matters involve the same or identical transactions, happenings, or events. The matters involve identical parties: (a) the FDIC; (b) corporations that have inherited the legal status of a Bank and a Bank Holding Company; and (c) the Former Executives. The Removed Case and the Related Case involve identical property: the disputed severance pay, presently being held in escrow by the Greenville County Clerk of Court. Resolution of either case independently would entail substantial duplication of labor if heard by different judges because the two cases revolve around one common central issue: a challenge to the FDIC's determination under the APA.

The Related Case was filed last month, and the FDIC has yet to file its answer. The Former Executives have filed a Motion to Dismiss the Related Case, which the FDIC has opposed.

The FDIC respectfully requests that the Removed Case be consolidated with the Related Case.

The FDIC is unaware of any other related litigation in this District. The FDIC notes that counsel for the Former Executives in the Related Case referenced (but did not

identify as related) a case involving litigation by the Former Executives against a former investor in CertusBank, N.A. for defamation and tortious interference: *Jones v. Weinger*, case number: 6:15-cv-03922-TMC (D.S.C.). The FDIC notes *Jones v. Weinger* was similar to a previously filed case, *Jones v. CertusBank, N.A.*, case number: 6:14-cv-01633-TMC (D.S.C.), which was dismissed for lack of diversity. The FDIC does not contend that either 6:14-cv-01633-TMC or 6:15-cv-03922-TMC are related to the current matter.

(F) [Defendants only.] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.

RESPONSE:

The FDIC is properly identified.

(G) [Defendants only.] If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of their liability.

RESPONSE:

The FDIC does not make such an assertion.

Respectfully submitted,

THOMERSON FREEMAN & ROGERS P.C.

March 28, 2018
Greenville, South Carolina

s/ William S. F. Freeman
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Michael J. Thomerson (Federal Bar#12599)
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ATTORNEYS FOR DEFENDANT FEDERAL DEPOSIT INSURANCE CORPORATION

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015:-CP-23-05554

FILED-CLERK OF COURT
2015 SEP 9 PM 3 15

DEFENDANTS' ANSWER TO COMPLAINT[1]

COME NOW, the Defendants, CertusBank, N.A. and CertusHoldings, Inc. (hereinafter collectively "Defendants" or "CertusBank" or "Bank" or "CertusHoldings"), by and through their counsel, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and files Defendants' Answer to Complaint as follows:

FIRST DEFENSE

Defendant responds to the individually-numbered paragraphs in the Complaint as follows:

Parties, Jurisdiction and Venue

1. Upon information and belief, Defendants lack sufficient information and knowledge to admit or deny the allegations contained in paragraph 1 of the Complaint and, therefore, deny the allegations contained in paragraph 1 on the Complaint as stated.

[1] Plaintiffs' allegations against Defendants are subject to arbitration pursuant to each Plaintiff's Amended and Restated Executive Employment Agreement. Plaintiffs and Defendants have jointly agreed to stay these proceedings pending the outcome of arbitration. (*See* Complaint, Attachments A-C).

2. Upon information and belief, Defendants admit the allegations contained in paragraph 2 of the Complaint as stated.

3. Upon information and belief, Defendants lack sufficient information and knowledge to admit or deny the allegations contained in paragraph 3 of the Complaint and, therefore, deny the allegations contained in paragraph 3 of the Complaint as stated.

4. Defendants deny that CertusBank is a Delaware corporation and affirmatively assert that CertusBank was a national bank organized under the laws of the United States. Defendants admit the remaining allegations contained in paragraph 4 of the Complaint as stated.

5. In response to the allegations contained in paragraph 5 of the Complaint, Defendants lack sufficient information and knowledge to admit or deny the allegations contained in paragraph 5 of the Complaint and, therefore, deny the allegations contained in paragraph 5 of the Complaint. Defendants affirmatively assert that the allegations contained in the Complaint against Defendant CertusBank are subject to arbitration pursuant to the arbitration clause contained in each Plaintiff's Amended and Restated Executive Employment Agreement.

6. In response to the allegations contained in paragraph 6 of the Complaint, Defendants lack sufficient information and knowledge to admit or deny the allegations contained in paragraph 6 of the Complaint and, therefore, deny the allegations contained in paragraph 6 of the Complaint. Defendants affirmatively assert that the allegations contained in the Complaint against Defendants are subject to arbitration pursuant to the arbitration clause contained in each Plaintiff's Amended and Restated Executive Employment Agreement.

7. In response to the allegations contained in paragraph 7 of the Complaint, Defendants lack sufficient information or knowledge to admit or deny the allegations contained

in paragraph 7 of the Complaint. However, upon information and belief, the allegations contained in paragraph 7 are admitted as stated.

8. In response to the allegations contained in paragraph 8 of the Complaint, Defendants lack sufficient information or knowledge to admit or deny the allegations contained in paragraph 8 of the Complaint. However, upon information and belief, the allegations contained in paragraph 8 are admitted as stated.

9. In response to the allegations contained in paragraph 9 of the Complaint, Defendants lack sufficient information or knowledge to admit or deny the allegations contained in paragraph 9 of the Complaint. However, upon information and belief, the allegations contained in paragraph 9 are admitted as stated.

10. In response to the allegations contained in paragraph 10 of the Complaint, Defendants lack sufficient information or knowledge to admit or deny the allegations contained in paragraph 10 of the Complaint. However, upon information and belief, the allegations contained in paragraph 10 are admitted as stated.

11. Upon information and belief, Defendants admit the allegations contained in paragraph 11 of the Complaint as stated.

12. In response to the allegations contained in paragraph 12 of the Complaint, Defendants deny that Blue Ridge had a name change to CertusBank. Defendants affirmatively assert that the Blue Ridge name was changed to CertusHoldings. With this one correction, Defendants admit the remaining allegations contained in paragraph 12 of the Complaint as stated.

13. In response to the allegations contained in paragraph 13 of the Complaint, Defendants admit the allegations contained in paragraph 13 of the Complaint at the time of the formation of the CertusBank Board of Directors.

14. Upon information and belief, Defendants deny the allegations contained in paragraph 14 of the Complaint as stated.

15. In response to the allegations contained in paragraph 15 of the Complaint, Defendants deny the allegations contained in paragraph 15 of the Complaint as stated. Defendants affirmatively assert that Plaintiffs were hired as key executives by Blue Ridge Holdings, Inc. and later CertusHoldings, Inc. and CertusBank.

16. Upon information and belief, Defendants admit the allegations contained in paragraph 16 of the Complaint as stated.

17. Upon information and belief, Defendants admit the allegations contained in paragraph 17 of the Complaint as stated.

18. In response to the allegations contained in paragraph 18 of the Complaint, Defendants affirmatively assert that paragraph 18 states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that CertusBank filed a Motion to Compel Arbitration in a complimentary lawsuit that Plaintiffs have agreed to dismiss and that CertusBank filed an affidavit of Colletta E. Bryce with the Motion. Defendants affirmatively assert that the affidavit speaks for itself.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint as stated.

20. Upon information and belief, Defendants admit the allegations contained in paragraph 20 of the Complaint as stated.

21. Upon information and belief, Defendants admit the allegations contained in paragraph 21 of the Complaint as stated.

22. In response to the allegations contained in paragraph 22 of the Complaint, Defendants admit that CertusBank purchased two additional banks (not three) and deny the remaining allegations contained in paragraph 22 of the Complaint as stated.

23. In response to the allegations contained in paragraph 23 of the Complaint, Defendants admit that CertusBank moved its corporate headquarters to Greenville. Defendants deny the remaining allegations contained in paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint as stated.

25. In response to the allegations contained in paragraph 25 of the Complaint, Defendants admit that CertusBank reported a net gain of $59 million during 2011. Upon information and belief, this net gain was attributable to bargain purchase gains associated with the failed bank acquisitions in 2011 and was not the result of banking operations. Defendants deny the remaining allegations contained in paragraph 25 of the Complaint.

26. In response to the allegations contained in paragraph 26 of the Complaint, upon information and belief, Defendants admit that CertusBank acquired a small business finance company in January 2013 that was already the number one Small Business Administration (SBA) lender in South Carolina. Defendants lack sufficient information and knowledge to admit or deny the remaining allegations contained in paragraph 26 of the Complaint.

27. In response to the allegations contained in paragraph 27 of the Complaint, upon information and belief, Defendants admit that Plaintiffs received a bonus in excess of $500,000

each. Defendants deny the remaining allegations contained in paragraph 27 of the Complaint as stated.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint as stated.

29. Upon information and belief, Defendants deny the allegations contained in paragraph 29 of the Complaint as stated.

30. Upon information and belief, Defendants admit the allegations contained in paragraph 30 of the Complaint as stated.

31. Upon information and belief, Defendants admit the allegations contained in paragraph 31 of the Complaint as stated.

32. In response to the allegation contained in paragraph 32 of the Complaint, Defendants deny the allegations contained in paragraph 32 of the Complaint as stated. Defendants affirmatively assert that the Board of Directors determined that Plaintiffs could not cure the condition of the Bank and that they were not the proper leadership team to lead the Bank forward as of April 9, 2014 and were terminated without cause.

33. Upon information and belief, Defendants admit the allegations contained in paragraph 33 of the Complaint as stated.

34. In response to the allegations contained in paragraph 34 of the Complaint, Defendants reassert their responses to paragraphs 1 – 33 of the Complaint, inclusive, as if repeated verbatim herein.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint as stated. Defendants admit that the Amended and Restated Executive Employment Agreements constitute a valid contract with CertusHoldings.

36. In response to the allegations contained in paragraph 36 of the Complaint Defendants admit that Plaintiffs employment was terminated without cause on April 9, 2014. Defendants deny the remaining allegations contained in paragraph 36 of the Complaint as stated.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint as stated.

38. Defendants deny the allegations contained in paragraph 38 of the Complaint as stated.

39. Defendants deny the allegations contained in paragraph 39 of the Complaint as stated.

40. Defendants deny the allegations contained in paragraph 40 of the Complaint as stated.

41. Defendants deny that Plaintiffs are entitled to any relief prayed for in the Complaint, including the relief set forth in the pray for relief immediately following paragraph 40 of the Complaint.

42. Defendants deny that the Plaintiffs have suffered damages and are entitled to any relief prayed for in the Complaint.

43. Defendant denies that Plaintiffs are entitled to have their causes of action against CertusBank determined by a jury. Plaintiffs' causes of action against CertusBank are subject to arbitration.

44. Defendants deny any allegations contained in the Complaint that are not otherwise admitted, denied or referred to upon information and belief.

SECOND DEFENSE

Plaintiffs' causes of action asserted against Defendants are subject to arbitration in accordance with the arbitration provision contained in Plaintiffs' Amended and Restated Executive Employment Agreements pursuant to the Federal Arbitration Act, 9 U.S.C. §1, *et. seq.* The parties are filing a joint motion to stay the case pending arbitration.

THIRD DEFENSE

All actions taken by Defendants with respect to Plaintiffs were justified; reasonable; in good faith; without improper motives, purpose, or means; and without any ill will, malice, or intent to injure Plaintiffs.

FOURTH DEFENSE

Plaintiffs are not entitled to severance under the terms of their Amended and Restated Executive Employment Agreements because Plaintiffs have not signed a general release and waiver of claims against Defendants.

FIFTH DEFENSE

Plaintiffs are not entitled to the remaining 22 months of salary and medical benefits remaining on their Amended and Restated Executive Employment Agreements because Plaintiffs fail to cite to any provision in the Agreements entitling them to any remaining salary or benefits.

SIXTH DEFENSE

Plaintiffs are not entitled to damages in the amount of 22 months' salary and termination without cause penalty damages because an award of both damages constitutes a double dip for Plaintiffs and a windfall.

SEVENTH DEFENSE

Plaintiffs' claims for damages are limited by the election of remedies defense.

EIGHTH DEFENSE

CertusHoldings lawfully terminated Plaintiffs employment on April 9, 2014 in accordance with the terms of their Amended and Restated Executive Employment Agreements.

NINTH DEFENSE

Defendants reserve the right to assert additional defenses and do not waive any additional defenses that may be revealed by information that may be acquired through discovery or otherwise. Defendants further reserve the right to assert the after acquired evidence defense.

TENTH DEFENSE

Defendants have failed to assert a proper claim for attorneys' fees in this case.

ELEVENTH DEFENSE

By pleading affirmative defenses, Defendants expressly do not undertake any burden of proof ordinarily borne by the Plaintiffs.

TWELTH DEFENSE

Any award of damages to Plaintiffs should be appropriately limited as a result of any failure by Plaintiffs to mitigate their damages.

THIRTEENTH DEFENSE

Defendants discharged their duties to the Plaintiffs in good faith, with due care, and in a manner which Defendants believed was in the best interests of the Bank and its shareholders. In discharging its duties, Defendants relied on information, opinions, reports, and statements prepared by the officers and employees of the Bank which it reasonably believed to be reliable and competent in the matters presented.

FOURTEENTH DEFENSE

Plaintiffs have failed to state a claim for relief against CertusBank because Plaintiffs' Amended and Restated Executive Employment Agreements are with CertusHoldings not CertusBank. CertusBank should be dismissed as a Defendant in this case as Plaintiffs have failed to plead a claim for relief against CertusBank.

FIFTHTEENTH DEFENSE

At all times Defendants acted in full compliance with the requirements of S.C. Code §33-8-300.

SIXTEENTH DEFENSE

Defendants cannot legally make the alleged severance payments owed pursuant to Plaintiffs' Amended and Restated Executive Employment Agreements due to regulatory prohibitions set forth in 12 C.F.R. § 359. Defendants assert the defense of impracticability.

SEVENTEENTH DEFENSE

Defendants hereby give notice that they intend to rely on such other further defenses as may become available during discovery in this action and reserve the right to amend its Answer to assert any such defenses.

WHEREFORE, Defendants prays as follows:

a. That judgment be granted in its favor and that the Complaint be dismissed with prejudice.

b. That Plaintiffs recover nothing from Defendants.

c. That the costs and other expenses of litigation be taxed to Plaintiffs.

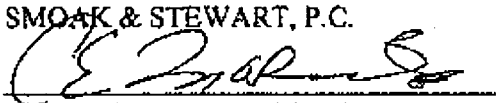
d. That Defendants be awarded reasonable attorneys' fees in defending this matter.

e. For such other and further relief as the Court deems just and proper.

Dated this 6th day of January, 2016

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.



Charles E. McDonald III (# 9612)
L. Gray Geddie, Jr. (#2397)

Attorneys for Defendants,
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CertusHoldings, Inc.

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IN THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

CIVIL ACTION NO. 2014-CP-23-05970

Milton Jones, Jr., Walter Davis and Angela Webb,

Plaintiffs,

v.

CertusBank, N.A.,

Defendants.

FILED-CLERK OF COURT
2016 JAN 6 PM 3 15
PAUL E.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2016, a true and correct copy of **DEFENDANTS' ANSWER TO COMPLAINT** was served by U.S. Mail, postage prepaid, upon Plaintiffs' counsel of record at the following address:

Richard A. Harpootlian (S.C. Bar No. 2725)
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rah@harpootlianlaw.com (email)

Charles E. McDonald III

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015:-CP-23-05554

FILED-CLERK OF COURT
2016 JAN 6 PM 3 15
PAUL D. [illegible]

JOINT MOTION TO STAY PROCEEDING PENDING ARBITRATION

Plaintiffs, Milton Jones, Jr., Walter Davis, and Angela Webb and Defendants, CertusBank, N.A. and CertusHoldings, Inc., by and through their counsel, jointly move the Court for an Order staying this action pending arbitration pursuant to Rule 7 of the South Carolina Rules of Civil Procedure and the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et. seq.*

The parties are in agreement that Plaintiffs' claims asserted against Defendants are subject to arbitration pursuant to Plaintiffs' Amended and Restated Executive Employment Agreements (hereinafter "Agreements") (copies attached to Complaint as Attachments A-C).

For the foregoing reasons, the parties respectfully request that this Court enter an Order staying the case pending arbitration.

[SIGNATURE PAGE TO FOLLOW]

ENTERED COMPUTER

Dated this 6th day of January, 2016

Respectfully submitted,

Richard A. Harpootlian (SC Bar No. 2725)
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Attorneys for Plaintiffs

Respectfully submitted,

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Attorneys for Defendant CertusBank, N.A.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Milton Jones, Jr., Walter Davis and Angela Webb,

Plaintiffs,

v.

CertusBank, N.A. and CertusHoldings, Inc.,

Defendants

C/A NO: 2015:-CP-23-05554

FILED-CLERK OF COURT
2016 JAN 6 PM 3 15
PAUL D. BRASHIER

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2016, a true and correct copy of **JOINT MOTION TO STAY PROCEEDING PENDING ARBITRATION** was served by U.S. Mail, postage prepaid, upon Plaintiffs' counsel of record at the following address:

Richard A. Harpootlian (S.C. Bar No. 2725)
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(telephone)
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rah@harpootlianlaw.com (email)

Charles E. McDonald III

22557504.1

ENTERED COMPUTER

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiff, vs. CertusBank, N.A. and CertusHoldings, Inc., Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-23-05554 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

FILED-CLERK OF COURT 2016 JAN 8 PM 3:14 GREENVILLE, S.C.

Plaintiff's Attorney:	Defendant's Attorney:
Richard A. Harpootlian, Bar No. 2725 Address: P.O. Box 1090 Columbia, SC 29202 Phone: 803-252-4848Fax 803-252-4810 E-mail: rah@harpootlianlaw.comOther: ____	Charles E. McDonald, III, Bar No. 9612 Address: P.O. Box 2757 Greenville, SC 29602 Phone: 864-271-1300 Fax864-242-0037 E-mail: charles.mcdonald@ogletreedeakins.com Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant — Date submitted: 01/06/2015

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date:

CLERK'S VERIFICATION

Collected by: Snl Date Filed: 1-8-16
☒ MOTION FEE COLLECTED: $ 25

QCH 81006152
Ogletree

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL H. WICKENSIMER
2016 JAN 21 PM 4:18

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2305554

PLAINTIFF(S)		DEFENDANT(S)	
Milton Jones Jr Angela Webb	Walter Davis	CertusBank NA	CertusHoldings Inc

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

The Joint Motion to Stay Pending Arbitration is GRANTED. This case is hereby STAYED pending the completion of the Arbitration process.

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

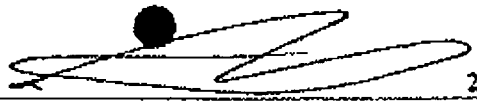
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)



2158 11/7/16

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on 11/21/16, and a copy mailed first class or placed in the appropriate attorney's box on 11/21/16, to attorneys of record or to parties (when appearing pro se) as follows:

Richard A. Harpootlian PO Box 1090 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

Charles Edgar McDonald III Ogletree Deakins Nash Smoak & Stewart P.O. Box 2757 Greenville, SC 29602
L. Gray Geddie Jr. Ogletree Deakins PO Box 2757 Greenville, SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2017 Mar 23 1:33 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP230554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **MOTION FOR AN ORDER CONFIRMING ARBITRATION AWARD AND ENTERING JUDGMENT**

Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb hereby enroll an arbitration award in their favor and move the Court for an order confirming the award and enrolling judgment in the amounts awards by the arbitrator.

On September 9, 2015, Plaintiffs filed this action in the Greenville County Court of Common Pleas. Defendants CertusBank N.A. and CertusHoldings, Inc. answered. On January 6, 2016, the parties filed a joint motion to stay this proceeding to pursue arbitration. That motion noted, "[t]he parties are in agreement that Plaintiffs' claims asserted against Defendants are subject to arbitration[.]" On January 21, 2016, the Court entered an Order staying this action pending the completion of the Arbitration process.

The dispute was submitted for arbitration to Thomas W. Traxler, Esquire (Arbitrator). On March 17, 2017, the Arbitrator issued an award in Plaintiffs' favor, awarding $340,000 to Mr. Jones, $325,000 to Mr. Davis, and $300,000 to Ms. Webb against CetusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc., the surviving entity of CertusBank, N.A. The Arbitrator's award is attached here as **Exhibit A**. "In or about November 2015 a now corporation, CBSub, Inc., was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any

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liabilities the bank may owe to the Plaintiff." See Stip. Claims & Facts at ¶24 (attached as **Exhibit B**); see also S.C. Code Ann. §33-11-106. This motion followed.

South Carolina Code § 15-48-120 provides that "[u]pon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140." S.C. Code Ann. § 15-48-120 (2005). The statutory exceptions incorporated in § 15-48-120 provide procedures to vacate or modify an award because of fraud, partiality, ultra vires acts, miscalculation, mistake, or other procedural defects not present here. See id. § 15-48-130 & -140. No such motion is pending.

"Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree." Id. § 15-48-150. Accordingly, Plaintiffs hereby enroll the Arbitrator's award and respectfully request that the Court enter judgment in favor of the Plaintiffs as follows:

1. Judgment in favor of Plaintiff Milton Jones in the amount of three hundred and forty thousand and 00/100 ($340,000.00) dollars;
2. Judgment in favor of Plaintiff Walter Davis in the amount of Three hundred and twenty-five thousand and 00/100 ($325,000.00) dollars; and
3. Judgment in favor of Plaintiff Angela Davis in the amount of three hundred thousand ($300,000.00) dollars.

[signature page follows]

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Respectfully submitted by,

s/Richard A. Harpootlian
Richard A. Harpootlian (SC Bar No. 2725)
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ATTORNEYS FOR PLAINTIFFS

March 21, 2017
Columbia, South Carolina.

ELECTRONICALLY FILED - 2017 Mar 23 1:33 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Jones v. Certus Bank, N.A.
C/A No.: 2015CP230554
Plaintiffs' Motion for an Order Confirming Arbitration Award and Entering Judgment

EXHIBIT A

(Arbitration Award, Mar 17, 2017)

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, And Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants.	)	**ARBITRATION AWARD** C.A. No.: 2015-CP-23-05554

FINDINGS OF FACT

1. Each of the Plaintiffs entered into an Amended and Restated Executive Employment Agreement ("Employment Agreement(s)") with Blue Ridge Holdings, Inc., and the terms of each of the Employment Agreements for the Plaintiffs are identical except for the amount of compensation.

2. CertusBank, N.A. is a wholly-owned subsidiary of Blue Ridge Holdings, Inc.

3. Blue Ridge Holdings, Inc. subsequently became known as CertusHoldings, Inc.

4. Each Employment Agreement for each Plaintiff provided for each Plaintiff to be paid a "lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) month's salary, at the rate in effect on the date the Executive's employment terminates..." [¶33 of each Employment Agreement]. I refer to this simply as the lump sum payment in this Award.

5. If the Plaintiff Milton Jones is determined to be entitled to severance, the amount of severance to Plaintiff Jones is $340,000.

6. If the Plaintiff Walter Davis is determined to be entitled to severance, the amount of severance to Plaintiff Davis is $325,000.

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7. If the Plaintiff Angela Webb is determined to be entitled to severance, the amount of severance to Plaintiff Webb is $300,000.

8. Plaintiffs were terminated without cause pursuant to their respective Employment Agreements on April 9, 2014, by the Combined CertusHoldings, Inc. and CertusBank's Board of Directors. In place as of the date of termination of each of the Plaintiffs on April 9, 2014, were a statute and Regulations prohibiting payment of "golden parachute payments" by financial institutions in a "troubled condition." See below.

9. CertusBank's status as an independent depository institution terminated on or about October 23, 2015, via an Order of Approval of Termination of Insurance by the FDIC.

10. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

11. In or about November, 2015, with the surrender of its charter as a national bank to the OCC, CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

12. In or about November, 2015, a new corporation, CBSUB, Inc. was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any liabilities the bank may owe the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

13. CBSUB is not a bank and is not regulated by the OCC and FDIC.

14. Although all of the Stipulation of Claims and Facts between the parties and dated March 1, 2016 are not reiterated here, they are nonetheless my findings as well.

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ISSUES

1. **Which of the "Certus entities" is contractually liable to each of the Plaintiffs for any payments provided for in ¶33 of each Plaintiff's Employment Agreement?**

A legal distinction must be made between the various "Certus entities." CertusBank, N.A. is a subsidiary of CertusHoldings, Inc., which was formerly known as Blue Ridge Holdings, Inc. Each of the Plaintiffs entered into his or her Employment Agreement with Blue Ridge Holdings, Inc. as the named "Company" for an exchange of responsibilities and services by each executive for the compensation set out in the respective Employment Agreements. The face of each Employment Agreement appears to render Blue Ridge Holdings, Inc. as the obligor for payment of compensation. Each of the Plaintiffs bargained to perform services for the "Company," which is defined under the Employment Agreement to be Blue Ridge Holdings, Inc. However, in actuality, the Plaintiffs served in executive capacities for CertusBank, N.A., which also apparently undertook to pay the Plaintiffs, blurring and apparently ignoring any distinction between the Defendants. While I do not consider it to be in the province of an arbitrator or any court to rewrite any contract or realign the parties, I must recognize the alignment and actual course of dealing between the parties and give legal effect to that which the parties undertook if it can be reconciled with the Employment Agreements. Whether it be through invocation of an implied novation or delegation of contractual duties or by judicial estoppel or concluding that Blue Ridge Holding, Inc. was an undisclosed principal for CertusBank, I am compelled to recognize the true substance of the relationship between the parties that governed their conduct and enforce it.

I, therefore, conclude that just as CertusHoldings, Inc./Blue Ridge Holdings, Inc. and CertusBank, N.A. considered CertusBank, N.A. to be an obligor under the respective

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Employment Agreements, so, too, must I recognize CertusBank, N.A. as obligated under Paragraph 33 of each Employment Agreement. Apparently, CertusBank, N.A. paid the regular periodic compensation of the Plaintiffs, and there is no logical reason to find that it had no obligation under Paragraph 33. Just as it found it appropriate to pay the Plaintiffs their salary, so too, is it obligated to make any payments due under Paragraph 33. This finding is buttressed not only by the course of dealing between the parties but also by Stipulations in this matter and filings in the Federal Court case of *Milton Jones, Jr. et al v. CertusBank, N.A.*, et al 6:16-cv-1633, especially CertusBank moving to compel arbitration under the various Employment Agreements.

I, therefore, hold that CertusBank, N.A. as well as CertusHoldings, Inc. may both be liable to each of the Plaintiffs under each Plaintiff's Employment Agreement. Hereafter, CertusBank, N.A. and CertusHoldings, Inc. are collectively referred to as CertusBank with the same rights and obligations.

2. **Are payments of the compensation set forth in ¶33 of each Employment Agreement prohibited as "golden parachute payments" pursuant to 12 USC §1828(k) and 12 CFR §359.1 and is CertusBank's obligation discharged?**

There are several issues which now arise: (1) is the provision of a release and waiver of claims a condition precedent to CertusBank's obligation to pay that has not occurred, and (2) to what extent does any determination that such payments are "golden parachute payments" affect any liability under the Employment Agreements?

First, the Defendants argue that each Employment Agreement required each Plaintiff to deliver to CertusBank a waiver and release of claims prior to any right to receive the severance payments. In particular, the Employment Agreement provides:

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> The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer....

The Defendants assert this provision as a condition precedent to its obligation to make those payments. It is certainly true as a matter of contract law that any promise that is conditioned upon the occurrence of a condition precedent does not become absolute until and unless that condition precedent has either been met or has been waived. Until such condition precedent has been met or has been waived, the promisor's obligation to perform does not become absolute and unconditional, and a party is not liable for breach of a contract unless its promise has become unconditional and absolute.

I do not find the foregoing provision to be a condition precedent, but instead to be a condition concurrent. A condition concurrent means that each party's performance is to be tendered and rendered simultaneously, and the tender of each party's promise is an implied or constructive condition precedent to the other party's performance. In this instance, the exchange of performances of the release/waiver, on the one hand, and the payment of the lump sum payment, on the other hand, are expected to occur simultaneously. In order to recover from another party for breach of a contract with conditions concurrent, the "aggrieved" party must tender its performance in order to make the other party's promise absolute and unconditional. In this instance, CertusBank has denied liability and has not tendered its performance. Therefore, the duty to provide any such release has not yet arisen. That matter becomes ripe upon offer of payment. Even if the release and waiver must first be provided as a condition precedent, it still is not ripe since CertusBank has announced that it cannot pay the compensation. CertusBank cannot expect delivery of a release/waiver until it has indicated a willingness to perform.

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I, therefore, conclude that the tender of a release was not a condition precedent, and such defense is premature.

I next reach the issue of whether the payment of a lump sum amount of a year's compensation constitutes a "golden parachute payment" within the meaning of 12 CFR §359 and is barred pursuant to 12 USC §1828(k) and its effect on any contractual obligation on the part of CertusBank.

The Plaintiffs challenge whether I have authority to determine whether such payments are golden parachute payments or not. The Plaintiffs also assert that I do not have authority to alter or modify the Employment Agreements.

I find that I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute. My authority is limited to that to which the parties agree, and there does not appear to be any agreement on this issue. I can only determine the effect on the contractual obligations if the payments are indeed golden parachute payments.

Code section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.

I do have authority, however, to determine if any such bar discharges CertusBank's obligation under the Employment Agreement or merely renders it potentially unenforceable.

The Defendants urge me to rule that the doctrine of impossibility of performance discharges the duty of CertusBank to pay. That doctrine provides that a party's obligation to perform a contractual obligation is discharged (without being liable for nonperformance) if it is

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objectively impossible for anyone to perform that obligation. If that defense is applicable, it discharges CertusBank's contractual obligation to make the lump sum payment.

I find that there are exceptions to the bar against golden parachute payments as provided in the Regulations. I further find that a party may seek approval of the FDIC for payment despite any bar. I do not find that any bar operates to discharge the bank's performance or obligation. If the bar is applicable, then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable. I find that any bar, if there is one, does not affect CertusBank's liability to the Plaintiff's but that any applicable bar simply renders that provision unenforceable to the extent of any applicable bar. To hold that the contractual obligation to make the lump sum payment is discharged, that would be inconsistent with seeking FDIC permission for payment of the contractual obligation, and that would lead to incongruous results.

I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc.) are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

Finally, CBSUB, Inc. is the successor corporation to the dissolved CertusBank, N.A. To the extent that CertusBank has liability to the Plaintiffs, those liabilities have been assumed by CBSUB, Inc., and it is liable to each Plaintiff. However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC

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golden parachute statute and Regulations. Therefore, liability for the lump sum payments remains with CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc.

Therefore, I hold:

1. CertusBank, N.A. and CertusHoldings, Inc. and CBSUB, Inc. are liable to each Plaintiff under each Plaintiff's Employment Agreement.
2. Any Federal FDIC bar to golden parachute payments does not discharge the contractual liability of CertusBank, N.A., CertusHoldings, Inc. or CBSUB , Inc. to make the lump sum payment to each of the Plaintiffs under Paragraph 33 of their respective Employment Agreements, but instead may render them unenforceable to the extent that the bar against golden parachute payments prohibits payment.
3. I do not decide whether such payments are in fact barred under 12 USC §1828(k) and 12 CFR §359. If that issue is submitted to me, then I shall make that decision.

Thomas W. Traxler (SC Bar #5624) ARBITRATOR
CARTER, SMITH, MERRIAM,
ROGERS & TRAXLER, P.A.
900 E. North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
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tom.traxler@carterlawpa.com

Dated: ~~February 28, 2017~~ March 17, 2017
Greenville, South Carolina

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Jones v. CertusBank, N.A.
C/A No.: 2015CP230554
Plaintiffs' Motion for an Order Confirming Arbitration Award and Entering Judgment

EXHIBIT B

(Stipulation of Claims and Facts, Mar 1, 2016)

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ARBITRATION
THOMAS W. TRAXLER – ARBITRATOR

Milton Jones, Jr., Walter Davis, and Angela Webb,	)
	)
Plaintiffs,	)
v.	)
	)
CertusBank N.A., and CertusHoldings, Inc.,	)
	)
Defendants.	)

STIPULATION OF CLAIMS AND FACTS

The parties to this action stipulate to the following:

Stipulation of Legal Claim

1. Plaintiffs have instituted a breach of contract claim against Defendants based on their respective Amended and Restated Executive Employment Agreements.

2. Plaintiff Walter Davis seeks damages for failure to pay severance pursuant to his Amended and Restated Executive Employment Agreement in the amount of $325,000.

3. Plaintiff Milton Jones seeks damages for failure to pay severance pursuant to his Amended and Restated Executive Employment Agreement in the amount of $340,000.

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4. Plaintiff Angela Webb seeks damages for failure to pay severance pursuant to his Amended and Restated Executive Employment Agreement in the amount of $300,000.

5. Plaintiffs have agreed to withdraw their claim for relief for twenty-two (22) months of remaining salary and twenty-two (22) months of medical benefits alleged as damages in the Complaint.

Stipulation of Facts

The parties stipulate to the following facts:

1. At different times relevant to this litigation, Plaintiff Jones was Chairman of the Board, President, and CEO of CertusBank.

2. At different times relevant to this litigation, Plaintiff Davis was CEO, Co-CEO, Chief Credit Officer, and Senior Executive Vice President of CertusBank.

3. At different times relevant to this litigation, Plaintiff Webb was President, Senior Executive Vice President, and Chief Administrative Officer of CertusBank.

4. CertusBank, N.A. was a subsidiary of CertusHoldings, Inc. (formerly Blue Ridge Holdings, Inc.).

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5. Plaintiff Davis entered into an Amended and Restated Executive Employment Agreement with Blue Ridge Holdings, Inc. on or about February 22, 2011. (*Exhibit A)*

6. Plaintiff Jones entered into an Amended and Restated Executive Employment Agreement with Blue Ridge Holdings, Inc. on or about February 22, 2011. (*Exhibit B*)

7. Plaintiff Webb entered into an Amended and Restated Executive Employment Agreement with Blue Ridge Holdings, Inc. on or about February 22, 2011. (*Exhibit C)*

8. Except for the annual compensation amount, the terms of the Amended Restated Executive Employment Agreements are essentially identical for all three Plaintiffs.

9. Pursuant to Section H of Plaintiffs' respective Amended and Restated Executive Employment Agreements, each Plaintiff is entitled to severance if their employment terminated under certain circumstances.

10. Pursuant to Paragraph 33 of the Amended and Restated Executive Employment Agreements, each Plaintiff was scheduled to receive a lump sum cash payment in an amount equal to twelve (12) months' salary at the rate in effect on the date Plaintiff's employment terminates.

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11. Plaintiffs will not be entitled to receive the additional benefits described in Paragraph 33 unless they execute a General Release and Waiver of Claims.

12. Plaintiffs were terminated without cause pursuant to their respective Amended and Restated Executive Employment Agreements on April 9, 2014 by the Combined CertusHoldings, Inc. and CertusBank Boards of Directors.

13. As of April 9, 2014, the date of Plaintiffs' termination, their respective Amended and Restated Executive Employment Arguments with Blue Ridge Holdings, Inc. were the applicable agreements for their employment with CertusBank, N.A.

14. Plaintiff Jones and Plaintiff Davis remained members of the CertusBank Board of Directors after their terminations until June 2015.

15. Plaintiffs' termination without cause on April 9, 2014 triggered the severance pay provision in Paragraph 33 of the respective Amended and Restated Executive Employment Agreements. There are no other facts or circumstances that Plaintiffs contend triggered a right to payment under the Amended and Restated Executive Employment Agreements.

16. At the time Plaintiffs were terminated on April 9, 2014, the Office of the Comptroller of the Currency ("OCC") had designated CertusBank to be in "troubled condition" pursuant to 12 CFR § 303.101(c).

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17. CertusBank has not paid severance to Plaintiffs because it is CertusBank's position that it is legally prohibited from making such severance payments because such payments constitute a "golden parachute payment" set forth in 12 CFR § 359.1.

18. If Plaintiff Milton Jones is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Jones is $340,000.

19. If Plaintiff Walter Davis is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Davis is $325,000.

20. If Plaintiff Angela Webb is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Webb is $300,000.

21. CertusBank's status as an insured depository institution terminated on or about October 23, 2015 via an Order of Approval of termination of insurance by the FDIC.

22. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

23. In or about November, 2015 with the surrender of its charter as a national bank to the OCC CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

24. In or about November, 2015 a new corporation, CBSUB, Inc., was incorporated to receive the residual assets and liabilities of CertusBank, N.A.,

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including any liabilities the bank may owe to the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

25. CBSUB, Inc. is not a bank and is not regulated by the OCC and FDIC. CBSUB, Inc.'s principal place of business is located at 24 Poinsett Avenue, Greenville, South Carolina. CBSUB, Inc. maintains a bank account at SunTrust Bank, Greenville, South Carolina.

Dated this 1st day of March, 2016

Respectfully submitted,

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(SC Bar No. 2725)
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Respectfully submitted,

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Attorneys for Defendant CertusBank, N.A.

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Exhibit A

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AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This **AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and Walter L. Davis, an individual resident of the State of North Carolina ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Vice Chairman and Chief Credit Officer of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

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that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Twenty-Five Thousand Dollars ($325,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase 270,351 shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of 118,135 shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms

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and conditions of that agreement and the Plan. The shares of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

e. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of his duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Vice Chairman and Chief Credit Officer of the Company and shall faithfully devote his best efforts and all of his business time to his position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by his position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of

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directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts. In addition, the new duties and responsibilities must be consistent with the Executive's role as the Vice Chairman and Chief Credit Officer of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, he has a fiduciary duty of loyalty to the Employer and its affiliates, and that he will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on his own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for himself or herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of his employment with the Employer, he will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In his position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of his employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by

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this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that he has no agreements with, or obligations to, any party, and during the term of this Agreement he will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of his employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees

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that during the continuation of this Agreement and for a period of one year following the termination of this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that his obligations under this Section D shall not be assignable by him or her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which he may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting

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bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

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e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

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26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or his estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing his duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of his duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of his duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform his duties will be final and binding. During any period prior to termination during which the Executive fails to perform his duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive his full salary at the rate then in effect for such period until his employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to his estate in the event of his subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to his estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with his duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in his possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-57 shall survive the termination of this Agreement.

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G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

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The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section f, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

I. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that his rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to him under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and other

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applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing; and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

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Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(h)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

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42. The Executive acknowledges and agrees that his obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. **THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.**

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to his employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

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the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make himself or herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

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creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that his service as an employee of the Employer will not violate any agreement: (i) he has made that prohibits him or her from disclosing any information he acquired prior to him or her becoming employed by the Employer; or (ii) he has made that prohibits him or her from accepting employment with the Employer or that will interfere with his compliance with the terms of this Agreement. Executive further represents that he has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed him or her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chairman

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If to Executive:
9521 Greyson Ridge Drive
Charlotte, North Carolina 28277

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

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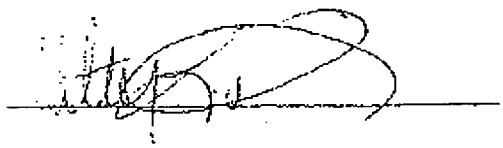
[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte, NC.

WALTER L. DAVIS



BLUE RIDGE HOLDINGS, INC.

By:

Name: Milton H. Jones Jr.

Title: Chairman, CEO & President

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Exhibit B

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AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This **AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and Milton H. Jones Jr., an individual resident of the State of Georgia ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Chairman, President and Chief Executive Officer of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

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that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Forty Thousand Dollars ($340,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase 270,351 shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of 118,135 shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms

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and conditions of that agreement and the Plan. The shares of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

e. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of his duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Chairman, President and Chief Executive Officer of the Company and shall faithfully devote his best efforts and all of his business time to his position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by his position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of

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directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts. In addition, the new duties and responsibilities must be consistent with the Executive's role as the Chairman, President and Chief Executive Officer of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, he has a fiduciary duty of loyalty to the Employer and its affiliates, and that he will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on his own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for himself or herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of his employment with the Employer, he will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In his position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of his employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by

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this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that he has no agreements with, or obligations to, any party, and during the term of this Agreement he will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of his employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees

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that during the continuation of this Agreement and for a period of one year following the termination of this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that his obligations under this Section D shall not be assignable by him or her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which he may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting

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bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

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e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

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26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or his estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing his duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of his duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of his duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform his duties will be final and binding. During any period prior to termination during which the Executive fails to perform his duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive his full salary at the rate then in effect for such period until his employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to his estate in the event of his subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to his estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with his duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in his possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-57 shall survive the termination of this Agreement.

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G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

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The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

I. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that his rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to him under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and

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other applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing; and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

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Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(h)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

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42. The Executive acknowledges and agrees that his obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. **THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.**

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to his employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

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the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make himself or herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

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creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that his service as an employee of the Employer will not violate any agreement: (i) he has made that prohibits him or her from disclosing any information he acquired prior to him or her becoming employed by the Employer; or (ii) he has made that prohibits him or her from accepting employment with the Employer or that will interfere with his compliance with the terms of this Agreement. Executive further represents that he has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed him or her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chief Operating Officer

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If to Executive:
233 Peachtree Circle, NE
Atlanta, Georgia 30309

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

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[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte NC.

MILTON H. JONES, JR.

BLUE RIDGE HOLDINGS, INC.

By: B. Angela

Name: B. Angela Webb

Title: Senior Executive Vice President

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Jones v. CertusBank, N.A.
C/A No.: 2015CP230554
Plaintiffs' Motion for an Order Confirming Arbitration Award and Entering Judgment

EXHIBIT B
Part II
(Stipulation of Claims and Facts, Mar 1, 2016)

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Exhibit C

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AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This **AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and K. Angela Webb, an individual resident of the State of North Carolina ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Executive Vice President, Treasurer and Assistant Secretary of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

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that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Thousand Dollars ($300,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase ninety thousand five hundred forty-seven (90,547) shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of forty-six thousand eight hundred fifty (46,850) shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms and conditions of that agreement and the Plan. The shares

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of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

c. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of her duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Executive Vice President, Treasurer and Assistant Secretary of the Company and shall faithfully devote her best efforts and all of her business time to her position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by her position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts.

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In addition, the new duties and responsibilities must be consistent with the Executive's role as the Executive Vice President, Treasurer and Assistant Secretary of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, she has a fiduciary duty of loyalty to the Employer and its affiliates, and that she will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on her own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 15, 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of her employment with the Employer, she will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In her position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of her employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective

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customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that she has no agreements with, or obligations to, any party, and during the term of this Agreement she will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of her employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees that during the continuation of this Agreement and for a period of one year following the termination of

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this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that her obligations under this Section D shall not be assignable by her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which she may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions

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to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

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e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

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26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or her estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing her duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of her duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of her duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform her duties will be final and binding. During any period prior to termination during which the Executive fails to perform her duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive her full salary at the rate then in effect for such period until her employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to her estate in the event of her subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to her estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with her duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in her possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-57 shall survive the termination of this Agreement.

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G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

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The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

I. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that her rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to her under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and

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other applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing; and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

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Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(b)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

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42. The Executive acknowledges and agrees that her obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. **THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.**

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to her employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

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the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

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creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that her service as an employee of the Employer will not violate any agreement: (i) she has made that prohibits her from disclosing any information she acquired prior to her becoming employed by the Employer; or (ii) she has made that prohibits her from accepting employment with the Employer or that will interfere with her compliance with the terms of this Agreement. Executive further represents that she has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chairman

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If to Executive:
6005 Oxfordshire Road
Waxhaw, North Carolina 28173

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

ELECTRONICALLY FILED - 2017 Mar 23 1:33 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte NC.

K. ANGELA WEBB

BLUE RIDGE HOLDINGS, INC.

By:

Name: Milton H. Jones Jr.

Title: Chairman, CEO and President

ELECTRONICALLY FILED - 2017 Mar 27 2:35 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **ORDER GRANTING PLAINTIFFS' MOTION FOR AN ORDER ENTERING JUDGMENT OF THE ARBITRATION AWARDS**

THIS MATTER comes before the Court on Plaintiffs' Motion and pursuant to South Carolina Code § 15-48-120 for an order confirming an arbitration award issued by arbitrator Thomas W. Traxler, Esq. on March 17, 2017 and entry of judgment in Plaintiffs' favor. The arbitration award has been issued and enrolled in this matter,

IT IS THEREFORE ORDERED that the award is confirmed and judgment is hereby entered in favor of the Plaintiffs as follows:

1. Judgment in favor of Plaintiff Milton Jones in the amount of three hundred and forty thousand and 00/100 ($340,000.00) dollars;
2. Judgment in favor of Plaintiff Walter Davis in the amount of Three hundred and twenty-five thousand and 00/100 ($325,000.00) dollars; and
3. Judgment in favor of Plaintiff Angela Davis in the amount of three hundred thousand ($300,000.00) dollars.

The judgments shall be against the named Defendants and CBSub, Inc. as successor corporation to CertusBank, N.A.

[signature page follows]

ELECTRONICALLY FILED - 2017 Mar 27 2:35 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

AND IT IS SO ORDERED.

_____
Presiding Circuit Court Judge

_____, 2017

_____, South Carolina.

ELECTRONICALLY FILED - 2017 Mar 27 2:35 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb
PLAINTIFF(S)

CertusBank, NA and CertusHoldings, Inc.
DEFENDANT(S)

Submitted by: Richard A. Harpootlian	Attorney for: ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Arbitrator Award Issued

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2017 Mar 27 2:35 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2017 Mar 27 2:35 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Judgment and Form 4

Motion/Order Denied

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2017-03-27 06:26:19 page 5 of 5

ELECTRONICALLY FILED - 2017 Mar 28 3:06 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

OPPOSITION TO MOTION FOR AN ORDER CONFIRMING ARBITRATION AWARD AND ENTRY OF JUDGMENT AND MOTION TO STAY

Defendants, CertusBank, N.A. and CertusHoldings, Inc. (collectively "CertusBank"), file this Opposition to Plaintiffs' Motion for an Order Confirming Arbitration Award and Entry of Judgement.

On March 17, 2017, Thomas W. Traxler, Arbitrator, concluded that pursuant to the terms of each Plaintiff's Amended and Restated Executive Employment Agreements ("Employment Agreements") with Blue Ridge Holdings, Inc. that Plaintiff Milton Jones is entitled to severance in the amount of $340,000.00; that Plaintiff Walter Davis is entitled to severance in the amount of $325,000.00; and, Plaintiff Angela Webb is entitled to severance in the amount of $300,000.00. (Arbitration Award at 1-2) (*Exhibit 1*).

Defendants do not dispute the Arbitrator's finding that Plaintiffs are entitled to severance pursuant to the terms of their Employment Agreements; however, Defendants do oppose entry of judgment ordering the payment of severance to Plaintiffs. The entry of judgment ordering the payment of severance payments in this case is premature and should be stayed pending final determination by the FDIC as to whether CertusBank can legally pay the severance amounts pursuant to 12 U.S.C. § 1828(k).

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The facts are undisputed that at the time Plaintiffs were terminated without cause pursuant to their respective Employment Agreements on April 9, 2014, CertusBank had been designated by its primary federal regulatory, the Office of the Comptroller of the Currency, to be in "troubled condition" and was prohibited under federal banking law from making "golden parachute payments" to the Plaintiffs. (Arbitration Award at 2). While the Arbitrator found the Plaintiffs were entitled to severance pursuant to the terms of their Employment Agreements, the Arbitrator further determined that he did not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute payment under federal banking law. The Arbitrator recognized that 12 U.S.C. § 1828(k) authorizes the FDIC to bar payment of golden parachute payments subject to certain exceptions.[1] However, the Arbitrator found that those exceptions were not for him to decide. (Arbitration Award at 6). The Arbitrator specifically recognized that he could not bind the parties to any determination regarding whether the severance payments constitute prohibited golden parachute payments under 12 U.S.C. § 1828(k). (Arbitration Award at 6). Because the Arbitrator was not authorized to make a decision on whether the severance payments owed to Plaintiffs constitute golden parachute payments and, thus, cannot be legally paid by Defendants to Plaintiffs, it is premature for the Court to enter judgment against Defendants. The Arbitrator concluded:

> I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc.) are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

[1] If a payment qualifies as a golden parachute payment, the regulations are clear that "[n]o insured depository institution holding company shall make or agree to make any golden parachute payment, except as provided in [12 C.F.R. Part 359]" 12 C.F.R. § 359.2. The only exception relevant here would be if the FDIC and OCC gave permission for CertusBank to make the payment. See. 12 C.F.R. § 359.4(a)(1). CertusBank has not yet received permission to pay Plaintiffs the incentive payments.

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(Arbitration Award at 7). The Arbitrator recognized that while liability could be determined, judgment could not be entered until the applicability of the golden parachute regulations have been determined by the FDIC.

Defendants do not oppose the entry of an order confirming the Arbitration Award; however, any judgment ordering CertusBank to pay the severance amounts to Plaintiffs is premature and should be stayed until the FDIC determines whether the severance payments constitute golden parachute payments. CertusBank filed applications with the FDIC on or about April 21, 2016 seeking a determination of whether the severance payments owed to Plaintiffs may be legally paid by Defendants or whether such payments constitute prohibited golden parachute payments under applicable federal banking law. Defendants have been in constant contact with the FDIC and expect a determination from the FDIC at any time.

For this reason, Defendants oppose entry of judgment in this case and seek a stay for the entry of judgment in this case until the FDIC has made its determination.

Dated this 28th day of March, 2017.

Respectfully submitted,

s/Charles E. McDonald, III
Charles E. McDonald III (SC Bar No. 9612)
L. Gray Geddie (SC Bar No. 2397)
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
The Ogletree Building
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864.271.1300
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Attorneys for Defendants

29253780.1

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EXHIBIT 1

ELECTRONICALLY FILED - 2017 Mar 28 3:06 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, And Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants.	)	**ARBITRATION AWARD** C.A. No.: 2015-CP-23-05554

FINDINGS OF FACT

1. Each of the Plaintiffs entered into an Amended and Restated Executive Employment Agreement ("Employment Agreement(s)") with Blue Ridge Holdings, Inc., and the terms of each of the Employment Agreements for the Plaintiffs are identical except for the amount of compensation.

2. CertusBank, N.A. is a wholly-owned subsidiary of Blue Ridge Holdings, Inc.

3. Blue Ridge Holdings, Inc. subsequently became known as CertusHoldings, Inc.

4. Each Employment Agreement for each Plaintiff provided for each Plaintiff to be paid a "lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) month's salary, at the rate in effect on the date the Executive's employment terminates..." [¶3 of each Employment Agreement]. I refer to this simply as the lump sum payment in this Award.

5. If the Plaintiff Milton Jones is determined to be entitled to severance, the amount of severance to Plaintiff Jones is $340,000.

6. If the Plaintiff Walter Davis is determined to be entitled to severance, the amount of severance to Plaintiff Davis is $325,000.

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7. If the Plaintiff Angela Webb is determined to be entitled to severance, the amount of severance to Plaintiff Webb is $300,000.

8. Plaintiffs were terminated without cause pursuant to their respective Employment Agreements on April 9, 2014, by the Combined CertusHoldings, Inc. and CertusBank's Board of Directors. In place as of the date of termination of each of the Plaintiffs on April 9, 2014, were a statute and Regulations prohibiting payment of "golden parachute payments" by financial institutions in a "troubled condition." See below.

9. CertusBank's status as an independent depository institution terminated on or about October 23, 2015, via an Order of Approval of Termination of Insurance by the FDIC.

10. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

11. In or about November, 2015, with the surrender of its charter as a national bank to the OCC, CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

12. In or about November, 2015, a new corporation, CBSUB, Inc. was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any liabilities the bank may owe the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

13. CBSUB is not a bank and is not regulated by the OCC and FDIC.

14. Although all of the Stipulation of Claims and Facts between the parties and dated March 1, 2016 are not reiterated here, they are nonetheless my findings as well.

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ISSUES

1. **Which of the "Certus entities" is contractually liable to each of the Plaintiffs for any payments provided for in ¶3 of each Plaintiff's Employment Agreement?**

A legal distinction must be made between the various "Certus entities." CertusBank, N.A. is a subsidiary of CertusHoldings, Inc., which was formerly known as Blue Ridge Holdings, Inc. Each of the Plaintiffs entered into his or her Employment Agreement with Blue Ridge Holdings, Inc. as the named "Company" for an exchange of responsibilities and services by each executive for the compensation set out in the respective Employment Agreements. The face of each Employment Agreement appears to render Blue Ridge Holdings, Inc. as the obligor for payment of compensation. Each of the Plaintiffs bargained to perform services for the "Company," which is defined under the Employment Agreement to be Blue Ridge Holdings, Inc. However, in actuality, the Plaintiffs served in executive capacities for CertusBank, N.A., which also apparently undertook to pay the Plaintiffs, blurring and apparently ignoring any distinction between the Defendants. While I do not consider it to be in the province of an arbitrator or any court to rewrite any contract or realign the parties, I must recognize the alignment and actual course of dealing between the parties and give legal effect to that which the parties undertook if it can be reconciled with the Employment Agreements. Whether it be through invocation of an implied novation or delegation of contractual duties or by judicial estoppel or concluding that Blue Ridge Holding, Inc. was an undisclosed principal for CertusBank, I am compelled to recognize the true substance of the relationship between the parties that governed their conduct and enforce it.

I, therefore, conclude that just as CertusHoldings, Inc./Blue Ridge Holdings, Inc. and CertusBank, N.A. considered CertusBank, N.A. to be an obligor under the respective

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Employment Agreements, so, too, must I recognize CertusBank, N.A. as obligated under Paragraph 33 of each Employment Agreement. Apparently, CertusBank, N.A. paid the regular periodic compensation of the Plaintiffs, and there is no logical reason to find that it had no obligation under Paragraph 33. Just as it found it appropriate to pay the Plaintiffs their salary, so too, is it obligated to make any payments due under Paragraph 33. This finding is buttressed not only by the course of dealing between the parties but also by Stipulations in this matter and filings in the Federal Court case of *Milton Jones, Jr. et al v. CertusBank, N.A.*, et al 6:16-cv-1633, especially CertusBank moving to compel arbitration under the various Employment Agreements.

I, therefore, hold that CertusBank, N.A. as well as CertusHoldings, Inc. may both be liable to each of the Plaintiffs under each Plaintiff's Employment Agreement. Hereafter, CertusBank, N.A. and CertusHoldings, Inc. are collectively referred to as CertusBank with the same rights and obligations.

2. **Are payments of the compensation set forth in ¶33 of each Employment Agreement prohibited as "golden parachute payments" pursuant to 12 USC §1828(k) and 12 CFR §359.1 and is CertusBank's obligation discharged?**

There are several issues which now arise: (1) is the provision of a release and waiver of claims a condition precedent to CertusBank's obligation to pay that has not occurred, and (2) to what extent does any determination that such payments are "golden parachute payments" affect any liability under the Employment Agreements?

First, the Defendants argue that each Employment Agreement required each Plaintiff to deliver to CertusBank a waiver and release of claims prior to any right to receive the severance payments. In particular, the Employment Agreement provides:

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> The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer....

The Defendants assert this provision as a condition precedent to its obligation to make those payments. It is certainly true as a matter of contract law that any promise that is conditioned upon the occurrence of a condition precedent does not become absolute until and unless that condition precedent has either been met or has been waived. Until such condition precedent has been met or has been waived, the promisor's obligation to perform does not become absolute and unconditional, and a party is not liable for breach of a contract unless its promise has become unconditional and absolute.

I do not find the foregoing provision to be a condition precedent, but instead to be a condition concurrent. A condition concurrent means that each party's performance is to be tendered and rendered simultaneously, and the tender of each party's promise is an implied or constructive condition precedent to the other party's performance. In this instance, the exchange of performances of the release/waiver, on the one hand, and the payment of the lump sum payment, on the other hand, are expected to occur simultaneously. In order to recover from another party for breach of a contract with conditions concurrent, the "aggrieved" party must tender its performance in order to make the other party's promise absolute and unconditional. In this instance, CertusBank has denied liability and has not tendered its performance. Therefore, the duty to provide any such release has not yet arisen. That matter becomes ripe upon offer of payment. Even if the release and waiver must first be provided as a condition precedent, it still is not ripe since CertusBank has announced that it cannot pay the compensation. CertusBank cannot expect delivery of a release/waiver until it has indicated a willingness to perform.

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I, therefore, conclude that the tender of a release was not a condition precedent, and such defense is premature.

I next reach the issue of whether the payment of a lump sum amount of a year's compensation constitutes a "golden parachute payment" within the meaning of 12 CFR §359 and is barred pursuant to 12 USC §1828(k) and its effect on any contractual obligation on the part of CertusBank.

The Plaintiffs challenge whether I have authority to determine whether such payments are golden parachute payments or not. The Plaintiffs also assert that I do not have authority to alter or modify the Employment Agreements.

I find that I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute. My authority is limited to that to which the parties agree, and there does not appear to be any agreement on this issue. I can only determine the effect on the contractual obligations if the payments are indeed golden parachute payments.

Code section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.

I do have authority, however, to determine if any such bar discharges CertusBank's obligation under the Employment Agreement or merely renders it potentially unenforceable.

The Defendants urge me to rule that the doctrine of impossibility of performance discharges the duty of CertusBank to pay. That doctrine provides that a party's obligation to perform a contractual obligation is discharged (without being liable for nonperformance) if it is

ELECTRONICALLY FILED - 2017 Mar 28 3:06 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

objectively impossible for anyone to perform that obligation. If that defense is applicable, it discharges CertusBank's contractual obligation to make the lump sum payment.

I find that there are exceptions to the bar against golden parachute payments as provided in the Regulations. I further find that a party may seek approval of the FDIC for payment despite any bar. I do not find that any bar operates to discharge the bank's performance or obligation. If the bar is applicable, then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable. I find that any bar, if there is one, does not affect CertusBank's liability to the Plaintiff's but that any applicable bar simply renders that provision unenforceable to the extent of any applicable bar. To hold that the contractual obligation to make the lump sum payment is discharged, that would be inconsistent with seeking FDIC permission for payment of the contractual obligation, and that would lead to incongruous results.

I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc.) are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

Finally, CBSUB, Inc. is the successor corporation to the dissolved CertusBank, N.A. To the extent that CertusBank has liability to the Plaintiffs, those liabilities have been assumed by CBSUB, Inc., and it is liable to each Plaintiff. However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC

ELECTRONICALLY FILED - 2017 Mar 28 3:06 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

golden parachute statute and Regulations. Therefore, liability for the lump sum payments remains with CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc.

Therefore, I hold:

1. CertusBank, N.A. and CertusHoldings, Inc. and CBSUB, Inc. are liable to each Plaintiff under each Plaintiff's Employment Agreement.
2. Any Federal FDIC bar to golden parachute payments does not discharge the contractual liability of CertusBank, N.A., CertusHoldings, Inc. or CBSUB , Inc. to make the lump sum payment to each of the Plaintiffs under Paragraph 33 of their respective Employment Agreements, but instead may render them unenforceable to the extent that the bar against golden parachute payments prohibits payment.
3. I do not decide whether such payments are in fact barred under 12 USC §1828(k) and 12 CFR §359. If that issue is submitted to me, then I shall make that decision.

/s/ Thomas W. Traxler

Thomas W. Traxler (SC Bar #5624) ARBITRATOR
CARTER, SMITH, MERRIAM,
ROGERS & TRAXLER, P.A.
900 E. North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
(864) 242-3566 / Fax: (864) 232-1558
tom.traxler@carterlawpa.com

Dated: ~~February 28, 2017~~ March 17, 2017
Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **ORDER GRANTING PLAINTIFFS' MOTION FOR AN ORDER ENTERING JUDGMENT OF THE ARBITRATION AWARDS**

THIS MATTER comes before the Court on Plaintiffs' Motion and pursuant to South Carolina Code § 15-48-120 for an order confirming an arbitration award issued by arbitrator Thomas W. Traxler, Esq. on March 17, 2017 and entry of judgment in Plaintiffs' favor. The arbitration award has been issued and enrolled in this matter,

IT IS THEREFORE ORDERED that the award is confirmed and judgment is hereby entered in favor of the Plaintiffs as follows:

1. Judgment in favor of Plaintiff Milton Jones in the amount of three hundred and forty thousand and 00/100 ($340,000.00) dollars;
2. Judgment in favor of Plaintiff Walter Davis in the amount of Three hundred and twenty-five thousand and 00/100 ($325,000.00) dollars; and
3. Judgment in favor of Plaintiff Angela Webb in the amount of three hundred thousand ($300,000.00) dollars.

The judgments shall be against the named Defendants and CBSub, Inc. as successor corporation to CertusBank, N.A.

[signature page follows]

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

AND IT IS SO ORDERED.

_____
Presiding Circuit Court Judge

_____, 2017

_____, South Carolina.

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb
PLAINTIFF(S)

CertusBank, NA and CertusHoldings, Inc.
DEFENDANT(S)

Submitted by: Richard A. Harpootlian	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Arbitrator Award Issued

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Judgment and Form 4

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

ELECTRONICALLY FILED - 2017 Apr 04 12:30 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554

Memorandum of law in opposition to Defendants' motion to stay and Reply to Defendants' memorandum in opposition to motion for an order confirming arbitration award and entry of judgment

Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb moved the Court to enroll an arbitration award in their favor, requested an order confirming the award, and requested judgment in the amount awarded by the arbitrator. See Pls.' Mot. Conf. Arb. (filed Mar. 23, 2017). Instead of raising one of the enumerated statutory grounds as a bar to enrollment and judgment, Defendants CertusBank N.A. and CertusHoldings, Inc. (collectively, "CertusBank") moved the Court to stay the entry of judgment based on the illusory promise that the Federal Deposit Insurance Corporation (FDIC) might seek to disallow the arbitration award.

CertusBanks' motion should be denied because the Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 et seq., provides no substantive or procedural provision to grant the relief (i.e., a stay) that CertusBank now requests. As Plaintiffs' motion seeking enrollment of the award and entry of judgment explains, South Carolina Code § 15-48-120 provides that "[u]pon application of a party, the court *shall* confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed

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as provided in §§ 15-48-130 and 15-48-140." S.C. Code Ann. § 15-48-120 (2005) (emphasis added). In other words, a circuit court lacks power to do anything but confirm the award an enroll judgment absent the availability of a statutory exception.

The statutory exceptions incorporated in § 15-48-120 are limited to circumstances that do not apply here. For instance, South Carolina Code § 15-48-130, concerning vacating an award, allows a court to vacate an award where:

> (1) The award was procured by corruption, fraud or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
>
> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection;

S.C. Code Ann. § 15-48-130(a). Likewise, South Carolina Code § 15-48-140, concerning modification or correction of an award, allows a court to modify or correct an award where:

> (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
>
> (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
>
> (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

S.C. Code Ann. § 15-48-140(a).

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Here, CertusBank does not purport to rely on any of the foregoing exceptions. To the contrary, CertusBank "do[es] not oppose the entry of an order confirming the Arbitration Award[,]" but instead seeks to stay entry of judgment "until the FDIC determines whether the severance payments constitute golden parachute payments." Defs.' Mot. at 3. CertusBank offers no authority or precedent for the relief sought here. Moreover, the bank's requested stay is predicated on the unsubstantiated claim that CertusBank has "been in constant contact with the FDIC" and expects "a determination from the FDIC at any time." See id.

This action was filed in September 9, 2015 and submitted to arbitration on January 21, 2016. CertusBank argued the FDIC golden parachute provision to the arbitrator, Thomas W. Traxler, Esquire (Arbitrator), and that argument was rejected. The Arbitrator found, "I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute." See Arb. Order at 6 (attached as **Exhibit A**). The Arbitrator did find that if the golden parachute bar is applicable, "then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable." Id. at 7. While CertusBank may have preferred a different result from the Arbitrator, it cannot look to the Court for assistance.

South Carolina Code §§ 15-48-130 & -140 provide "the exclusive procedures for vacating or modifying awards where arbitrators exceed their powers or award upon a matter not properly submitted to them." Sentry Eng'g & Const., Inc. v. Mariner's Cay Dev. Corp., 287 S.C. 346, 350–51, 338 S.E.2d 631, 634 (1985). "In reviewing arbitration awards, the standards for judicial intervention are narrowly drawn to assure the basic integrity of the arbitration process without meddling in it." Crouch Const. Co. v. Causey, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013)

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(quoting Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 681 (7th Cir.1983)). Generally, an arbitration award is "conclusive" and courts refuse to review the merits of an award except under the narrow circumstances defined by statute. See Crouch Const., 405 S.C. at 163, 747 S.E.2d at 486 (quoting C. Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013)). Because CertusBank does rely on either § 15-48-130 or § 15-48-140, there is nothing for the Court to do aside from confirming the award and enrolling the judgment.

For these reasons, Plaintiffs' motion should be granted, the Arbitration Award should be confirmed through entry of Plaintiffs' proposed order confirming the award, and judgment should be enrolled in the amounts requested.

Respectfully submitted by,

s/ Richard A. Harpootlian
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ATTORNEYS FOR PLAINTIFFS

April 4, 2017
Columbia, South Carolina.

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Jones v. CertusBank, N.A.
C/A No.: 2015CP2305554
Plaintiffs' Memorandum of law in opposition to Defendants' motion to stay and Reply to Defendants' memorandum in opposition to motion for an order confirming arbitration award and entering judgment

EXHIBIT A

(Arbitration Award, Mar 17, 2017)

ELECTRONICALLY FILED - 2017 Apr 04 12:30 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, And Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants.	)	**ARBITRATION AWARD** C.A. No.: 2015-CP-23-05554

FINDINGS OF FACT

1. Each of the Plaintiffs entered into an Amended and Restated Executive Employment Agreement ("Employment Agreement(s)") with Blue Ridge Holdings, Inc., and the terms of each of the Employment Agreements for the Plaintiffs are identical except for the amount of compensation.

2. CertusBank, N.A. is a wholly-owned subsidiary of Blue Ridge Holdings, Inc.

3. Blue Ridge Holdings, Inc. subsequently became known as CertusHoldings, Inc.

4. Each Employment Agreement for each Plaintiff provided for each Plaintiff to be paid a "lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) month's salary, at the rate in effect on the date the Executive's employment terminates..." [¶3 of each Employment Agreement]. I refer to this simply as the lump sum payment in this Award.

5. If the Plaintiff Milton Jones is determined to be entitled to severance, the amount of severance to Plaintiff Jones is $340,000.

6. If the Plaintiff Walter Davis is determined to be entitled to severance, the amount of severance to Plaintiff Davis is $325,000.

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7. If the Plaintiff Angela Webb is determined to be entitled to severance, the amount of severance to Plaintiff Webb is $300,000.

8. Plaintiffs were terminated without cause pursuant to their respective Employment Agreements on April 9, 2014, by the Combined CertusHoldings, Inc. and CertusBank's Board of Directors. In place as of the date of termination of each of the Plaintiffs on April 9, 2014, were a statute and Regulations prohibiting payment of "golden parachute payments" by financial institutions in a "troubled condition." See below.

9. CertusBank's status as an independent depository institution terminated on or about October 23, 2015, via an Order of Approval of Termination of Insurance by the FDIC.

10. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

11. In or about November, 2015, with the surrender of its charter as a national bank to the OCC, CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

12. In or about November, 2015, a new corporation, CBSUB, Inc. was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any liabilities the bank may owe the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

13. CBSUB is not a bank and is not regulated by the OCC and FDIC.

14. Although all of the Stipulation of Claims and Facts between the parties and dated March 1, 2016 are not reiterated here, they are nonetheless my findings as well.

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ISSUES

1. **Which of the "Certus entities" is contractually liable to each of the Plaintiffs for any payments provided for in ¶3 of each Plaintiff's Employment Agreement?**

A legal distinction must be made between the various "Certus entities." CertusBank, N.A. is a subsidiary of CertusHoldings, Inc., which was formerly known as Blue Ridge Holdings, Inc. Each of the Plaintiffs entered into his or her Employment Agreement with Blue Ridge Holdings, Inc. as the named "Company" for an exchange of responsibilities and services by each executive for the compensation set out in the respective Employment Agreements. The face of each Employment Agreement appears to render Blue Ridge Holdings, Inc. as the obligor for payment of compensation. Each of the Plaintiffs bargained to perform services for the "Company," which is defined under the Employment Agreement to be Blue Ridge Holdings, Inc. However, in actuality, the Plaintiffs served in executive capacities for CertusBank, N.A., which also apparently undertook to pay the Plaintiffs, blurring and apparently ignoring any distinction between the Defendants. While I do not consider it to be in the province of an arbitrator or any court to rewrite any contract or realign the parties, I must recognize the alignment and actual course of dealing between the parties and give legal effect to that which the parties undertook if it can be reconciled with the Employment Agreements. Whether it be through invocation of an implied novation or delegation of contractual duties or by judicial estoppel or concluding that Blue Ridge Holding, Inc. was an undisclosed principal for CertusBank, I am compelled to recognize the true substance of the relationship between the parties that governed their conduct and enforce it.

I, therefore, conclude that just as CertusHoldings, Inc./Blue Ridge Holdings, Inc. and CertusBank, N.A. considered CertusBank, N.A. to be an obligor under the respective

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Employment Agreements, so, too, must I recognize CertusBank, N.A. as obligated under Paragraph 33 of each Employment Agreement. Apparently, CertusBank, N.A. paid the regular periodic compensation of the Plaintiffs, and there is no logical reason to find that it had no obligation under Paragraph 33. Just as it found it appropriate to pay the Plaintiffs their salary, so too, is it obligated to make any payments due under Paragraph 33. This finding is buttressed not only by the course of dealing between the parties but also by Stipulations in this matter and filings in the Federal Court case of *Milton Jones, Jr. et al v. CertusBank. N.A.*, et al 6:16-cv-1633, especially CertusBank moving to compel arbitration under the various Employment Agreements.

I, therefore, hold that CertusBank, N.A. as well as CertusHoldings, Inc. may both be liable to each of the Plaintiffs under each Plaintiff's Employment Agreement. Hereafter, CertusBank, N.A. and CertusHoldings, Inc. are collectively referred to as CertusBank with the same rights and obligations.

2. **Are payments of the compensation set forth in ¶33 of each Employment Agreement prohibited as "golden parachute payments" pursuant to 12 USC §1828(k) and 12 CFR §359.1 and is CertusBank's obligation discharged?**

There are several issues which now arise: (1) is the provision of a release and waiver of claims a condition precedent to CertusBank's obligation to pay that has not occurred, and (2) to what extent does any determination that such payments are "golden parachute payments" affect any liability under the Employment Agreements?

First, the Defendants argue that each Employment Agreement required each Plaintiff to deliver to CertusBank a waiver and release of claims prior to any right to receive the severance payments. In particular, the Employment Agreement provides:

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> The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer....

The Defendants assert this provision as a condition precedent to its obligation to make those payments. It is certainly true as a matter of contract law that any promise that is conditioned upon the occurrence of a condition precedent does not become absolute until and unless that condition precedent has either been met or has been waived. Until such condition precedent has been met or has been waived, the promisor's obligation to perform does not become absolute and unconditional, and a party is not liable for breach of a contract unless its promise has become unconditional and absolute.

I do not find the foregoing provision to be a condition precedent, but instead to be a condition concurrent. A condition concurrent means that each party's performance is to be tendered and rendered simultaneously, and the tender of each party's promise is an implied or constructive condition precedent to the other party's performance. In this instance, the exchange of performances of the release/waiver, on the one hand, and the payment of the lump sum payment, on the other hand, are expected to occur simultaneously. In order to recover from another party for breach of a contract with conditions concurrent, the "aggrieved" party must tender its performance in order to make the other party's promise absolute and unconditional. In this instance, CertusBank has denied liability and has not tendered its performance. Therefore, the duty to provide any such release has not yet arisen. That matter becomes ripe upon offer of payment. Even if the release and waiver must first be provided as a condition precedent, it still is not ripe since CertusBank has announced that it cannot pay the compensation. CertusBank cannot expect delivery of a release/waiver until it has indicated a willingness to perform.

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I, therefore, conclude that the tender of a release was not a condition precedent, and such defense is premature.

I next reach the issue of whether the payment of a lump sum amount of a year's compensation constitutes a "golden parachute payment" within the meaning of 12 CFR §359 and is barred pursuant to 12 USC §1828(k) and its effect on any contractual obligation on the part of CertusBank.

The Plaintiffs challenge whether I have authority to determine whether such payments are golden parachute payments or not. The Plaintiffs also assert that I do not have authority to alter or modify the Employment Agreements.

I find that I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute. My authority is limited to that to which the parties agree, and there does not appear to be any agreement on this issue. I can only determine the effect on the contractual obligations if the payments are indeed golden parachute payments.

Code section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.

I do have authority, however, to determine if any such bar discharges CertusBank's obligation under the Employment Agreement or merely renders it potentially unenforceable.

The Defendants urge me to rule that the doctrine of impossibility of performance discharges the duty of CertusBank to pay. That doctrine provides that a party's obligation to perform a contractual obligation is discharged (without being liable for nonperformance) if it is

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objectively impossible for anyone to perform that obligation. If that defense is applicable, it discharges CertusBank's contractual obligation to make the lump sum payment.

I find that there are exceptions to the bar against golden parachute payments as provided in the Regulations. I further find that a party may seek approval of the FDIC for payment despite any bar. I do not find that any bar operates to discharge the bank's performance or obligation. If the bar is applicable, then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable. I find that any bar, if there is one, does not affect CertusBank's liability to the Plaintiff's but that any applicable bar simply renders that provision unenforceable to the extent of any applicable bar. To hold that the contractual obligation to make the lump sum payment is discharged, that would be inconsistent with seeking FDIC permission for payment of the contractual obligation, and that would lead to incongruous results.

I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc.) are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

Finally, CBSUB, Inc. is the successor corporation to the dissolved CertusBank, N.A. To the extent that CertusBank has liability to the Plaintiffs, those liabilities have been assumed by CBSUB, Inc., and it is liable to each Plaintiff. However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC

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golden parachute statute and Regulations. Therefore, liability for the lump sum payments remains with CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc.

Therefore, I hold:

1. CertusBank, N.A. and CertusHoldings, Inc. and CBSUB, Inc. are liable to each Plaintiff under each Plaintiff's Employment Agreement.
2. Any Federal FDIC bar to golden parachute payments does not discharge the contractual liability of CertusBank, N.A., CertusHoldings, Inc. or CBSUB , Inc. to make the lump sum payment to each of the Plaintiffs under Paragraph 33 of their respective Employment Agreements, but instead may render them unenforceable to the extent that the bar against golden parachute payments prohibits payment.
3. I do not decide whether such payments are in fact barred under 12 USC §1828(k) and 12 CFR §359. If that issue is submitted to me, then I shall make that decision.

Thomas W. Traxler (SC Bar #5624) ARBITRATOR
CARTER, SMITH, MERRIAM,
ROGERS & TRAXLER, P.A.
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P.O. Box 10828 (29603)
Greenville, South Carolina
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Dated: ~~February 28, 2017~~ March 17, 2017
Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Apr 13 10:21 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

DEFENDANTS' MOTION FOR ENTRY OF PROTECTIVE ORDER

Defendants, CertusBank, N.A. and CertusHoldings, Inc. (collectively "CertusBank"), respectfully file this Motion for Entry of Protective Order with the Court in the above captioned case.

CertusBank filed applications with the FDIC on or about April 21, 2016 seeking a determination of whether the severance payments owed to Plaintiffs pursuant to their Amended and Restated Executive Employment Agreements with Blue Ridge Holdings, Inc. may be legally paid by Defendants or whether such payments constitute prohibited golden parachute payments under applicable federal banking law. The FDIC has issued a written determination letter for each of the Plaintiffs. The FDIC considers determination letters to be "confidential supervisory information" and will not release such information to a court without a Protective Order in place pursuant to 12 C.F.R. § 309.6(b)(8). For this reason, Defendants are filing a Motion for Entry of Protective Order so that the FDIC's determination letters may be filed with the Court. The FDIC's determination letters are central to Plaintiffs' claims for payment of severance benefits pursuant to their respective employment agreements.

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Defendants have discussed the motion with counsel for the Plaintiffs and Plaintiffs' counsel has indicated they do not consent to the motion.

For this reason, Defendants ask the Court to execute the attached Protective Order so that Defendants may file the FDIC's determination letters with the Court.

Dated this 13th day of April, 2017.

Respectfully submitted,

s/Charles E. McDonald, III
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29459947.1

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EXHIBIT "A"

CONFIDENTIAL RECORDS

Subject to the terms and conditions of the Protective Order, disclosure of the privileged and confidential FDIC records listed or described below (Confidential Records) is hereby authorized under 12 C.F.R. § 309.6(b)(8)(ii).

Application for proposed golden parachute payment to be made pursuant to Section 32 of the Federal Deposit Insurance Act and 12 CFR Part 359--Milton Jones ("Jones Application") dated April 21, 2016.

Application for proposed golden parachute payment to be made pursuant to Section 32 of the Federal Deposit Insurance Act and 12 CFR Part 359-- Walter L. Davis ("Davis Application") dated April 21, 2016.

Application for proposed golden parachute payment to be made pursuant to Section 32 of the Federal Deposit Insurance Act and 12 CFR Part 359--K. Angela Webb ("Webb Application") dated April 21, 2016.

Federal Deposit Insurance Corporation Letter to Thomas S. Simpson, counsel, on Jones Application dated April 5, 2017.

Federal Deposit Insurance Corporation Letter to Thomas S. Simpson, counsel, on Davis Application dated April 5, 2017.

Federal Deposit Insurance Corporation Letter to Thomas S. Simpson, counsel, on Webb Application dated April 5, 2017.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Milton Jones, Jr., Walter Davis, and Angela Webb

Plaintiffs,

v.

CertusBank, N.A. and CertusHoldings, Inc.,

Defendants.

C/A NO.: 2015-CP-23-05554
PROTECTIVE ORDER

PROTECTIVE ORDER

WHEREAS, counsel for one or more of the parties to above-captioned action ("Litigation") have requested the discretionary disclosure of certain privileged and confidential records of the Federal Deposit Insurance Corporation ("FDIC"), pursuant to 12 C.F.R. § 309.6(b)(8); and

WHEREAS, the FDIC has determined that the requirements for discretionary disclosure under 12 C.F.R. § 309.6(b)(8) have been satisfied, and has therefore authorized disclosure of the records identified in the Exhibit A hereto ("Confidential Records") provided that such disclosure is made strictly under the terms and conditions of this Protective Order;

NOW THEREFORE, the Court hereby orders the following:

1. The Confidential Records, and all information contained therein or related thereto, shall be held strictly confidential and may be examined and used only in connection with the preparation, discovery in connection with, trial, and appeal of the Litigation.

2. No person, including, without limitation, the parties to the Litigation, their counsel, the Court, the Clerk of the Court, court reporters, or any employee or agent of any of the

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foregoing, shall transcribe, copy, or disclose in any manner any information contained in or related to the Confidential Records, except upon order of the Court or as necessary for the limited purpose of the preparation, discovery in connection with, trial, and appeal of the Litigation. Subject to paragraphs 4 and 5 below, nothing in the preceding sentence is intended to prevent or prohibit the use of information contained in the Confidential Records for the purpose of interrogating witnesses at depositions or in the trial of the Litigation.

3. If any of the Confidential Records or portions thereof are included in discovery documents filed with the Clerk of the Court, or in the event any information contained in or related to such Confidential Records is to be used in the trial of the Litigation, the Clerk of the Court shall keep such documents in a sealed envelope or in such other manner as shall make the documents unavailable for public scrutiny.

4. Any party offering any of the Confidential Records into evidence in the trial of the Litigation, or in connection therewith, shall offer only those pages or portions thereof that are relevant and material to the issues in dispute, and shall block out any portion of any page that contains information not relevant and material to such issues. The name of any person or entity contained on any page of the Confidential Records who is not a party to the Litigation, or whose name is not otherwise relevant and material to the issues in dispute, shall be blocked out prior to the admission of such page into evidence. If there is disagreement between the parties to the Litigation regarding what page or portion of any page of the Confidential Records should be blocked out in the manner described in this paragraph, the Court shall make this determination after an *in camera* review of the Confidential Records in question.

5. If any portion of the Confidential Records is used for any purpose in the Litigation, including without limitation, use in any deposition, hearing, trial, or appeal, such portion of the

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Confidential Records shall be sealed against any disclosure inconsistent with the terms and conditions of this Protective Order, and any briefs, transcripts or other writing quoting or referring to any statement contained in such portion of the Confidential Records shall also be sealed against any such disclosure.

6. At the conclusion of the Litigation (including any appeal), all Confidential Records in the possession or control of any person granted access to the Confidential Records under this Protective Order, including all copies, extracts and summaries thereof, shall forthwith be returned to the Regional Counsel, FDIC Legal Division, Atlanta Regional Office, 10 Tenth Street, N.E., Suite 800, Atlanta, Georgia 30309, or shall be otherwise disposed of as directed by the Regional Counsel or her designee.

7. Any person granted access under this Protective Order to any of the Confidential Records, or to information contained therein or related thereto, who uses such Confidential Records or such information for any purpose other than the preparation, discovery in connection with, trial, or appeal of the Litigation, or otherwise violates the terms or conditions of this Protective Order, shall be subject to sanctioning by the Court.

8. The terms and conditions of this Protective Order shall apply to any subsequent or supplemental process that may be issued and served on the FDIC in connection with the Litigation.

9. The Confidential Records shall include all records or testimony identified in any amendments or modifications of the Exhibit. Any such amendment or modification shall be effective, without need for approval by the Court, upon notice by the FDIC to the parties to the Litigation.

10. Disclosure of the Confidential Records under the terms and conditions of this Protective Order shall not constitute a waiver of any privileges or confidentiality with respect to such Confidential Records or with respect to any matters that relate in any way to any aspect of the Confidential Records.

ORDERED this _____ day of _____ 2017.

By: _____
PRESIDING JUDGE

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ELECTRONICALLY FILED - 2017 Apr 18 10:16 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

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Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Protective Order

Motion/Order Denied

s/ Honorable Perry H. Gravely, #2755

ELECTRONICALLY FILED - 2017 May 22 3:26 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554

Memorandum of law in opposition to Defendants' motion for entry of a protective order

Defendants CertusBank N.A. and CertusHoldings. Inc. (collectively. "CertusBank") have moved the Court for entry of a protective order so certain documents purportedly deemed "confidential supervisory information" by the Federal Depository Insurance Corporation (FDIC) can be filed with this Court. The motion should be denied because there is no reason to file these records with the Court. The only possible reason to file these documents is to enable CertusBank to make an argument to avoid paying an arbitration award to Plaintiffs Milton Jones, Walter Davis, and Angela Webb. South Carolina's Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 et seq., is clear: there is no jurisdiction to make such an argument, thus, the motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

On September 9, 2015, Plaintiffs filed this action in the Greenville County Court of Common Pleas. Defendants CertusBank N.A. and CertusHoldings, Inc. answered. On January 6, 2016, the parties filed a joint motion to stay this proceeding to pursue arbitration, noting "[t]he parties are in agreement that Plaintiffs' claims asserted against Defendants are subject to arbitration[.]" On January 21, 2016, the Court entered an Order staying this action pending the

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completion of arbitration. The dispute was submitted to Thomas W. Traxler, Esquire (Arbitrator) and, on March 17, 2017, the Arbitrator issued an award in Plaintiffs' favor, awarding $340,000 to Mr. Jones, $325,000 to Mr. Davis, and $300,000 to Ms. Webb against CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc., the surviving entity of CertusBank, N.A.

On March 23, 2017, Plaintiffs moved the Court to enroll the arbitration award and requested judgment in the amount awarded by the Arbitrator. Instead of raising a statutory objection to the arbitration award, CertusBank moved to stay the entry of judgment based on the unsupported claim that FDIC *might* seek to disallow the award. Plaintiffs filed a memorandum of law in opposition highlighting the absence of any statutory authority for the requested stay. This motion followed.

ARGUMENT

There is no reason to grant CertusBank a protective order because the only issue before the Court is whether the arbitration awards should be enrolled. Enrollment of an arbitration award is a ministerial act that limits the Court's discretion:

> Upon application of a party, *the court shall confirm* an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140.

S.C. Code Ann. § 15-48-120 (emphasis added). Thus, only an exception to the statutory mandate requiring confirmation of an award are those specifically enumerated in South Carolina Code §§ 15-48-130 and 15-48-140 concerning fraud, partiality, *ultra vires* acts, miscalculation, mistake, or other procedural defects. Because none of those arguments have been raised, the Court should deny this motion and enroll the judgment. Finally, even assuming FDIC has made a golden parachute determination or intends to intervene, that intervention should occur in the context of judgment *enforcement*, not enrollment. In other words, enrolling the judgment and denying

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CertusBank's motion for a protective order does not foreclose FDIC's ability to appear and raise these arguments with the Court. If the federal agency chooses to appear, the Court can consider an appropriate motion to facilitate filing of sensitive records *at that time*.[1] Since there is no authority for or purpose in granting CertusBank the relief it seeks here, the Court should decline to do so.

CONCLUSION

For the reasons explained here, the motion should be denied.

Respectfully submitted by,

s/ Richard A. Harpootlian
Richard A. Harpootlian (SC Bar No. 2725)
Christopher P. Kenney (SC Bar No. 100147)
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cpk@harpootlianlaw.com

ATTORNEYS FOR PLAINTIFFS

May 22, 2017
Columbia, South Carolina.

[1] Plaintiffs respectfully reserve their rights to oppose any such motion.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	CASE NO.: 2015-CP-23-05554
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	
CERTUSBANK, N.A., AND CERTUS HOLDINGS, INC.,	)	
Defendants		
AND		
FEDERAL DEPOSIT INSURANCE CORPORATION		
Prospective Defendant Intervenor		
Defendant.	)	

FILED-CLERK OF COURT
PAUL D. WICKENSIMER
GREENVILLE, S.C.
2017 MAY 23 PM 2:54

Plaintiff's Attorney:	Defendant's Attorney:
Richard A. Harpootlian, Bar No. 2725 Christopher P. Kenny 100147 Address: Post Office Box 1090 Columbia, South Carolina 29202 Phone: _____ Fax _____ E-mail: _____ Other: _____	Charles E. McDonald, III, Bar No. 9612 Address: 300 North Main Street, Suite 500 Greenville, South Carolina 29601 Phone: _____ Fax_____ E-mail: _____ Other: Defendant-Intervenor Attorney: William S. F. Freeman, Bar Number 16676 Address: Post Office Box 473 Greenville, South Carolina 29602 phone: (864) 991-8329 fax: (864) 991-8330 email: William@tmlawpc.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion To: (1) Intervene; (2) Modify or Set Aside Judgment; (3) Render Unenforceable Obligation to Make Payments

Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ _____

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 35.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB,	)	civil action number: 2015-CP-23-05554
Plaintiffs,	)	
v.	)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,	)	
Defendants.	)	NOTICE OF APPEARANCE
AND	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
Prospective Defendant Intervenor.	)	

FILED-CLERK OF COURT
PAUL D. MCKENSIE
GREENVILLE CO. SC
2017 MAY 23 PM 2:54

TO: ATTORNEYS FOR PLAINTIFFS AND DEFENDANTS.

Please take notice that Michael J. Thomerson, Esq. and William S.F. Freeman, Esq. of Thomerson Freeman & Rogers P.C. hereby enter their appearance as co-counsel for the Prospective Defendant Intervenor the Federal Deposit Insurance Corporation in this action.

THOMERSON FREEMAN & ROGERS P.C.

May 23, 2017
Greenville, South Carolina

Michael J. Thomerson (S.C. Bar #70832)
William S.F. Freeman (S.C. Bar #16676)
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william@tmlawpc.com
ATTORNEYS FOR THE PROPOSED DEFENDANT INTERVENOR FEDERAL DEPOSIT INSURANCE CORPORATION

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE 2017 MAY 23 PM 2:50)	THIRTEENTH JUDICIAL CIRCUIT
FILED CLERK OF COURT PAUL D. MCGREGOR GREENVILLE COUNTY SC	
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB,)	Civil action number: 2015-CP-23-05554
Plaintiffs,)	**FEDERAL DEPOSIT INSURANCE CORPORATION'S NOTICE OF MOTIONS AND MOTIONS TO: (1) INTERVENE; (2) MODIFY THE MARCH 29 JUDGMENT TO CONFORM IT WITH THE TERMS OF THE ARBITRATOR'S AWARD OR IN THE ALTERNATIVE TO SET ASIDE THE MARCH 29 JUDGMENT; AND (3) RENDER UNENFORCEABLE ANY OBLIGATION TO MAKE PAYMENT OF THE PROPOSED SEVERANCE PAYMENTS**
v.)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,)	
Defendants.)	
AND)	
FEDERAL DEPOSIT INSURANCE CORPORATION,)	
Prospective Defendant Intervenor.)	

YOU WILL PLEASE TAKE NOTICE that the Federal Deposit Insurance Corporation in its corporate capacity ("FDIC") will move the Court in such time, place, and manner as the Court so requires for an Order for the relief detailed herein.

I. INTRODUCTION AND MOTIONS

This litigation and related arbitration centers around the Plaintiffs' respective claims to payments of funds (herein "the Proposed Severance Payments") related to the termination of their employment. The case was referred to Thomas W. Traxler, Esq. (herein the "Arbitrator") for arbitration. The Arbitrator found it was for FDIC to determine whether the Proposed Severance Payments were enforceable obligations under federal law. FDIC has now issued final agency decision determination letters that bar

payment of the Proposed Severance Payments as federally prohibited "golden parachute" payments. Accordingly, pursuant to both the Arbitrator's award and also the applicable federal jurisprudence, the Proposed Severance Payments are not subject to enforcement or collection by the Plaintiffs. Therefore, FDIC seeks leave of Court to intervene, to conform the Court's judgment with the Arbitrator's award, and to oppose the entry of an enforceable judgment.

II. FACTS

A. PARTIES

Defendant CertusBank, National Association, Greenville, South Carolina (herein "CertusBank") was a national banking association within the meaning of 12 U.S.C. §1813(q)(1)(A) and was chartered and examined by the Office of the Comptroller of the Currency (herein "OCC"). CertusBank was an "insured depository institution" as that term is defined in 12 U.S.C. §1813(c)(2).

At different times relevant to the litigation, Plaintiff Milton Jones, Jr. (herein "Mr. Jones") was the Chairman of the Board, President, and CEO of CertusBank.[1] At different times relevant to the litigation, Plaintiff Walter Davis (herein "Mr. Davis") was the Co-CEO, Chief Credit Officer, and Senior Executive Vice President of CertusBank.[2] At different times relevant to the litigation, Plaintiff Angela Webb (herein "Ms. Webb") was the President, Senior Executive Vice President, and Chief Administrative Officer of

[1] Paragraph 1, Stipulation of Claims and Facts dated March 1, 2016, and signed by attorney for Plaintiff and attorneys for Defendant. A copy was filed by Plaintiffs on March 23, 2017, as Exhibit B to Plaintiffs' Motion For An Order Confirming Arbitration Award And Entering Judgment. It is herein referred to as the Stipulation. The Stipulation was also made a part of the Arbitration Award. It is attached as Exhibit 1.
[2] Paragraph 2, Stipulation of Facts.

CertusBank.[3] Collectively, Mr. Jones, Mr. Davis, and Ms. Webb are referred to as the Plaintiffs.

B. HISTORY: CERTUSBANK IS IN A "TROUBLED CONDITION" AND THE PLAINTIFFS' EMPLOYMENT AGREEMENTS ARE TERMINATED

As noted above, the Plaintiffs were senior executives at CertusBank. With respect to Mr. Jones,[4] Mr. Davis,[5] and Ms. Webb,[6] the FDIC's Determination Letter provides as follows regarding their stewardship of CertusBank:

> The applications stated that the Senior Executive Officers [the Plaintiffs] were substantially responsible for the "troubled condition" of the Bank [CertusBank] and described the following support for that opinion. The Bank suffered steep financial losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. The applications also stated that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at a time when the Company [CertusHoldings, Inc.] and the Bank were reporting heavy losses. The applications stated that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operations. ...
>
> We [FDIC] have reviewed the supervisory record and it supports the determination that the Senior Executive Officers were responsible for the decline of the overall condition of the Bank.[7]

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[3] Paragraph 3, Stipulation of Facts.

[4] By letter dated April 7, 2017, FDIC issued a final agency determination. It is herein referred to as the Jones Determination Letter and is attached as Exhibit 2.

[5] By letter dated April 7, 2017, FDIC issued a final agency determination. It is herein referred to as the Davis Determination Letter and is attached as Exhibit 3.

[6] By letter dated April 7, 2017, FDIC issued a final agency determination. It is herein referred to as the Webb Determination Letter and is attached as Exhibit 4.

[7] Jones Determination Letter, Page 4; Davis Determination Letter, Page 4; and Webb Determination Letter, Page 4.

Following a forensic audit into the Plaintiffs' activities,[8] the Plaintiffs' employment was terminated without cause on April 9, 2014, by the combined CertusHoldings and CertusBank Boards of Directors.[9]

Mr. Jones,[10] Mr. Davis,[11] and Ms. Webb[12] would each ultimately enter into Consent Orders with the OCC related to their activities at CertusBank. Each of the Plaintiffs individually agreed (and the Comptroller Ordered) as part of their Consent Order to: (1) pay a civil monetary penalty to the OCC;[13] and (2) enter into a Personal Cease and Desist Order which placed restrictions on them and prohibited them from engaging in certain banking activities.[14]

Moreover, in the Consent Orders the Comptroller made various individualized findings against the Plaintiffs regarding their activities at CertusBank, which the Plaintiffs neither admitted nor denied. The findings in part determined that each of the Plaintiffs individually "engaged in violations of law and regulation, reckless unsafe or

[8] Jones Determination Letter, Page 4; Davis Determination Letter, Page 4; Webb Determination Letter, Page 4.

[9] Arbitration Award, Paragraph 8, Stipulation of Facts, Paragraph 12.

[10] Consent Order #2017-006 entered in the matter of Milton Jones, Former Executive Chairman - CertusBank, N.A. Greenville, South Carolina, docket number AA-EC-2016-88. That consent order was signed by Mr. Jones on December 20, 2016, and by the OCC through the duly authorized representative of the Comptroller of the Currency on January 3, 2017. It is herein referred to as the Jones Consent Order and is attached as Exhibit 5.

[11] Consent Order #2017-005 entered in the matter of Walter Davis, Former CEO and Director - CertusBank, N.A. Greenville, South Carolina, docket number AA-EC-2016-87. That consent order was signed by Mr. Davis on December 20, 2016, and by the OCC through the duly authorized representative of the Comptroller of the Currency on January 3, 2017. It is herein referred to as the Davis Consent Order and is attached as Exhibit 6.

[12] Consent Order #2017-007 entered in the matter of Kathy Angela Webb, Former President - CertusBank, N.A. Greenville, South Carolina, docket number AA-EC-2016-86. That consent order was signed by Ms. Webb on December 20, 2016, and by the OCC through the duly authorized representative of the Comptroller of the Currency on January 3, 2017. It is herein referred to as the Webb Consent Order and is attached as Exhibit 7.

[13] Jones Consent Order, Article IV; Davis Consent Order, Article IV; and Webb Consent Order, Article IV.

[14] Jones Consent Order, Article III; Davis Consent Order, Article III; and Webb Consent Order, Article III.

unsound practices, and/or breaches of [his or her] fiduciary duty to [CertusBank]; which violations, practices, and breaches were part of a pattern of misconduct [and/or] caused or were likely to cause more than a minimal loss to the Bank."[15]

Importantly, the parties agreed that while the Plaintiffs were employees of CertusBank, the OCC designated CertusBank to be in a "troubled condition."[16] Additionally, the Arbitrator echoed the Stipulation of the parties and found: "In place as of the date of termination of each of the Plaintiffs on April 9, 2014, were a statute and Regulations prohibiting payment of 'golden parachute payments' by financial institutions in a 'troubled condition.'"[17]

C. PLAINTIFFS' EMPLOYMENT AND CBSUB'S INVOLVEMENT

Defendant CertusBank was a wholly owned subsidiary of Blue Ridge Holdings, Inc.[18] Blue Ridge Holdings, Inc. subsequently became known as Defendant CertusHoldings, Inc.[19] (herein "CertusHoldings").

Relevant to this litigation, Mr. Jones,[20] Mr. Davis,[21] and Ms. Webb[22] each had an Employment Agreement that provided (at Paragraph 33) for payment of twelve months

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[15] Jones Consent Order, Article II, Section (3); Davis Consent Order, Article II, Section (4); and Webb Consent Order, Article II, Section (6).
[16] Stipulation of Facts, Paragraph 16.
[17] Arbitration Award, Paragraph 8.
[18] Paragraph 2, Arbitration Award signed by Thomas W. Traxler and initially dated February 28, 2017, with a handwritten notation altering the date to March 17, 2017. A copy was filed by Plaintiffs on March 23, 2017, as Exhibit A to Plaintiffs' Motion For An Order Confirming Arbitration Award And Entering Judgment. It is herein referred to as the Arbitration Award and attached as Exhibit 8.
[19] Arbitration Award, Paragraph 3.
[20] Mr. Jones' Amended and Restated Executive Employment Agreement was filed on March 23, 2017, by the Plaintiffs in their Motion For An Order Confirming Arbitration Award And Entering Judgment. It is herein referred to as the Jones Employment Agreement and is attached as Exhibit 9.
[21] Mr. Davis' Amended and Restated Executive Employment Agreement was filed on March 23, 2017, by the Plaintiffs in their Motion For An Order Confirming Arbitration Award And Entering Judgment. It is herein referred to as the Davis Employment Agreement and is attached as Exhibit 10.

salary in the event their employment was terminated without Good Cause[23] and they executed a General Release and Waiver of Claims.[24] At the time of their termination, the Plaintiffs' respective twelve months salaries were as follows: for Mr. Jones, $340,000.00;[25] for Mr. Davis, $325,000.00;[26] and for Ms. Webb, $300,000.00.[27] Funds in these amounts constitute the Proposed Severance Payments.

At the time of their termination of employment, the Plaintiffs' Employment Agreements were with Blue Ridge Holdings, Inc. However, "in actuality, the Plaintiffs served in executive capacities for CertusBank, N.A., which also apparently undertook to pay the Plaintiffs."[28] The Arbitrator specifically determined that CertusBank was "obligated under Paragraph 33 of each Employment Agreement"[29] and further wrote: "I, therefore, hold that CertusBank, N.A. as well as CertusHoldings, Inc. may both be liable to each of the Plaintiffs under each Plaintiff's Employment Agreement."[30] Moreover, the

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[22] Ms. Webb's Amended and Restated Executive Employment Agreement was filed on March 23, 2017, by the Plaintiffs in their Motion For An Order Confirming Arbitration Award And Entering Judgment. It is herein referred to as the Webb Employment Agreement and is attached as Exhibit 11.

[23] Section H, Paragraph 33 of the Jones Employment Agreement, the Davis Employment Agreement, and the Webb Employment Agreement provides in relevant part as follows:

> 33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the Term of this Agreement, then in addition to the Standard Termination and Other Benefits, the Executive shall be entitled to receive:
>
> a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

[24] Arbitration Award, Paragraph 5, Stipulation of Facts, Paragraph 11.
[25] Arbitration Award, Paragraph 6, Stipulation of Facts, Paragraph 18.
[26] Arbitration Award, Paragraph 7, Stipulation of Facts, Paragraph 19.
[27] Arbitration Award, Paragraph 8, Stipulation of Facts, Paragraph 20.
[28] Arbitration Award, Page 3 of 8.
[29] Arbitration Award, Page 4 of 8.
[30] Arbitration Award, Page 4 of 8.

Plaintiffs each individually stipulated with the OCC that they were an "officer and director" of CertusBank, as follows:

> Respondent was an officer and director of the Bank [CertusBank] and is an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. §1813(u), having served in such capacity within six (6) years from the date of this Order. *See* 12 U.S.C. §1818(i)(3).[31]

In or about November 2015, a successor, CBSUB, Inc. (herein "CBSUB"), was incorporated to receive the residual assets and liabilities of CertusBank, including any liabilities CertusBank may owe the Plaintiffs.[32] The Arbitrator found that CBSUB "is the successor corporation to the dissolved CertusBank, N.A. To the extent that CertusBank has liability to the Plaintiffs, those liabilities have been assumed by CBSUB, Inc. and it is liable to each Plaintiff."[33]

CBSUB was not named as a Defendant by the Plaintiffs in their complaint.

D. PROCEDURAL HISTORY

On September 9, 2015, the Plaintiffs filed this action seeking in part the Proposed Severance Payments. On January 6, 2016, the parties to the litigation filed a Joint Motion To Stay Proceedings Pending Arbitration and the case was thereafter referred to arbitration.

A little more than two months ago, the Arbitrator issued his award. As noted above, the Arbitrator found that whether the Proposed Severance Payments were

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[31] Article I, Section (2), Jones Consent Order; Article I, Section (2), Davis Consent Order; and Article I, Section (2), Webb Consent Order.
[32] Arbitration Award, Paragraph 12.
[33] Arbitration Award, Page 7 of 8.

federally prohibited "golden parachute" payments was a determination to be made by the FDIC. With respect to CertusBank and CertusHoldings, the Arbitrator found as follows:

> Code Section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.[34]

With respect to CBSUB, the Arbitrator found as follows:

> However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC golden parachute statute and Regulations.[35]

The Arbitrator's award concluded as follows:

> Therefore, I hold:
> 1. CertusBank, N.A. and CertusHoldings, Inc. and CBSUB, Inc. are liable to each Plaintiff under each Plaintiff's Employment Agreement.
> 2. Any Federal FDIC bar to golden parachute payments does not discharge the contractual liability of CertusBank, N.A., CertusHoldings, Inc. or CBSUB, Inc. to make the lump sum payment [Proposed Severance Payments] to each of the Plaintiffs under Paragraph 33 of their respective Employment Agreements, but instead may render them unenforceable to the extent that the bar against golden parachute payments prohibits payment.
> 3. I do not decide whether such payments are in fact barred under 12 USC §1828(k) and 12 CFR §359. If that issue is submitted to me, then I shall make that decision.[36]

Shortly after the Arbitrator's award was issued, the Plaintiffs filed a Motion For An Order Confirming Arbitration Award And Entering Judgment on March 23, 2017. Presumably the Plaintiffs also filed a draft proposed Order and draft proposed Form 4.

[34] Arbitration Award, Page 6 of 8.
[35] Arbitration Award, Pages 7-8 of 8.
[36] Arbitration Award, Page 8 of 8.

Thereafter, the procedural history is unclear. Based on the Clerk of Court's online filing docket, on March 27, the Court denied the Plaintiffs' motion; on March 28, the Defendants filed in opposition to the Plaintiffs' motion and moved to stay pending the FDIC's determination; on March 29, the Court appears to have granted the motion that was previously denied and entered the draft proposed Order and draft proposed Form 4; and on April 4, the Plaintiffs (seemingly unaware of the March 29 Judgment in their favor) filed a memorandum in opposition to the Defendant's March 28 filing. This is further supported by the Plaintiffs filing on May 22, 2017 which provided in part that "the only issue before the Court is whether the arbitration awards should be enrolled."

From the face of the March 29, 2017 Order Granting Plaintiffs' Motion For An Order Entering Judgment of the Arbitration Awards and the concomitant entry of a SCRCP Form 4 Judgment In A Civil Case (herein both are collectively referred to as the "March 29 Judgment"), a judgment was entered in favor of the Plaintiffs and was enrolled on the judgment index against CertusBank, CertusHoldings, and CBSUB.

The drafts presumably submitted to the Court and subsequently entered do not reflect the award issued by the Arbitrator. The Arbitrator specifically found that he did not have the jurisdiction to order payment because such an obligation could be unenforceable. The Arbitrator further found that "[a]ny Federal FDIC bar to golden parachute payments ... may render them [the Proposed Severance Payments] unenforceable to the extent that the bar against golden parachute payments prohibits

payment."[37] Conversely, the March 29 Judgment does not indicate that the entry of the judgment is potentially unenforceable under either the Arbitrator's award or federal law.

II. MOTIONS

A. MOTION TO INTERVENE

FDIC hereby respectfully petitions and moves the Court to intervene as a party denominated as "Defendant Intervenor." Counsel for Defendants consents to the intervention of FDIC into this litigation. Counsel for Plaintiffs opposes FDIC's motion.

Intervention is largely governed by Rule 24 of the South Carolina Rules of Civil Procedure. "The rule is more liberal than prior practice." Prof. Flanagan, South Carolina Civil Procedure 3rd ed. (2014), Chapter 24 §A. Intervention is appropriate under both Rule 24(a) as of right and under Rule 24(b)'s permissive standard.

1. RULE 24(a)

Rule 24(a) provides as follows:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In explaining Rule 24(a)(2), the Court has stated a party seeking to intervene must:

> (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

[37] Arbitration Award, Page 8 of 8.

Berkeley Electric v. Town of Mt. Pleasant, 302 S.C. 186, 189 (S.C. 1990) (citation omitted). "The rules permit liberal intervention." *Id.*

The federal rule is nearly identical to the state rule. Under similar circumstances, the courts have allowed intervention. *See Newport News Shipbuilding & Drydock Co. v. Peninsula Shipbuilders' Ass'n*, 646 F.2d 117, 120 (4th Cir. 1981) (reversing trial court and holding NLRB had right to intervene to protect its own jurisdiction and process and preclude the possibility of district court judgment in conflict with its own administrative proceedings). *Accord Heaton v. Monogram Credit Card Bank* of *Ga.*, 297 F.3d 416, 422 (5th Cir. 2002) (reversing trial court and holding FDIC had right to intervene to show that FDI Act preempted state law).

FDIC can satisfy the requirements of Rule 24(a)(2). Accordingly, intervention of FDIC as a Defendant-Intervenor is appropriate.

i. FDIC's application is timely

The Court has employed a four part test to determine timeliness:

> (1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial.

Davis v. Jennings, 304 S.C. 502 (S.C. 1991) (citation omitted) (intervention permitted).

The present litigation was stayed until March, 2017. FDIC issued the Determination Letters in April, 2017. Moreover, the *effect* of the contractual obligations regarding the Proposed Severance Payments was only decided by the Arbitrator about

two months ago. Therefore, with respect to the first and second *Davis* factors, the FDIC has moved with appropriate celerity.

The third and fourth *Davis* factors do not preclude FDIC's involvement. The Arbitrator's award contemplated that FDIC would issue the Determination Letters after the award was issued and specifically deferred to FDIC's determination regarding whether the Proposed Severance Payments would be prohibited under the golden parachute rules. Accordingly, FDIC's intervention at this stage of the litigation makes sense. Further, there is no prejudice to the parties. In fact, the parties and Arbitrator specifically contemplated that FDIC would make its determination.

Accordingly, FDIC's motion is timely made.

ii. FDIC's interest

The Court has permitted intervention to protect a wide variety of interests, including by way of examples, a first wife intervening in a divorce action brought by a second wife who alleged the husband was committing adultery with the first wife, a newspaper intervening to object to sealing records, an employer intervening in a tort brought by the plaintiff against its employee while the employer was negotiating with the plaintiff to settle the claim, foster parents in an action to terminate parental rights, subrogation claims, and adjoining property owners in a zoning action.[38] Banks have demonstrated an interest where there a lawsuit between a landlord and commercial tenant

[38] Prof. Flanagan, South Carolina Civil Procedure 3rd ed. (2014), Chapter 24 §B 2.

over money due the tenant that had been pledged to the bank or where the bank held a mortgage on leased property where there was a suit between the mortgagor and lessor.[39]

The central issue in the arbitration and litigation is whether the Proposed Settlement Payments can be paid. Application was made to FDIC to permit the Proposed Severance Payments to the Plaintiffs. FDIC's Determination Letters prohibit the making of such payments. FDIC has an interest in both the property (the Proposed Severance Payments) and the transaction (the prohibiting of the Proposed Severance Payments).

Congress authorized the FDIC to "prohibit or limit, by regulation or order, any golden parachute" payment by any "insured depository institution" and any other "covered company." 12 U.S.C. §§1828(k)(1), (k)(4)(A), (k)(5)(D). In fact, Section 1828(k) "was enacted to provide a means of preventing executives who have been terminated from troubled depository institutions from draining money from those institutions." *Knyal v. Office of Comptroller of Currency*, No. C 02-2851 PJH, 2003 WL 26465939, at *14 (N.D. Cal. Nov. 25, 2003). The agency is entitled to deference in making these findings, including findings as to its own administrative jurisdiction. 12 U.S.C. §§1828(k)(1)(A); *City of Arlington v. FCC*, 133 S.Ct. 1863 (2013).

In order to make an otherwise prohibited "golden parachute" payment, an application must be filed with FDIC. Section 12 C.F.R. § 303.244 spells out how applicants may obtain administrative determinations. Following the submission and review of a Part 359 application, FDIC issues a written decision granting or denying approval to make the payment. In assessing a payment application, the agency may make

[39] *Id.*

findings as to whether the payment and the entity making the payment is subject to regulation; the agency also considers the evaluative factors under Part 359, which bear on the culpability and responsibility of the recipient of the proposed payment, the reasonableness of the proposed payment amount, and the purposes of Section 1828(k).[40]

Moreover, the Arbitrator's award specifically contemplated that FDIC would make a determination in this action.

FDIC has acted pursuant to its authority in determining that payment of the Proposed Severance Payments is prohibited. Accordingly, federal law prohibits the making of the Proposed Severance Payments. FDIC has an interest in ensuring that its rulings are upheld.

Therefore, FDIC has an interest in the litigation.

iii. FDIC would be impaired if intervention is not permitted

"Rule 24 protects against more than res judicata and focuses on the effect the disposition of the case would have on the applicant's ability to protect his interests as a practical matter." Prof. Flanagan, South Carolina Civil Procedure 3rd ed., Chapter 24 §B3. The Court has permitted intervention where an assignee's interest in certain income would be impaired if the assignee was not permitted to intervene in an assignor's action to recover the funds from a third party. *Id. citing Thomasson v. Ocean Point Golf, Inc.*, 300 S.C. 29 (S.C. App. 1989).

Both the relief sought by the Plaintiffs and the March 29 Judgment are at odds with FDIC's ruling set forth in the Determination Letters. If FDIC is not permitted to

[40] 12 C.F.R. § 359.4.

intervene, the administrative scheme set up by Congress may be frustrated. Making the Proposed Severance Payments runs contrary to the statutory and regulatory scheme and the FDIC's rulings in this matter.

iv. The parties cannot adequately represent FDIC

The burden of showing inadequate representation "is minimal." Prof. Flanagan, South Carolina Civil Procedure 3rd ed., Chapter 24 §B4. In considering the adequacy of representation, the Court has looked to three factors:

> (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

Berkeley Electric v. Mt. Pleasant, 302 S.C. 186, 191 (S.C. 1990) (citation omitted). The Court in *Berkeley Electric* overturned the trial court and permitted South Carolina Electric & Gas (SCE&G) to intervene in a case brought by Berkeley Electric against the Town of Mt. Pleasant regarding its rights to provide electrical services in Mt. Pleasant.

In the present case, CertusBank, CertusHoldings, and CBSUB will not undoubtedly make all of FDIC's arguments. In fact, the Arbitrator determined that absent the Proposed Severance Payments being barred by the golden parachute rules, the judgment defendants would be bound by the terms of the Plaintiffs' respective Employment Agreements. FDIC has available to it rights not afforded a private entity. Moreover, as the promulgating agency, FDIC is uniquely positioned to make arguments regarding its own policies, procedures, rulings and the Determination Letters. FDIC further has deep knowledge, experience, and perspective on nationwide banking activities

and jurisprudence. FDIC has been delegated its authority to protect the public interest by Congress. The Court in *Berkeley Electric* noted that the interests of governmental entities and private entities can diverge. Accordingly, because of FDIC's unique statue as a federal bank regulator, no party in this action can replicate the agency's interests.

2. IN THE ALTERNATIVE, FDIC SHOULD BE ALLOWED TO INTERVENE UNDER RULE 24(b)

Rule 24(b) provides for permissive intervention as follows:

> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

If FDIC is not allowed to intervene as of right, the agency's motion should be granted under Rule 24(b)'s permissive framework. Rule 24(b) authorizes a court to grant a governmental agency permission to intervene if a party's claim or defense is based on a statute or regulation "administered by a federal. . . agency." The FDIC, as the agency charged by Congress with authority to administer the FDI Act and to "prohibit or limit, by regulation or order, any golden parachute payment," meets Rule 24(b)'s standards. 12 U.S.C. § 1828(k); 12 C.F.R. Part 359, *et seq.* For this, and for the reasons addressed above, the FDIC's intervention under Rule 24(b) would be warranted, if the agency is not permitted to intervene as of right.

3. RULE 24(c)

Rule 24(c) provides that a motion to intervene "shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." In the present case, the parties have entered into stipulated facts and the Arbitrator has rendered an award. Accordingly, the motions set forth in Sections B and C (below) represent the requisite pleadings.

B. MOTION TO MODIFY THE MARCH 29 JUDGMENT TO CONFORM IT WITH THE TERMS OF THE ARBITRATOR'S AWARD OR IN THE ALTERNATIVE TO SET ASIDE THE MARCH 29 JUDGMENT

FDIC respectfully petitions the Court for clarification regarding whether an enforceable judgment has been entered in favor of Plaintiffs. To the extent such a judgment has been entered, FDIC respectfully petitions that it be either modified to conform with the award issued by the Arbitrator, or in the alternative, that it be set aside.

1. FACTS

The Arbitrator's award is dated March 17, 2017. As noted above, the procedural history is unclear. Also as noted above, the March 29 Judgment did not reflect the award issued by the Arbitrator, in that the Arbitrator specifically found that he did not have the jurisdiction to order payment of the Proposed Severance Payments because such an obligation could be unenforceable. The Arbitrator further found that "[a]ny Federal FDIC bar to golden parachute payments ... may render them [the Proposed Severance

Payments] unenforceable to the extent that the bar against golden parachute payments prohibits payment."[41]

Conversely, the March 29 Judgment does not indicate that the judgment is potentially unenforceable under the Arbitrator's award or that is it now barred by federal law but instead purports to make a final determination that the Proposed Severance Payments are owed.

2. ANALYSIS

Rule 60(a) of the South Carolina Rules of Civil Procedure provides in part for relief from a judgment or order that is the result of a clerical mistake or error. To the extent such a mistake or error exists, FDIC respectfully moves that it be rectified under Rule 60(a), SCRCP.

Rule 60(b)(5) permits relief from a judgment both where a judgment has been "otherwise vacated" or where "it is no longer equitable that the judgment should have prospective application." With respect to the former, Professor Flanagan has explained "it is inequitable to enforce a judgment if it is based on a prior judgment that has been reversed or otherwise vacated." South Carolina Civil Procedure, 3rd ed., Chapter 60, §G (2014). With respect to the latter, the Court has explained that this "is based on the historical power of a court of equity to modify its decree in light of subsequent conditions." *Evans v. Gunter*, 294 S.C. 525, 529 (S.C.App. 1988) (citation omitted).

Similarly, Rule 60(b)(4) provides for relief where a judgment is void.

[41] Arbitration Award, Page 8 of 8.

In the present case, the March 29 Judgment enrolling the Arbitrator's award does not accurately reflect the award as made. The South Carolina Uniform Arbitration Act provides that the Court should not vary the terms of an Arbitrator's award in the absence of an application to do so. S.C. Code Ann. §15-48-120. No application to vacate or modify an award has been filed under either S.C. Code Ann. §15-48-130 or 140.

Further, the March 29 Judgment was entered prior to the expiration of time provided for parties to petition the Court to vacate or modify the Arbitrator's award under S.C. Code Ann. §15-48-130 or 140. Moreover, the sums sought by the Plaintiffs are preempted by federal law.

Accordingly, the Court lacked the power to enter the March 29 Judgment. This is especially true to the extent the March 29 Judgment does not reflect the Arbitrator's award. Furthermore, it would be inequitable for the March 29 Judgment to stand when it does not accurately reflect the Arbitrator's award. Moreover, the Arbitrator's award contemplated that the FDIC would ultimately make a determination as to whether the Proposed Severance Payments are enforceable obligations. That determination was made after the March 29 Judgment was entered. In light of the Arbitrator's award, FDIC's rulings, and controlling federal law, the issuance of the Determinative Letters is analogous to a judgment being vacated. Finally, federal law now bars defendants (and CBSUB) from making the Proposed Severance Payments. The Plaintiffs claimed entitlements to such sums under state law must give way under the Supremacy Clause.

R\Rule 60(b)(2) also provides an avenue for relief from a judgment. The Court has explained the Rule as follows:

> To obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence:
> (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching.

Lanier v. Lanier, 364 S.C. 211, 217 (Ct.App. 2005) (citations omitted). In the present case, the Determinative Letters are not "evidence" but rather the ruling of FDIC. The FDIC's rulings bear on the central issue of the litigation and were issued after the Arbitrator's award and the March 29 Judgment. The FDIC's Determination Letters prohibit the making of the Proposed Severance Payments. To the extent the *Lanier* factors apply, the analysis is as follows: (1) the Proposed Severance Payments are now prohibited by federal jurisprudence (as evidenced by the Determination Letters) which will probably change the result of the March 29 Judgment to the contrary, (2) the FDIC's determination was necessarily discovered after the March 29 Judgment since the Determination Letters were not written until April, 2017, (3) the FDIC's determination could not have been discovered prior to the entry of the March 29 Judgment because it was not made until April, 2017, (4) the Determination Letters are material to the case because they prohibit the making of the Proposed Severance Payments, which determination was dispositive of the entire issue submitted to arbitration, and further because the Arbitrator specifically contemplated that the FDIC's adverse decision would necessarily determine the enforceability of the obligation to make the Proposed Severance Payments, and (5) the FDIC's determination is not merely cumulative or

impeaching but is unique and addressed to the heart of the case. Finally, FDIC was not a party to the case when the March 29 Judgment was entered.

Federal golden parachute restrictions bar the sums the Plaintiffs seek under state law. Further, it is inequitable for CertusBank, CertusHoldings, or CBSUB to be faced with conflicting requirements—a requirement to pay under the March 29 Judgment but a federal prohibition from making payment under the ruling set forth in FDIC's Determinative Letters.

Accordingly, FDIC respectfully moves the Court for an Order either conforming the March 29 Judgment to the award as issued by the Arbitrator or, in the alternative, setting aside the March 29 Judgment.

C. MOTION TO RENDER UNENFORCEABLE ANY OBLIGATION TO MAKE PAYMENT OF THE PROPOSED SEVERANCE PAYMENTS

FDIC respectfully petitions and moves the Court for an Order that payment of the Proposed Severance Payments is unenforceable under both the Arbitrator's award and the applicable federal law.

I. FACTS

As noted above, the Arbitrator found that whether the Proposed Severance Payments were federally prohibited "golden parachute" payments was a determination to be made by FDIC. With respect to CertusBank and CertusHoldings, the Arbitrator found as follows:

> Code Section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I

> read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.[42]

With respect to CBSUB, the Arbitrator found as follows:

> However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC golden parachute statute and Regulations.[43]

After the issuance of the Arbitrator's award, the FDIC made its determination and prohibited payment of the Proposed Severance Payments with respect to all of the Plaintiffs.[44]

2. ANALYSIS

In 1990, Congress amended the Federal Deposit Insurance Act (the "FDI Act") to include a provision related to golden parachute payments. 12 U.S.C. §1828(k). Section 1828(k) defines such payments to include payments contingent on the termination of employment and made while a bank is in "a troubled condition." 12 U.S.C. §1828(k)(4)(A). To carry out Section 1828(k), Congress authorized the FDIC to "prohibit or limit, by regulation or order, any golden parachute" payment by any "insured depository institution" and any other "covered company." 12 U.S.C. §§1828(k)(1), (k)(4)(A), (k)(5)(D).

In 1996, after formal notice and comment rulemaking, the FDIC issued regulations implementing Section 1828(k). *See* 12 C.F.R. 359; 12 C.F.R. § 303.244. Section 1828(k) "was enacted to provide a means of preventing executives who have been

[42] Arbitration Award, Page 6 of 8.
[43] Arbitration Award, Pages 7-8 of 8.
[44] Jones Determination Letter, Page 6; Davis Determination Letter, Page 6; Webb Determination Letter, Page 6.

terminated from troubled depository institutions from draining money from those institutions." *Knyal v. Office of Comptroller of Currency*, No. C 02-2851 PJH, 2003 WL 26465939, at *14 (N.D. Cal. Nov. 25, 2003). To make an otherwise prohibited "golden parachute" payment, an application must be filed with FDIC. Section 12 C.F.R. § 303.244 spells out how applicants may obtain administrative determinations. Following the submission and review of a Part 359 application, FDIC issues a written decision granting or denying approval to make the payment. In assessing a payment application, the agency may make findings as to whether the payment and the entity making the payment is subject to regulation; the agency also considers the evaluative factors under Part 359, which bear on the culpability and responsibility of the recipient of the proposed payment, the reasonableness of the proposed payment amount, and the purposes of Section 1828(k).[45]

In the present case, FDIC has acted pursuant to its authority in issuing the Determination Letters barring the Proposed Severance Payments sought in this case. FDIC is the federal agency charged by Congress to administer 12 U.S.C. §1828(k), and has promulgated the implementing Part 359 regulations, 12 C.F.R. §359 *et seq.* FDIC appropriately exercised this authority by barring the payments sought here. *See, e.g., Harrison v. Ocean Bank*, 614 F. App'x 429 (11th Cir. 2015), *cert. denied*, No. 15-1050, 2016 WL 1173141 (U.S. Mar. 28, 2016) (affording deference to FDIC "golden parachute" administrative determination); *Batchelor v. Cornerstone Bank*, No. 5:13-CV-78-D, 2013 WL 5309578, at *3 (E.D.N.C. Sept. 19, 2013) (same).

[45] 12 C.F.R. § 359.4.

Congress granted FDIC the authority to "prohibit or limit, by regulation or order, any golden parachute payment," and the agency is entitled to deference in making these findings, including findings as to its own administrative jurisdiction. 12 U.S.C. §§1828(k)(1)(A); *City of Arlington v. FCC*, 133 S.Ct. 1863 (2013). The FDIC's "golden parachute" administrative determinations have been roundly upheld on judicial review over the years.[46]

Citing the "golden parachute" rules, the FDIC's Determination Letters prohibit the making of the Proposed Severance Agreement to the Plaintiffs. Accordingly, that portion of the Plaintiffs' Employment Agreements are now unenforceable under federal law.[47] As an additional and independent ground, the Arbitrator's award recognized that the FDIC had the power to render the contractual obligation to make the Proposed Severance Agreements unenforceable. Given the federal prohibitions, it would be error for this Court to enter an award requiring payment of the Proposed Severance Payments.

In light of federal jurisprudence, FDIC's ruling, and the Arbitrator's award, FDIC respectfully moves the Court for an Order that any obligation to make the Proposed Severance Payments is now rendered unenforceable. Accordingly, FDIC respectfully moves the Court to enter an Order that removes any judgment requiring that CertusBank, CertusHoldings, and/or CBSUB make the Proposed Severance Payments to the Plaintiffs.

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[46] *See, e.g., Rohr v. Reliance Bank*, 826 F.3d 1046 (8th Cir. 2016); *Harrison v. Ocean Bank*, 614 F. App'x 429 (11th Cir. 2015), *cert. denied*, No. 15-1050, 2016 WL 1173141 (U.S. Mar. 28, 2016); *Knyal v. Office of Comptroller of Currency*, No. C 02-2851 PJH, 2003 WL 26465939, at *14 (N.D. Cal. Nov. 25, 2003); *Batchelor v. Cornerstone Bank*, No. 5:13-CV-78-D, 2013 WL 5309578, at *3 (E.D.N.C. Sept. 19, 2013).

[47] Without limiting the remedies available to the Plaintiffs, the Administrative Procedure Act, 5 U.S.C. § 706 *et seq.* can provide an avenue for review.

Finally, FDIC seeks an Order prohibiting the making of the Proposed Settlement Payments.

IV. CONCLUSION

For the foregoing reasons, FDIC respectfully requests and moves this Honorable Court to grant its motion to intervene, motion to modify or set aside the March 29 Judgment, and motion to order that payment of the Proposed Severance Payments is unenforceable and for such other and further relief as the Court may deem proper.

Respectfully submitted,

May 23, 2017
Greenville, South Carolina

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ATTORNEYS FOR THE PROPOSED DEFENDANT INTERVENOR FEDERAL DEPOSIT INSURANCE CORPORATION

ELECTRONICALLY FILED - 2017 Mar 23 1:33 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

ARBITRATION
THOMAS W. TRAXLER – ARBITRATOR

Milton Jones, Jr., Walter Davis, and Angela Webb,	)
Plaintiffs,	)
v.	)
CertusBank N.A., and CertusHoldings, Inc.,	)
Defendants.	)

STIPULATION OF CLAIMS AND FACTS

The parties to this action stipulate to the following:

Stipulation of Legal Claim

1. Plaintiffs have instituted a breach of contract claim against Defendants based on their respective Amended and Restated Executive Employment Agreements.

2. Plaintiff Walter Davis seeks damages for failure to pay severance pursuant to his Amended and Restated Executive Employment Agreement in the amount of $325,000.

3. Plaintiff Milton Jones seeks damages for failure to pay severance pursuant to his Amended and Restated Executive Employment Agreement in the amount of $340,000.

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4. Plaintiff Angela Webb seeks damages for failure to pay severance pursuant to his Amended and Restated Executive Employment Agreement in the amount of $300,000.

5. Plaintiffs have agreed to withdraw their claim for relief for twenty-two (22) months of remaining salary and twenty-two (22) months of medical benefits alleged as damages in the Complaint.

Stipulation of Facts

The parties stipulate to the following facts:

1. At different times relevant to this litigation, Plaintiff Jones was Chairman of the Board, President, and CEO of CertusBank.

2. At different times relevant to this litigation, Plaintiff Davis was CEO, Co-CEO, Chief Credit Officer, and Senior Executive Vice President of CertusBank.

3. At different times relevant to this litigation, Plaintiff Webb was President, Senior Executive Vice President, and Chief Administrative Officer of CertusBank.

4. CertusBank, N.A. was a subsidiary of CertusHoldings, Inc. (formerly Blue Ridge Holdings, Inc.).

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5. Plaintiff Davis entered into an Amended and Restated Executive Employment Agreement with Blue Ridge Holdings, Inc. on or about February 22, 2011. (*Exhibit A*)

6. Plaintiff Jones entered into an Amended and Restated Executive Employment Agreement with Blue Ridge Holdings, Inc. on or about February 22, 2011. (*Exhibit B*)

7. Plaintiff Webb entered into an Amended and Restated Executive Employment Agreement with Blue Ridge Holdings, Inc. on or about February 22, 2011. (*Exhibit C*)

8. Except for the annual compensation amount, the terms of the Amended Restated Executive Employment Agreements are essentially identical for all three Plaintiffs.

9. Pursuant to Section H of Plaintiffs' respective Amended and Restated Executive Employment Agreements, each Plaintiff is entitled to severance if their employment terminated under certain circumstances.

10. Pursuant to Paragraph 33 of the Amended and Restated Executive Employment Agreements, each Plaintiff was scheduled to receive a lump sum cash payment in an amount equal to twelve (12) months' salary at the rate in effect on the date Plaintiff's employment terminates.

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11. Plaintiffs will not be entitled to receive the additional benefits described in Paragraph 33 unless they execute a General Release and Waiver of Claims.

12. Plaintiffs were terminated without cause pursuant to their respective Amended and Restated Executive Employment Agreements on April 9, 2014 by the Combined CertusHoldings, Inc. and CertusBank Boards of Directors.

13. As of April 9, 2014, the date of Plaintiffs' termination, their respective Amended and Restated Executive Employment Arguments with Blue Ridge Holdings, Inc. were the applicable agreements for their employment with CertusBank, N.A.

14. Plaintiff Jones and Plaintiff Davis remained members of the CertusBank Board of Directors after their terminations until June 2015.

15. Plaintiffs' termination without cause on April 9, 2014 triggered the severance pay provision in Paragraph 33 of the respective Amended and Restated Executive Employment Agreements. There are no other facts or circumstances that Plaintiffs contend triggered a right to payment under the Amended and Restated Executive Employment Agreements.

16. At the time Plaintiffs were terminated on April 9, 2014, the Office of the Comptroller of the Currency ("OCC") had designated CertusBank to be in "troubled condition" pursuant to 12 CFR § 303.101(c).

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17. CertusBank has not paid severance to Plaintiffs because it is CertusBank's position that it is legally prohibited from making such severance payments because such payments constitute a "golden parachute payment" set forth in 12 CFR § 359.1.

18. If Plaintiff Milton Jones is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Jones is $340,000.

19. If Plaintiff Walter Davis is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Davis is $325,000.

20. If Plaintiff Angela Webb is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Webb is $300,000.

21. CertusBank's status as an insured depository institution terminated on or about October 23, 2015 via an Order of Approval of termination of insurance by the FDIC.

22. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

23. In or about November, 2015 with the surrender of its charter as a national bank to the OCC CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

24. In or about November, 2015 a new corporation, CBSUB, Inc., was incorporated to receive the residual assets and liabilities of CertusBank, N.A.,

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including any liabilities the bank may owe to the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

25. CBSUB, Inc. is not a bank and is not regulated by the OCC and FDIC. CBSUB, Inc.'s principal place of business is located at 24 Poinsett Avenue, Greenville, South Carolina. CBSUB, Inc. maintains a bank account at SunTrust Bank, Greenville, South Carolina.

Dated this 1st day of March, 2016

Respectfully submitted,

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FDIC

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Atlanta Regional Office
Division of Risk Management Supervision
Division of Depositor and Consumer Protection
(678) 916-2200

April 7, 2017

Mr. Thomas Simpson
JAMES-BATES-BRANNAN-GROOVER-LLP
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326

SUBJECT: CBSUB, Inc. and CertusHoldings, Inc., successors by merger to CertusBank, N.A.
Easley, South Carolina

Golden Parachute Application—Milton Jones

Dear Mr. Simpson:

The FDIC received the applications dated on April 21, 2016, you filed on behalf of CBSUB, Inc. ("CBSUB"), and CertusHoldings, Inc. ("Company") (collectively, "Certus") as successors by merger to CertusBank, N.A. ("Bank") requesting that the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Bank of Atlanta ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "Agencies") confirm that 12 U.S.C. § 1828(k) ("Section 1828(k)") and 12 C.F.R. Part 359 ("Part 359") (collectively, "Golden Parachute Rules") apply to certain proposed payments. CBSUB also asked that the Agencies approve applications for golden parachute payments from CBSUB to Milton Jones ("Jones"), Walter L. Davis ("Davis"), and K. Angela Webb ("Webb") (collectively, "Senior Executive Officers") despite the lack of the required certifications. The applications seek approval of the proposed payments of $340,000, $325,000, and $300,000, respectively ("Proposed Payments")[1], to Jones, Davis, and Webb, though this letter regards the applicability of the Golden Parachute Rules as they pertain to Jones. The Proposed Payments constitute "golden parachute payments" under the Golden Parachute Rules, compelling the filing of applications. For the reasons set forth below, based on their involvement with the troubled condition of the Bank and the issues described below regarding their actions as Senior Executive Officers, the FDIC prohibits CBSUB under the Golden Parachute Rules from making the Proposed Payments to Jones in any amount.

Blue Ridge Holdings, Inc. ("Blue Ridge") became a bank holding company in 2011. At the time the Bank became an insured depository institution, it was a wholly owned subsidiary of Blue

[1]Proposed Payments are the amounts of severance which were determined by an arbitrator on February 28, 2017.

Ridge.[2] In March 2014, the OCC notified the Bank that it was in "troubled condition" under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions on golden parachute payments set forth in Part 359. As a result of the Bank's deteriorating financial condition, the Bank entered into a Stipulation to the Issuance of a Consent Order ("Order") with the OCC on November 4, 2014. Due to the financial condition of the Bank, the FRB notified the Company that it was in troubled condition on April 7, 2014.

After failing to raise additional capital, Bank management submitted an application for a change in asset composition and application to merge with a non-bank affiliate to the OCC. The application incorporated a plan to divest the Bank of all banking assets. As part of its approval of this plan, the OCC approved the merger of the Bank with and into CBSUB which was effective November 2, 2015, and also cancelled the Bank's national banking charter. The Bank and the Company merged into CBSUB which was formed to dispose of the Bank's remaining assets and resolve its remaining liabilities.

Jones was President and Chief Executive Officer of the Company and the Bank from January 20, 2011, until February of 2012. Jones was Executive Chairman of the Company and the Bank from February 2012 until his termination on April 9, 2014. Jones was Chairman of the Board of the Company and the Bank from January 2011 until his termination on April 9, 2014. On February 22, 2011, Jones entered into an amended and restated employment agreement with the Company ("Employment Agreement"). The Employment Agreement provided for a base annual salary of $340,000, annual performance incentives, stock options, award of stock at the beginning of the Employment Agreement, and participation in the Company's employee benefit plans, fringe benefits, and perquisites.

Because of the condition of the Company and the Bank, the Board terminated Jones and the other Senior Executive Officers without "Good Cause" as defined in the Employment Agreements on April 9, 2014, following a Board meeting. The Board could not terminate the Senior Executive Officers for "Good Cause" under the terms of their Employment Agreements without first providing them with a 30 day "cure" period. Because of the deteriorated condition of the Bank, the Board believed that an immediate change in executive leadership was in the best interests of the Company and the Bank. Therefore, the Board terminated the Senior Executive Officers without cause pursuant to their Employment Agreements.

The termination provisions of the Employment Agreements provided that the Company, by action of its board of directors, could terminate the Employment Agreements for any reason within 30 days written notice of the termination.[3] Although there is a provision describing the grounds for termination for Good Cause, the Board did not terminate Jones for Good Cause. The Employment Agreements provided for a severance payment if he was terminated during the term of the Employment Agreement without Good Cause, in addition to the Standard Termination Benefits and Other Benefits.[4] The severance payment was to include: a cash payment for the Senior Executive Officer's base salary for 12 months; a lump sum cash payment equal to the target annual incentive pursuant to a certain formula; and their outstanding equity would become

[2] Blue Ridge became the Company in late 2011 and functioned as a bank holding company. The OCC granted a national banking charter and the FDIC approved the Bank's application for deposit insurance in January 2011.
[3] Employment Agreements, Paragraph 22.
[4] Employment Agreements, Paragraph 33. Standard Termination Benefits and Other Benefits are not defined in the Employment Agreements.

exercisable or vest. However, the Employment Agreements expressly stated that the Senior Executive Officers were not entitled to receive these severance benefits in Paragraph 33 unless they executed a general release and waiver of claims. The Senior Executive Officers did not execute such a release and waiver.

The Senior Executive Officers filed suit in South Carolina State Court against the Company and the Bank ("Regulated Entities") on September 9, 2015, under the Employment Agreements ("State Court Action") for breach of contract. They requested damages including 22 months of salary, 22 months of medical benefits, attorney's fees, and termination without cause penalties. The complete amount of damages sought on behalf of Jones was $1,049,089.27. The State Court Action was referred to an arbitrator pursuant to the provisions in the Employment Agreements. In the arbitration proceeding, the Senior Executive Officers asserted that CBSUB did not need to obtain approval from the OCC, FDIC and/or FRB pursuant to Part 359 to make the Proposed Payments. The Arbitrator in the State Court Action determined that the Bank, the Company, and CBSUB are liable to the Senior Executive Officers for the Proposed Payments. The Arbitrator also expressly did not decide whether the Proposed Payments are barred under the Golden Parachute Rules.[5]

Pursuant to 12 C.F.R. § 359.1(f)(1), any payment in the nature of compensation that is payable to a current or former institution-affiliated party ("IAP") on or after the termination of his employment by the institution and received on or after the institution is in troubled condition is a golden parachute payment. The Senior Executive Officers were IAPs of the Bank and the Company in their capacities as officers, directors, and employees under 12 C.F.R. § 359.1(h)(1) and (f)(iii)(A). The OCC notified the Bank in March 2014 that it was in troubled condition under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions in the Golden Parachute Rules. The FRB notified the Company on April 7, 2014, that it was in troubled condition.

Jones was employed with the Bank and the Company when the OCC and the FRB notified the Bank and the Company that they were in troubled condition. Any payments that were compensation payable after Jones' termination on April 9, 2014, would have been received after the Bank and the Company were in troubled condition. The Proposed Payments meet the definition of a golden parachute payment in 12 C.F.R. § 359.1(f)(1). Further, the Proposed Payments are not covered by any of the exceptions contained in 12 C.F.R. § 359.1(f)(2). CBSUB, as successor by merger to the Bank and the Company, is subject to regulation under 12 U.S.C § 1828(k) as a "covered company." The Arbitrator also determined that CBSUB was the successor by merger to the Bank and the Company and liable for the Proposed Payments. Therefore, CBSUB could not make the Proposed Payments absent prior regulatory approval. 12 C.F.R. § 359.2.

Part 359 defines "payment" as including "[a]ny direct or indirect transfer of any funds or any asset...the conferring of any benefit ...for the purpose of making, or pursuant to any agreement to make, any payment . . ." 12 C.F.R. § 359.1(k). In the State Court Action, the Senior Executive Officers asserted rights to severance payments and other payments as a result of their assertion that the Bank and Company breached the Employment Agreements. If severance payments had been made, those payments would have been made after Jones' termination from

[5] Arbitration Award, February 28, 2017.

the troubled Bank and Company. The severance payments[6] are golden parachute payments subject to the limitations of the Golden Parachute Rules. Based on the material provided in the Applications, the Proposed Payments are derived from agreements that, by their very terms, afforded benefits upon termination of employment with the Bank and Company. The Proposed Payments constitute golden parachute payments under 12 C.F.R. § 359.1(f)(1)(i).

In determining whether CBSUB could provide the certifications required by 12 C.F.R. § 359.4(a)(4), the Board and officers of CBSUB represented that they consulted with the former human resources director of the Bank, reviewed applicable corporate governance records and regulatory correspondence, reviewed financial information regarding Jones' employment by the Company and the Bank, and considered their duties and the activities of their employment. After its review, the Board of CBSUB stated that they were unable to provide the certifications for the Jones in conjunction with the applications. The applications did not recite every factor that CBSUB and the Company considered in determining their inability to deliver the certifications but the applications did present some of those factors.

The applications stated that the Senior Executive Officers were substantially responsible for the "troubled condition" of the Bank and described the following support for that opinion. The Bank suffered steep financial losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. The applications also stated that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at a time when the Company and the Bank were reporting heavy losses. The applications stated that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operations. Based on the above described issues, the applications stated that neither the Company nor CBSUB could deliver the certifications required by 12 C.F.R. § 359.4(a)(4) with respect to the Senior Executive Officers.

We have reviewed the supervisory record and it supports the determination that the Senior Executive Officers were responsible for the decline of the overall condition of the Bank. We note that the terminations of the Senior Executive Officers were authorized by the independent members of the Board, based on findings from a forensic audit into the Senior Executive Officers' activities. We note that the OCC's Order identifies the comprehensive remedial actions that were needed at the Bank to address the management failures which occurred at the time that the Senior Executive Officers were responsible for the management policies and direction of the Bank.

Moreover, we note that recently Jones entered into orders with the OCC agreeing to personally cease and desist from certain banking activities and pay civil monetary penalties.[7] The CMP Orders recite that the Senior Executive Officers caused the Bank to violate banking laws by purchasing property for their use; failed to present to the Board for decision certain strategically important contracts or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution; and caused the Bank to incur excessive

[6] The severance payments and any payments the Senior Executive Officers sought based on alternative theories in the State Court Action are golden parachute payments.

[7] Consent Orders 2017-005, 2017-006, and 2017-007 were issued against Davis, Jones, and Webb, respectively, on January 3, 2017 (collectively, "CMP Orders").

expenses resulting in losses to the Bank. As a result, the OCC found that the Senior Executive Officers engaged in a pattern of misconduct that supported actions pursuant to 12 U.S.C. § 1818(b) and (i) against the Senior Executive Officers. Jones agreed to personally cease and desist from certain banking activities and pay a civil money penalty of $3,500.

12 C.F.R. § 359.4(a)(1) permits the appropriate federal banking agency, with the FDIC's written concurrence, to determine that a payment is permissible. 12 C.F.R. § 359.4(b) sets forth three factors supervisory staff may consider in evaluating whether to permit a golden parachute payment and we have taken those factors into account in this determination. Each of these factors independently supports denial of the applications here. Jones had policy-making authority for the Bank. CBSUB provided substantial information about Jones' work duties, responsibilities, and areas of oversight that fell within significant areas of the Bank's operations that were criticized in the supervisory record. Additionally, the supervisory record supports a determination that Jones exercised a high degree of managerial and fiduciary responsibility. Given their executive leadership positions, the Senior Executive Officers were in a position to make decisions and policies regarding the Bank that directly contributed to the Bank and the Company's troubled condition. While CBSUB did not provide the certifications, the information that was provided is consistent with the expectations for that information described in the FDIC's FIL-66-2010, *Guidance on Golden Parachute Applications*, as it addressed the areas of regulatory criticism. The agency finds the information provided supports denial of the applications.

12 C.F.R. § 359.4(b)(2) requires the regulator, in considering whether to approve otherwise impermissible "golden parachute" payments, to consider the IAP's length of affiliation with the institution, "and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment." FDIC guidance makes clear that in evaluating the reasonableness of payment amounts, the regulators' exception[8] "should not be viewed as intended to permit golden parachute payments in excess of 12 months' salary." Here, CBSUB has sought authorization to make payments to Jones in the amount of his annual salary. We note that the original damages that Jones sought in the State Court Action far exceed twelve months' salary.

12 C.F.R. § 359.4(a)(1) and (b)(3) grants the regulator the discretion to approve otherwise impermissible payments to the extent the regulator determines such payments are permissible. There is no other information presented in the applications or the supervisory record that would warrant a departure from the exercise of normal supervisory discretion regarding the applications.

This letter documents the FDIC's determination that any payments to Jones would constitute golden parachute payments and are subject to approval of the OCC and the FRB with the concurrence of the FDIC. The FDIC determined that:

1. The Proposed Payments are subject to the limitations of the Golden Parachute Rules.
2. CBSUB is the successor by merger to the troubled entities from whom the payment obligation arises, is subject to the Golden Parachute Rules, and prohibited from

[8] 12 C.F.R. § 359.4(a)(1).

making payments to the Senior Executive Officers without approved golden parachute applications.

3. Although the applications did not provide the certifications, based on available information, the FDIC determined that the Senior Executive Officers were substantially responsible for the troubled condition of the Bank and the Company.

4. The Senior Executive Officers were employed by the Bank from its inception until April 9, 2014, and were the most senior executive officers of the Bank until their termination after the Bank and the Company became in troubled condition; and

5. The Senior Executive Officers were in positions of managerial and fiduciary responsibility and, based on the deterioration of the Bank under their supervision, there is evidence that their acts in that capacity had a material adverse effect on the Bank.

For the foregoing reasons, and based on review of the entire record, the FDIC could not concur in the approval of any payments to Jones by either the OCC or the FRB. The FDIC therefore prohibits CBSUB from making the Proposed Payments, in any amount, to Jones. This correspondence represents the FDIC's final agency action regarding the subject applications.

If you have any questions regarding this correspondence, please contact Senior Case Manager Rick Packard at 678-916-2211.

Sincerely,

John P. Henrie
Deputy Regional Director

cc. James Zimmerman, Office of the Comptroller of the Currency
Allan Stanley, Federal Reserve Bank of Atlanta

FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION
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Atlanta Regional Office
Division of Risk Management Supervision
Division of Depositor and Consumer Protection
(678) 916-2200

April 7, 2017

Mr. Thomas Simpson
JAMES-BATES-BRANNAN-GROOVER-LLP
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326

SUBJECT: CBSUB, Inc. and CertusHoldings, Inc., successors by merger to CertusBank, N.A.
Easley, South Carolina

Golden Parachute Application—Walter L. Davis

Dear Mr. Simpson:

The FDIC received the applications dated on April 21, 2016, you filed on behalf of CBSUB, Inc. ("CBSUB"), and CertusHoldings, Inc. ("Company") (collectively, "Certus") as successors by merger to CertusBank, N.A. ("Bank") requesting that the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Bank of Atlanta ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "Agencies") confirm that 12 U.S.C. § 1828(k) ("Section 1828(k)") and 12 C.F.R. Part 359 ("Part 359") (collectively, "Golden Parachute Rules") apply to certain proposed payments. CBSUB also asked that the Agencies approve applications for golden parachute payments from CBSUB to Milton Jones ("Jones"), Walter L. Davis ("Davis"), and K. Angela Webb ("Webb") (collectively, "Senior Executive Officers") despite the lack of the required certifications. The applications seek approval of the proposed payments of $340,000, $325,000, and $300,000, respectively ("Proposed Payments")[1], to Jones, Davis, and Webb, though this letter regards the applicability of the Golden Parachute Rules as they pertain to Davis. The Proposed Payments constitute "golden parachute payments" under the Golden Parachute Rules, compelling the filing of applications. For the reasons set forth below, based on their involvement with the troubled condition of the Bank and the issues described below regarding their actions as Senior Executive Officers, the FDIC prohibits CBSUB under the Golden Parachute Rules from making the Proposed Payments to Davis in any amount.

Blue Ridge Holdings, Inc. ("Blue Ridge") became a bank holding company in 2011. At the time the Bank became an insured depository institution, it was a wholly owned subsidiary of Blue

[1]Proposed Payments are the amounts of severance which were determined by an arbitrator on February 28, 2017.

Ridge.[2] In March 2014, the OCC notified the Bank that it was in "troubled condition" under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions on golden parachute payments set forth in Part 359. As a result of the Bank's deteriorating financial condition, the Bank entered into a Stipulation to the Issuance of a Consent Order ("Order") with the OCC on November 4, 2014. Due to the financial condition of the Bank, the FRB notified the Company that it was in troubled condition on April 7, 2014.

After failing to raise additional capital, Bank management submitted an application for a change in asset composition and application to merge with a non-bank affiliate to the OCC. The application incorporated a plan to divest the Bank of all banking assets. As part of its approval of this plan, the OCC approved the merger of the Bank with and into CBSUB which was effective November 2, 2015, and also cancelled the Bank's national banking charter. The Bank and the Company merged into CBSUB which was formed to dispose of the Bank's remaining assets and resolve its remaining liabilities.

Davis was Chief Credit Officer of the Company and the Bank from January 2011 until February 2012. From February 2012 until April 9, 2014, Davis was Co-Chief Executive Officer of the Company and the Bank. From January 2014 until April 9, 2014, Davis was Chief Executive Officer of the Company and the Bank. Additionally, Davis was a member of the Board of the Company and the Bank from January 2011 until April 9, 2014. On February 22, 2011, Davis entered into an amended and restated employment agreement with the Company ("Employment Agreement"). The Employment Agreement provided for a base annual salary of $325,000, annual performance incentives, stock options, award of stock at the beginning of the Employment Agreement, and participation in the Company's employee benefit plans, fringe benefits, and perquisites.

Because of the condition of the Company and the Bank, the Davis and the other Senior Executive Officers without "Good Cause" as defined in the Employment Agreements on April 9, 2014, following a Board meeting. The Board could not terminate the Senior Executive Officers for "Good Cause" under the terms of their Employment Agreements without first providing them with a 30 day "cure" period. Because of the deteriorated condition of the Bank, the Board believed that an immediate change in executive leadership was in the best interests of the Company and the Bank. Therefore, the Board terminated the Senior Executive Officers without cause pursuant to their Employment Agreements.

The termination provisions of the Employment Agreements provided that the Company, by action of its board of directors, could terminate the Employment Agreements for any reason within 30 days written notice of the termination.[3] Although there is a provision describing the grounds for termination for Good Cause, the Board did not terminate Davis for Good Cause. The Employment Agreements provided for a severance payment if he was terminated during the term of the Employment Agreement without Good Cause, in addition to the Standard Termination Benefits and Other Benefits.[4] The severance payment was to include: a cash payment for the Senior Executive Officer's base salary for 12 months; a lump sum cash payment

[2] Blue Ridge became the Company in late 2011 and functioned as a bank holding company. The OCC granted a national banking charter and the FDIC approved the Bank's application for deposit insurance in January 2011.
[3] Employment Agreements, Paragraph 22.
[4] Employment Agreements, Paragraph 33. Standard Termination Benefits and Other Benefits are not defined in the Employment Agreements.

equal to the target annual incentive pursuant to a certain formula; and their outstanding equity would become exercisable or vest. However, the Employment Agreements expressly stated that the Senior Executive Officers were not entitled to receive these severance benefits in Paragraph 33 unless they executed a general release and waiver of claims. The Senior Executive Officers did not execute such a release and waiver.

The Senior Executive Officers filed suit in South Carolina State Court against the Company and the Bank ("Regulated Entities") on September 9, 2015, under the Employment Agreements ("State Court Action") for breach of contract. They requested damages including 22 months of salary, 22 months of medical benefits, attorney's fees, and termination without cause penalties. The complete amount of damages sought on behalf of Davis was $1,017,145.81. The State Court Action was referred to an arbitrator pursuant to the provisions in the Employment Agreements. In the arbitration proceeding, the Senior Executive Officers asserted that CBSUB did not need to obtain approval from the OCC, FDIC and/or FRB pursuant to Part 359 to make the Proposed Payments. The Arbitrator in the State Court Action determined that the Bank, the Company, and CBSUB are liable to the Senior Executive Officers for the Proposed Payments. The Arbitrator also expressly did not decide whether the Proposed Payments are barred under the Golden Parachute Rules.[5]

Pursuant to 12 C.F.R. § 359.1(f)(1), any payment in the nature of compensation that is payable to a current or former institution-affiliated party ("IAP") on or after the termination of his employment by the institution and received on or after the institution is in troubled condition is a golden parachute payment. The Senior Executive Officers were IAPs of the Bank and the Company in their capacities as officers, directors, and employees under 12 C.F.R. § 359.1(h)(1) and (f)(iii)(A). The OCC notified the Bank in March 2014 that it was in troubled condition under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions in the Golden Parachute Rules. The FRB notified the Company on April 7, 2014, that it was in troubled condition.

Davis was employed with the Bank and the Company when the OCC and the FRB notified the Bank and the Company that they were in troubled condition. Any payments that were compensation payable after Davis' termination on April 9, 2014, would have been received after the Bank and the Company were in troubled condition. The Proposed Payments meet the definition of a golden parachute payment in 12 C.F.R. § 359.1(f)(1). Further, the Proposed Payments are not covered by any of the exceptions contained in 12 C.F.R. § 359.1(f)(2). CBSUB, as successor by merger to the Bank and the Company, is subject to regulation under 12 U.S.C § 1828(k) as a "covered company." The Arbitrator also determined that CBSUB was the successor by merger to the Bank and the Company and liable for the Proposed Payments. Therefore, CBSUB could not make the Proposed Payments absent prior regulatory approval. 12 C.F.R. § 359.2.

Part 359 defines "payment" as including "[a]ny direct or indirect transfer of any funds or any asset...the conferring of any benefit ...for the purpose of making, or pursuant to any agreement to make, any payment . . ." 12 C.F.R. § 359.1(k). In the State Court Action, the Senior Executive Officers asserted rights to severance payments and other payments as a result of their assertion that the Bank and Company breached the Employment Agreements. If severance payments had been made, those payments would have been made after Davis' termination from

[5] Arbitration Award, February 28, 2017.

the troubled Bank and Company. The severance payments[6] are golden parachute payments subject to the limitations of the Golden Parachute Rules. Based on the material provided in the Applications, the Proposed Payments are derived from agreements that, by their very terms, afforded benefits upon termination of employment with the Bank and Company. The Proposed Payments constitute golden parachute payments under 12 C.F.R. § 359.1(f)(1)(i).

In determining whether CBSUB could provide the certifications required by 12 C.F.R. § 359.4(a)(4), the Board and officers of CBSUB represented that they consulted with the former human resources director of the Bank, reviewed applicable corporate governance records and regulatory correspondence, reviewed financial information regarding Davis' employment by the Company and the Bank, and considered their duties and the activities of their employment. After its review, the Board of CBSUB stated that they were unable to provide the certifications for the Davis in conjunction with the applications. The applications did not recite every factor that CBSUB and the Company considered in determining their inability to deliver the certifications but the applications did present some of those factors.

The applications stated that the Senior Executive Officers were substantially responsible for the "troubled condition" of the Bank and described the following support for that opinion. The Bank suffered steep financial losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. The applications also stated that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at a time when the Company and the Bank were reporting heavy losses. The applications stated that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operations. Based on the above described issues, the applications stated that neither the Company nor CBSUB could deliver the certifications required by 12 C.F.R. § 359.4(a)(4) with respect to the Senior Executive Officers.

We have reviewed the supervisory record and it supports the determination that the Senior Executive Officers were responsible for the decline of the overall condition of the Bank. We note that the terminations of the Senior Executive Officers were authorized by the independent members of the Board, based on findings from a forensic audit into the Senior Executive Officers' activities. We note that the OCC's Order identifies the comprehensive remedial actions that were needed at the Bank to address the management failures which occurred at the time that the Senior Executive Officers were responsible for the management policies and direction of the Bank.

Moreover, we note that recently Davis entered into orders with the OCC agreeing to personally cease and desist from certain banking activities and pay civil monetary penalties.[7] The CMP Orders recite that the Senior Executive Officers caused the Bank to violate banking laws by purchasing property for their use; failed to present to the Board for decision certain strategically important contracts or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution; and caused the Bank to incur excessive

[6] The severance payments and any payments the Senior Executive Officers sought based on alternative theories in the State Court Action are golden parachute payments.

[7] Consent Orders 2017-005, 2017-006, and 2017-007 were issued against Davis, Jones, and Webb, respectively, on January 3, 2017 (collectively, "CMP Orders").

expenses resulting in losses to the Bank. As a result, the OCC found that the Senior Executive Officers engaged in a pattern of misconduct that supported actions pursuant to 12 U.S.C. § 1818(b) and (i) against the Senior Executive Officers. Davis agreed to personally cease and desist from certain banking activities and pay a civil money penalty of $25,000.

12 C.F.R. § 359.4(a)(1) permits the appropriate federal banking agency, with the FDIC's written concurrence, to determine that a payment is permissible. 12 C.F.R. § 359.4(b) sets forth three factors supervisory staff may consider in evaluating whether to permit a golden parachute payment and we have taken those factors into account in this determination. Each of these factors independently supports denial of the applications here. Davis had policy-making authority for the Bank. CBSUB provided substantial information Davis' work duties, responsibilities, and areas of oversight that fell within significant areas of the Bank's operations that were criticized in the supervisory record. Additionally, the supervisory record supports a determination that Davis exercised a high degree of managerial and fiduciary responsibility. Given their executive leadership positions, the Senior Executive Officers were in a position to make decisions and policies regarding the Bank that directly contributed to the Bank and the Company's troubled condition. While CBSUB did not provide the certifications, the information that was provided is consistent with the expectations for that information described in the FDIC's FIL-66-2010, *Guidance on Golden Parachute Applications*, as it addressed the areas of regulatory criticism. The agency finds the information provided supports denial of the applications.

12 C.F.R. § 359.4(b)(2) requires the regulator, in considering whether to approve otherwise impermissible "golden parachute" payments, to consider the IAP's length of affiliation with the institution, "and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment." FDIC guidance makes clear that in evaluating the reasonableness of payment amounts, the regulators' exception[8] "should not be viewed as intended to permit golden parachute payments in excess of 12 months' salary." Here, CBSUB has sought authorization to make payments to Davis in the amount of his annual salary. We note that the original damages that Davis sought in the State Court Action far exceed twelve months' salary.

12 C.F.R. § 359.4(a)(1) and (b)(3) grants the regulator the discretion to approve otherwise impermissible payments to the extent the regulator determines such payments are permissible. There is no other information presented in the applications or the supervisory record that would warrant a departure from the exercise of normal supervisory discretion regarding the applications.

This letter documents the FDIC's determination that any payments Davis would constitute golden parachute payments and are subject to approval of the OCC and the FRB with the concurrence of the FDIC. The FDIC determined that:

1. The Proposed Payments are subject to the limitations of the Golden Parachute Rules.
2. CBSUB is the successor by merger to the troubled entities from whom the payment obligation arises, is subject to the Golden Parachute Rules, and prohibited from

[8] 12 C.F.R. § 359.4(a)(1).

making payments to the Senior Executive Officers without approved golden parachute applications.

3. Although the applications did not provide the certifications, based on available information, the FDIC determined that the Senior Executive Officers were substantially responsible for the troubled condition of the Bank and the Company.

4. The Senior Executive Officers were employed by the Bank from its inception until April 9, 2014, and were the most senior executive officers of the Bank until their termination after the Bank and the Company became in troubled condition; and

5. The Senior Executive Officers were in positions of managerial and fiduciary responsibility and, based on the deterioration of the Bank under their supervision, there is evidence that their acts in that capacity had a material adverse effect on the Bank.

For the foregoing reasons, and based on review of the entire record, the FDIC could not concur in the approval of any payments to Davis by either the OCC or the FRB. The FDIC therefore prohibits CBSUB from making the Proposed Payments, in any amount, to Davis. This correspondence represents the FDIC's final agency action regarding the subject applications.

If you have any questions regarding this correspondence, please contact Senior Case Manager Rick Packard at 678-916-2211.

Sincerely,

John P. Henrie
Deputy Regional Director

cc. James Zimmerman, Office of the Comptroller of the Currency
Allen Stanley, Federal Reserve Bank of Atlanta

FDIC

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April 7, 2017

Mr. Thomas Simpson
JAMES-BATES-BRANNAN-GROOVER-LLP
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326

SUBJECT: CBSUB, Inc. and CertusHoldings, Inc., successors by merger to CertusBank, N.A.
Easley, South Carolina

Golden Parachute Application—K. Angela Webb

Dear Mr. Simpson:

The FDIC received the applications dated on April 21, 2016, you filed on behalf of CBSUB, Inc. ("CBSUB"), and CertusHoldings, Inc. ("Company") (collectively, "Certus") as successors by merger to CertusBank, N.A. ("Bank") requesting that the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Bank of Atlanta ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "Agencies") confirm that 12 U.S.C. § 1828(k) ("Section 1828(k)") and 12 C.F.R. Part 359 ("Part 359") (collectively, "Golden Parachute Rules") apply to certain proposed payments. CBSUB also asked that the Agencies approve applications for golden parachute payments from CBSUB to Milton Jones ("Jones"), Walter L. Davis ("Davis"), and K. Angela Webb ("Webb") (collectively, "Senior Executive Officers") despite the lack of the required certifications. The applications seek approval of the proposed payments of $340,000, $325,000, and $300,000, respectively ("Proposed Payments")[1], to Jones, Davis, and Webb, though this letter regards the applicability of the Golden Parachute Rules as they pertain to Webb. The Proposed Payments constitute "golden parachute payments" under the Golden Parachute Rules, compelling the filing of applications. For the reasons set forth below, based on their involvement with the troubled condition of the Bank and the issues described below regarding their actions as Senior Executive Officers, the FDIC prohibits CBSUB under the Golden Parachute Rules from making the Proposed Payments to Webb in any amount.

Blue Ridge Holdings, Inc. ("Blue Ridge") became a bank holding company in 2011. At the time the Bank became an insured depository institution, it was a wholly owned subsidiary of Blue

[1]Proposed Payments are the amounts of severance which were determined by an arbitrator on February 28, 2017.

Ridge.[2] In March 2014, the OCC notified the Bank that it was in "troubled condition" under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions on golden parachute payments set forth in Part 359. As a result of the Bank's deteriorating financial condition, the Bank entered into a Stipulation to the Issuance of a Consent Order ("Order") with the OCC on November 4, 2014. Due to the financial condition of the Bank, the FRB notified the Company that it was in troubled condition on April 7, 2014.

After failing to raise additional capital, Bank management submitted an application for a change in asset composition and application to merge with a non-bank affiliate to the OCC. The application incorporated a plan to divest the Bank of all banking assets. As part of its approval of this plan, the OCC approved the merger of the Bank with and into CBSUB which was effective November 2, 2015, and also cancelled the Bank's national banking charter. The Bank and the Company merged into CBSUB which was formed to dispose of the Bank's remaining assets and resolve its remaining liabilities.

Webb was the Chief Administrative Officer of the Company and the Bank from January 2011 until February 2012. From February 2012 until her termination on April 9, 2014, Webb was the President of the Company and the Bank. Webb was not a director of the Company or the Bank. On February 22, 2011, Webb entered into an amended and restated employment agreement with the Company ("Employment Agreement"). The Employment Agreement provided for a base annual salary of $300,000, annual performance incentives, stock options, award of stock at the beginning of the Employment Agreement, and participation in the Company's employee benefit plans, fringe benefits, and perquisites.

Because of the condition of the Company and the Bank, the Board terminated Webb and the other Senior Executive Officers without "Good Cause" as defined in the Employment Agreements on April 9, 2014, following a Board meeting. The Board could not terminate the Senior Executive Officers for "Good Cause" under the terms of their Employment Agreements without first providing them with a 30 day "cure" period. Because of the deteriorated condition of the Bank, the Board believed that an immediate change in executive leadership was in the best interests of the Company and the Bank. Therefore, the Board terminated the Senior Executive Officers without cause pursuant to their Employment Agreements.

The termination provisions of the Employment Agreements provided that the Company, by action of its board of directors, could terminate the Employment Agreements for any reason within 30 days written notice of the termination.[3] Although there is a provision describing the grounds for termination for Good Cause, the Board did not terminate Webb for Good Cause. The Employment Agreements provided for a severance payment if she was terminated during the term of the Employment Agreement without Good Cause, in addition to the Standard Termination Benefits and Other Benefits.[4] The severance payment was to include: a cash payment for the Senior Executive Officer's base salary for 12 months; a lump sum cash payment equal to the target annual incentive pursuant to a certain formula; and their outstanding equity would become exercisable or vest. However, the Employment Agreements expressly stated that

[2] Blue Ridge became the Company in late 2011 and functioned as a bank holding company. The OCC granted a national banking charter and the FDIC approved the Bank's application for deposit insurance in January 2011.
[3] Employment Agreements, Paragraph 22.
[4] Employment Agreements, Paragraph 33. Standard Termination Benefits and Other Benefits are not defined in the Employment Agreements.

the Senior Executive Officers were not entitled to receive these severance benefits in Paragraph 33 unless they executed a general release and waiver of claims. The Senior Executive Officers did not execute such a release and waiver.

The Senior Executive Officers filed suit in South Carolina State Court against the Company and the Bank ("Regulated Entities") on September 9, 2015, under the Employment Agreements ("State Court Action") for breach of contract. They requested damages including 22 months of salary, 22 months of medical benefits, attorney's fees, and termination without cause penalties. The complete amount of damages sought on behalf of Webb was $920,348.17. The State Court Action was referred to an arbitrator pursuant to the provisions in the Employment Agreements. In the arbitration proceeding, the Senior Executive Officers asserted that CBSUB did not need to obtain approval from the OCC, FDIC and/or FRB pursuant to Part 359 to make the Proposed Payments. The Arbitrator in the State Court Action determined that the Bank, the Company, and CBSUB are liable to the Senior Executive Officers for the Proposed Payments. The Arbitrator also expressly did not decide whether the Proposed Payments are barred under the Golden Parachute Rules.[5]

Pursuant to 12 C.F.R. § 359.1(f)(1), any payment in the nature of compensation that is payable to a current or former institution-affiliated party ("IAP") on or after the termination of his employment by the institution and received on or after the institution is in troubled condition is a golden parachute payment. The Senior Executive Officers were IAPs of the Bank and the Company in their capacities as officers, directors, and employees under 12 C.F.R. § 359.1(h)(1) and (f)(iii)(A). The OCC notified the Bank in March 2014 that it was in troubled condition under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions in the Golden Parachute Rules. The FRB notified the Company on April 7, 2014, that it was in troubled condition.

Webb was employed with the Bank and the Company when the OCC and the FRB notified the Bank and the Company that they were in troubled condition. Any payments that were compensation payable after Webb's termination on April 9, 2014, would have been received after the Bank and the Company were in troubled condition. The Proposed Payments meet the definition of a golden parachute payment in 12 C.F.R. § 359.1(f)(1). Further, the Proposed Payments are not covered by any of the exceptions contained in 12 C.F.R. § 359.1(f)(2). CBSUB, as successor by merger to the Bank and the Company, is subject to regulation under 12 U.S.C § 1828(k) as a "covered company." The Arbitrator also determined that CBSUB was the successor by merger to the Bank and the Company and liable for the Proposed Payments. Therefore, CBSUB could not make the Proposed Payments absent prior regulatory approval. 12 C.F.R. § 359.2.

Part 359 defines "payment" as including "[a]ny direct or indirect transfer of any funds or any asset...the conferring of any benefit ...for the purpose of making, or pursuant to any agreement to make, any payment . . ." 12 C.F.R. § 359.1(k). In the State Court Action, the Senior Executive Officers asserted rights to severance payments and other payments as a result of their assertion that the Bank and Company breached the Employment Agreements. If severance payments had been made, those payments would have been made after Webb's termination from the troubled Bank and Company. The severance payments[6] are golden parachute payments

[5] Arbitration Award, February 28, 2017.

[6] The severance payments and any payments the Senior Executive Officers sought based on alternative theories in the State Court Action are golden parachute payments.

subject to the limitations of the Golden Parachute Rules. Based on the material provided in the Applications, the Proposed Payments are derived from agreements that, by their very terms, afforded benefits upon termination of employment with the Bank and Company. The Proposed Payments constitute golden parachute payments under 12 C.F.R. § 359.1(f)(1)(i).

In determining whether CBSUB could provide the certifications required by 12 C.F.R. § 359.4(a)(4), the Board and officers of CBSUB represented that they consulted with the former human resources director of the Bank, reviewed applicable corporate governance records and regulatory correspondence, reviewed financial information regarding Webb's employment by the Company and the Bank, and considered her duties and the activities of her employment. After its review, the Board of CBSUB stated that they were unable to provide the certifications for Webb in conjunction with the applications. The applications did not recite every factor that CBSUB and the Company considered in determining their inability to deliver the certifications but the applications did present some of those factors.

The applications stated that the Senior Executive Officers were substantially responsible for the "troubled condition" of the Bank and described the following support for that opinion. The Bank suffered steep financial losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. The applications also stated that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at a time when the Company and the Bank were reporting heavy losses. The applications stated that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operations. Based on the above described issues, the applications stated that neither the Company nor CBSUB could deliver the certifications required by 12 C.F.R. § 359.4(a)(4) with respect to the Senior Executive Officers.

We have reviewed the supervisory record and it supports the determination that the Senior Executive Officers were responsible for the decline of the overall condition of the Bank. We note that the terminations of the Senior Executive Officers were authorized by the independent members of the Board, based on findings from a forensic audit into the Senior Executive Officers' activities. We note that the OCC's Order identifies the comprehensive remedial actions that were needed at the Bank to address the management failures which occurred at the time that the Senior Executive Officers were responsible for the management policies and direction of the Bank.

Moreover, we note that recently Webb entered into orders with the OCC agreeing to personally cease and desist from certain banking activities and pay a civil monetary penalty.[7] The CMP Orders recite that the Senior Executive Officers caused the Bank to violate banking laws by purchasing property for their use; failed to present to the Board for decision certain strategically important contracts or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution; and caused the Bank to incur excessive expenses resulting in losses to the Bank. As a result, the OCC found that the Senior Executive Officers engaged in a pattern of misconduct that supported actions pursuant to 12 U.S.C. §

[7] Consent Orders 2017-005, 2017-006, and 2017-007 were issued against Davis, Jones, and Webb, respectively, on January 3, 2017 (collectively, "CMP Orders").

1818(b) and (i) against the Senior Executive Officers. Webb agreed to personally cease and desist from certain banking activities and pay a civil money penalty of $27,000.

12 C.F.R. § 359.4(a)(1) permits the appropriate federal banking agency, with the FDIC's written concurrence, to determine that a payment is permissible. 12 C.F.R. § 359.4(b) sets forth three factors supervisory staff may consider in evaluating whether to permit a golden parachute payment and we have taken those factors into account in this determination. Each of these factors independently supports denial of the applications here. Webb had policy-making authority for the Bank. CBSUB provided substantial information about Webb's work duties, responsibilities, and areas of oversight that fell within significant areas of the Bank's operations that were criticized in the supervisory record. Additionally, the supervisory record supports a determination that Webb exercised a high degree of managerial and fiduciary responsibility. Given their executive leadership positions, the Senior Executive Officers were in a position to make decisions and policies regarding the Bank that directly contributed to the Bank and the Company's troubled condition. While CBSUB did not provide the certifications, the information that was provided is consistent with the expectations for that information described in the FDIC's FIL-66-2010, *Guidance on Golden Parachute Applications*, as it addressed the areas of regulatory criticism. The FDIC finds the information provided supports denial of the applications.

12 C.F.R. § 359.4(b)(2) requires the regulator, in considering whether to approve otherwise impermissible "golden parachute" payments, to consider the IAP's length of affiliation with the institution, "and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment." FDIC guidance makes clear that in evaluating the reasonableness of payment amounts, the regulators' exception[8] "should not be viewed as intended to permit golden parachute payments in excess of 12 months' salary." Here, CBSUB has sought authorization to make payments to Webb in the amount of her annual salary. We note that the original damages that Webb sought in the State Court Action far exceed twelve months' salary.

12 C.F.R. § 359.4(a)(1) and (b)(3) grants the regulator the discretion to approve otherwise impermissible payments to the extent the regulator determines such payments are permissible. There is no other information presented in the applications or the supervisory record that would warrant a departure from the exercise of normal supervisory discretion regarding the applications.

This letter documents the FDIC's determination that any payments to Webb would constitute golden parachute payments and are subject to approval of the OCC and the FRB with the concurrence of the FDIC. The FDIC determined that:

1. The Proposed Payments are subject to the limitations of the Golden Parachute Rules.
2. CBSUB is the successor by merger to the troubled entities from whom the payment obligation arises, is subject to the Golden Parachute Rules, and prohibited from making payments to the Senior Executive Officers without approved golden parachute applications.

[8] 12 C.F.R. § 359.4(a)(1).

3. Although the applications did not provide the certifications, based on available information, the FDIC determined that the Senior Executive Officers were substantially responsible for the troubled condition of the Bank and the Company.
4. The Senior Executive Officers were employed by the Bank from its inception until April 9, 2014, and were the most senior executive officers of the Bank until their termination after the Bank and the Company became in troubled condition; and
5. The Senior Executive Officers were in positions of managerial and fiduciary responsibility and, based on the deterioration of the Bank under their supervision, there is evidence that their acts in that capacity had a material adverse effect on the Bank.

For the foregoing reasons, and based on review of the entire record, the FDIC could not concur in the approval of any payments to Webb by either the OCC or the FRB. The FDIC therefore prohibits CBSUB from making the Proposed Payments, in any amount, to Webb. This correspondence represents the FDIC's final agency action regarding the subject applications.

If you have any questions regarding this correspondence, please contact Senior Case Manager Rick Packard at 678-916-2211.

Sincerely,

John P. Henrie
Deputy Regional Director

cc. James Zimmerman, Office of the Comptroller of the Currency
Allen Stanley, Federal Reserve Bank of Atlanta

#2017-006

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of: Milton Jones Former Executive Chairman CertusBank, N.A. Greenville, South Carolina	)	AA-EC-2016-88

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency ("OCC") intends to initiate cease and desist and civil money penalty proceedings against Milton Jones ("Respondent") pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent's activities while serving as a senior executive officer and Director of CertusBank, National Association, Greenville, South Carolina ("Bank");

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to consent to the issuance of this Consent Order ("Order") issued pursuant to 12 U.S.C. § 1818(b) and (i);

NOW, THEREFORE, it is stipulated by and between the OCC, through the duly authorized representative of the Comptroller of the Currency ("Comptroller"), and Respondent that:

ARTICLE I

JURISDICTION

(1) The Bank was an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c)(2).

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(2) Respondent was an officer and director of the Bank and is an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and was chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(4) The OCC is the "appropriate Federal banking agency" as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain these civil money penalty and cease and desist actions against Respondent pursuant to 12 U.S.C. § 1818(b) and (i).

ARTICLE II

COMPTROLLER'S FINDINGS

The Comptroller finds, and Respondent neither admits nor denies, the following:

(1) Respondent caused the Bank to violate 12 U.S.C. § 29 and 12 CFR § 7.1000 through its purchase of three condominiums in Greenville, South Carolina, in August 2012 for executive officer use.

(2) Respondent failed to present to the Board for decision certain strategically important contracts and/or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution, including, but not limited to:

(a) contracts for the construction of various capital projects, including, but not limited to, the buildout of the Bank's executive and administrative offices in Greenville, South Carolina;

(b) the lease contract for the Bank's administrative offices in Greenville, South Carolina, and the lease for executive and administrative space in in Atlanta, Georgia; and

Initials: MJ
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(c) contracts for the purchase of three condominiums in Greenville, South Carolina, for executive use.

(3) By reason of the foregoing conduct, Respondent engaged in violations of law and regulation, reckless unsafe or unsound practices, and/or breaches of his fiduciary duty to the Bank; which violations, practices, and breaches were part of a pattern of misconduct and/or caused or were likely to cause more than a minimal loss to the Bank.

ARTICLE III

PERSONAL CEASE AND DESIST ORDER

Respondent consents to, and it is ORDERED that:

(1) Whenever Respondent is employed by an insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)) or becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

(a) Comply fully with all laws, regulations, and policies applicable to that insured depository institution;

(b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;

(c) Participate at least annually in training regarding corporate governance best practices and/or enterprise risk management, if Respondent is an institution-affiliated party with any insured depository institution; and

(d) Prior to accepting employment at an insured depository institution or becoming an institution-affiliated party, provide the President or Chief Executive Officer of the insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the

Initials: MJ
Date: 12/20/16

Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, along with a written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(2) If, at any time, Respondent is uncertain whether a situation implicates paragraph (1) of this Article, or if Respondent is uncertain about his duties arising from that paragraph, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' websites.

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

ARTICLE IV

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of three thousand five hundred dollars ($3,500), which shall be paid in full upon Respondent's execution of this Order.

(2) Respondent shall make payment in full by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Office of the Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-2016-88) shall be entered on the submitted payment.

Initials: MJ
Date: 12/20/16

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

ARTICLE V

CLOSING

(1) By executing this Order, Respondent waives:

(a) the right to a Notice of Charges for Issuance of an Order to Cease and Desist and Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b) and (i);

(b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b), and (i) and 12 C.F.R. Part 19;

(c) all rights to seek judicial review of this Order;

(d) all rights in any way to contest the validity of this Order; and

(e) any and all claims for fees, costs, or expenses against the United States, the OCC, or any officer, employee, or agent of the OCC, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(2) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate of the Bank) to incur, directly or indirectly, any expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate of the

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Bank) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the OCC or any officer, employee, or agent of the OCC to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). The OCC agrees not to institute the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order unless such acts, omissions, or violations reoccur. However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the OCC from taking any action affecting Respondent if, at any time, the OCC deems it appropriate to do so to fulfill the responsibilities placed upon the OCC by the several laws of the United States.

(6) Nothing in this Order shall preclude any proceedings brought by the OCC to enforce the terms of this Order, and nothing in this Order constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

Initials: MJ
Date: 12/20/16

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding on the United States, the OCC, or any officer, employee, or agent of the OCC. Respondent expressly acknowledges that no officer, employee, or agent of the OCC has statutory or other authority to bind the United States, the United States Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer, employee, or agent of those entities, to a contract affecting the OCC's exercise of its supervisory responsibilities.

(8) This Order is "issued with the consent of . . . the institution-affiliated party concerned," pursuant to 12 U.S.C. § 1818(h)(2).

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) The provisions of this Order are effective upon issuance by the OCC, through the Comptroller's duly authorized representative, whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller's duly authorized representative.

Initials: MJ
Date: 12/20/16

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

S/Milton Jones — 12/20/2016

Milton Jones — Date

IT IS SO ORDERED.

S/Joseph N. Meinhardt — 1/3/17

Joseph N. Meinhardt — Date
Acting Deputy Comptroller for Special Supervision

Initials: MJ
Date: 12/20/16

#2017-005

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of: Walter Davis Former CEO and Director CertusBank, N.A. Greenville, South Carolina	)	AA-EC-2016-87

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency ("OCC") intends to initiate cease and desist and civil money penalty proceedings against Walter Davis ("Respondent") pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent's activities while serving as a senior executive officer and Director of CertusBank, National Association, Greenville, South Carolina ("Bank");

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to consent to the issuance of this Consent Order ("Order") issued pursuant to 12 U.S.C. § 1818(b) and (i);

NOW, THEREFORE, it is stipulated by and between the OCC, through the duly authorized representative of the Comptroller of the Currency ("Comptroller"), and Respondent that:

ARTICLE I

JURISDICTION

(1) The Bank was an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c)(2).

Initials: WD
Date: 12/20/2016

(2) Respondent was an officer and director of the Bank and is an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and was chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(4) The OCC is the "appropriate Federal banking agency" as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain these civil money penalty and cease and desist actions against Respondent pursuant to 12 U.S.C. § 1818(b) and (i).

ARTICLE II

COMPTROLLER'S FINDINGS

The Comptroller finds, and Respondent neither admits nor denies, the following:

(1) Respondent caused the Bank to violate 12 U.S.C. § 29 and 12 CFR § 7.1000 through its purchase of three condominiums in Greenville, South Carolina, in August 2012 for executive officer use.

(2) Respondent failed to present to the Board for decision certain strategically important contracts and/or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution, including, but not limited to:

(a) contracts for the construction of various capital projects, including, but not limited to, the buildout of the Bank's executive and administrative offices in Greenville, South Carolina;

(b) the lease contract for the Bank's administrative offices in Greenville, South Carolina, and the lease for executive and administrative space in Atlanta, Georgia; and

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(c) contracts for the purchase of three condominiums in Greenville, South Carolina, for executive use.

(3) Respondent caused the Bank to incur excessive expenses resulting in losses to the Bank, including but not limited to expenses related to:

(a) the purchase, improvement, furnishing and decoration of three condominiums in Greenville, South Carolina, for executive officer use;

(b) the leasing, construction, furnishing and decoration of the Bank's executive and administrative offices in Greenville, South Carolina; and

(c) executive travel, including, but not limited to, private jet travel.

(4) By reason of the foregoing conduct, Respondent engaged in violations of law and regulation, reckless unsafe or unsound practices, and/or breaches of his fiduciary duty to the Bank; which violations, practices, and breaches were part of a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank, and/or resulted in pecuniary gain or other benefit to Respondent.

ARTICLE III

PERSONAL CEASE AND DESIST ORDER

Respondent consents to, and it is ORDERED that:

(1) Whenever Respondent is employed by an insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)) or becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

(a) Comply fully with all laws, regulations, and policies applicable to that insured depository institution;

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(b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;

(c) Participate at least annually in training regarding corporate governance best practices and/or enterprise risk management, if Respondent is an institution-affiliated party with any insured depository institution;

(d) Not approve, nor receive the authority to approve, any business expense in excess of $10,000, if Respondent is an institution-affiliated party with any insured depository institution; and

(e) Prior to accepting employment at an insured depository institution or becoming an institution-affiliated party, provide the President or Chief Executive Officer of the insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, along with a written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(2) If, at any time, Respondent is uncertain whether a situation implicates paragraph (1) of this Article, or if Respondent is uncertain about his duties arising from that paragraph, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' websites.

Initials: WD
Date: 12/20/2016

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

ARTICLE IV

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of twenty-five thousand dollars ($25,000), which shall be paid in full upon Respondent's execution of this Order.

(2) Respondent shall make payment in full by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Office of the Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-2016-87) shall be entered on the submitted payment.

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

ARTICLE V

CLOSING

(1) By executing this Order, Respondent waives:

(a) the right to a Notice of Charges for Issuance of an Order to Cease and Desist and Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b) and (i);

Initials: WD
Date: 12/20/2016

(b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b), and (i) and 12 C.F.R. Part 19;

(c) all rights to seek judicial review of this Order;

(d) all rights in any way to contest the validity of this Order; and

(e) any and all claims for fees, costs, or expenses against the United States, the OCC, or any officer, employee, or agent of the OCC, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(2) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate of the Bank) to incur, directly or indirectly, any expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate of the Bank) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the OCC or any officer, employee, or agent of the OCC to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). The

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OCC agrees not to institute the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order unless such acts, omissions, or violations reoccur. However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the OCC from taking any action affecting Respondent if, at any time, the OCC deems it appropriate to do so to fulfill the responsibilities placed upon the OCC by the several laws of the United States.

(6) Nothing in this Order shall preclude any proceedings brought by the OCC to enforce the terms of this Order, and nothing in this Order constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding on the United States, the OCC, or any officer, employee, or agent of the OCC. Respondent expressly acknowledges that no officer, employee, or agent of the OCC has statutory or other authority to bind the United States, the United States Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer, employee, or agent of those entities, to a contract affecting the OCC's exercise of its supervisory responsibilities.

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(8) This Order is "issued with the consent of . . . the institution-affiliated party concerned," pursuant to 12 U.S.C. § 1818(h)(2).

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) The provisions of this Order are effective upon issuance by the OCC, through the Comptroller's duly authorized representative, whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller's duly authorized representative.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

S/Walter Davis — 12/20/2016

Walter Davis — Date

IT IS SO ORDERED.

S/Joseph N. Meinhardt — 1/3/17

Joseph N. Meinhardt — Date
Acting Deputy Comptroller for Special Supervision

Initials: WD
Date: 12/20/2016

#2017-007

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of:	)	
Kathy Angela Webb	)	
Former President	)	AA-EC-2016-86
	)	
CertusBank, N.A.	)	
Greenville, South Carolina	)	

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency ("OCC") intends to initiate cease and desist and civil money penalty proceedings against Kathy Angela Webb ("Respondent") pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent's activities while serving as a senior executive officer of CertusBank, National Association, Greenville, South Carolina ("Bank");

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to consent to the issuance of this Consent Order ("Order") issued pursuant to 12 U.S.C. § 1818(b) and (i);

NOW, THEREFORE, it is stipulated by and between the OCC, through the duly authorized representative of the Comptroller of the Currency ("Comptroller"), and Respondent that:

ARTICLE I

JURISDICTION

(1) The Bank was an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c)(2).

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(2) Respondent was an officer of the Bank and is an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and was chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(4) The OCC is the "appropriate Federal banking agency" as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain these civil money penalty and cease and desist actions against Respondent pursuant to 12 U.S.C. § 1818(b) and (i).

ARTICLE II

COMPTROLLER'S FINDINGS

The Comptroller finds, and Respondent neither admits nor denies, the following:

(1) Respondent caused the Bank to violate 12 U.S.C. § 29 and 12 CFR § 7.1000 through its purchase of three condominiums in Greenville, South Carolina, in August 2012 for executive officer use.

(2) Respondent facilitated improper payments by the Bank to Integrated Capital Strategies ("ICS") that were outside the scope of the agreements between the Bank and ICS, including:

(a) a payment of $155,000 by the Bank to ICS for incentive payments to ICS contractors in January 2012; and

(b) a payment of $75,000 in February 2012 for 1000 hours of billed time in a single month by a single ICS contractor.

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(3) Respondent failed to present to the Board for decision certain strategically important contracts and/or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution, including, but not limited to:

(a) contracts for the construction of various capital projects, including, but not limited to, the buildout of the Bank's executive and administrative offices in Greenville, South Carolina;

(b) the lease contract for the Bank's administrative offices in Greenville, South Carolina, and the lease for executive and administrative space in in Atlanta, Georgia; and

(c) contracts for the purchase of three condominiums in Greenville, South Carolina, for executive use.

(4) Respondent caused the Bank to incur excessive expenses resulting in losses to the Bank, including but not limited to expenses related to:

(a) the purchase, improvement, furnishing and decoration of three condominiums in Greenville, South Carolina, for executive officer use;

(b) the leasing, construction, furnishing and decoration of the Bank's executive and administrative offices in Greenville, South Carolina; and

(c) executive travel, including, but not limited to, private jet travel (including, specifically, private jet travel to attend a non-profit board meeting in 2013 for a personal and non-Bank related matter).

(5) In December 2012, Respondent received an impermissible extension of credit from the Bank in the amount of approximately $179,000, in violation of 12 CFR § 215.5.

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(6) By reason of the foregoing conduct, Respondent engaged in violations of law and regulation, reckless unsafe or unsound practices, and/or breaches of her fiduciary duty to the Bank; which violations, practices, and breaches were part of a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank, and/or resulted in pecuniary gain or other benefit to Respondent.

ARTICLE III

PERSONAL CEASE AND DESIST ORDER

Respondent consents to, and it is ORDERED that:

(1) Whenever Respondent is employed by an insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)) or becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

(a) Comply fully with all laws, regulations, and policies applicable to that insured depository institution;

(b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;

(c) Participate at least annually in training regarding corporate governance best practices and/or enterprise risk management, if Respondent is an institution-affiliated party with any insured depository institution;

(d) Not approve, nor receive the authority to approve, any business expense in excess of $10,000, if Respondent is an institution-affiliated party with any insured depository institution;

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(e) Within six months of becoming an institution-affiliated party with any insured depository institution, receive training in the requirements of Regulation O;

(f) Refrain from seeking any extensions of credit from any insured depository institution with which Respondent is an institution-affiliated party, unless and until the training required in Subpart (e) has been completed; and

(g) Prior to accepting employment at an insured depository institution or becoming an institution-affiliated party, provide the President or Chief Executive Officer of the insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, along with a written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(2) If, at any time, Respondent is uncertain whether a situation implicates paragraph (1) of this Article, or if Respondent is uncertain about her duties arising from that paragraph, she shall obtain, at her own expense, and abide by the written advice of counsel regarding her duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' websites.

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(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

ARTICLE IV

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of twenty-seven thousand dollars ($27,000), which shall be paid in full upon Respondent's execution of this Order.

(2) Respondent shall make payment in full by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Office of the Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-2016-86) shall be entered on the submitted payment.

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

ARTICLE V

CLOSING

(1) By executing this Order, Respondent waives:

(a) the right to a Notice of Charges for Issuance of an Order to Cease and Desist and Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b) and (i);

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(b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b), and (i) and 12 C.F.R. Part 19;

(c) all rights to seek judicial review of this Order;

(d) all rights in any way to contest the validity of this Order; and

(e) any and all claims for fees, costs, or expenses against the United States, the OCC, or any officer, employee, or agent of the OCC, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(2) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate of the Bank) to incur, directly or indirectly, any expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate of the Bank) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(3) Respondent acknowledges that she has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the OCC or any officer, employee, or agent of the OCC to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). The

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OCC agrees not to institute the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order unless such acts, omissions, or violations reoccur. However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the OCC from taking any action affecting Respondent if, at any time, the OCC deems it appropriate to do so to fulfill the responsibilities placed upon the OCC by the several laws of the United States.

(6) Nothing in this Order shall preclude any proceedings brought by the OCC to enforce the terms of this Order, and nothing in this Order constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding on the United States, the OCC, or any officer, employee, or agent of the OCC. Respondent expressly acknowledges that no officer, employee, or agent of the OCC has statutory or other authority to bind the United States, the United States Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer, employee, or agent of those entities, to a contract affecting the OCC's exercise of its supervisory responsibilities.

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(8) This Order is "issued with the consent of . . . the institution-affiliated party concerned," pursuant to 12 U.S.C. § 1818(h)(2).

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) The provisions of this Order are effective upon issuance by the OCC, through the Comptroller's duly authorized representative, whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller's duly authorized representative.

IN TESTIMONY WHEREOF, the undersigned has hereunto set her hand.

S/Kathy Angela Webb — 12/20/16

Kathy Angela Webb — Date

IT IS SO ORDERED.

S/Joseph N. Meinhardt — 1/3/17

Joseph N. Meinhardt — Date
Acting Deputy Comptroller for Special Supervision

Initials: KA
Date: 12/20/16

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, And Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants.	)	ARBITRATION AWARD C.A. No.: 2015-CP-23-05554

FINDINGS OF FACT

1. Each of the Plaintiffs entered into an Amended and Restated Executive Employment Agreement ("Employment Agreement(s)") with Blue Ridge Holdings, Inc., and the terms of each of the Employment Agreements for the Plaintiffs are identical except for the amount of compensation.

2. CertusBank, N.A. is a wholly-owned subsidiary of Blue Ridge Holdings, Inc.

3. Blue Ridge Holdings, Inc. subsequently became known as CertusHoldings, Inc.

4. Each Employment Agreement for each Plaintiff provided for each Plaintiff to be paid a "lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) month's salary, at the rate in effect on the date the Executive's employment terminates..." [¶3 of each Employment Agreement]. I refer to this simply as the lump sum payment in this Award.

5. If the Plaintiff Milton Jones is determined to be entitled to severance, the amount of severance to Plaintiff Jones is $340,000.

6. If the Plaintiff Walter Davis is determined to be entitled to severance, the amount of severance to Plaintiff Davis is $325,000.

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7. If the Plaintiff Angela Webb is determined to be entitled to severance, the amount of severance to Plaintiff Webb is $300,000.

8. Plaintiffs were terminated without cause pursuant to their respective Employment Agreements on April 9, 2014, by the Combined CertusHoldings, Inc. and CertusBank's Board of Directors. In place as of the date of termination of each of the Plaintiffs on April 9, 2014, were a statute and Regulations prohibiting payment of "golden parachute payments" by financial institutions in a "troubled condition." See below.

9. CertusBank's status as an independent depository institution terminated on or about October 23, 2015, via an Order of Approval of Termination of Insurance by the FDIC.

10. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

11. In or about November, 2015, with the surrender of its charter as a national bank to the OCC, CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

12. In or about November, 2015, a new corporation, CBSUB, Inc. was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any liabilities the bank may owe the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

13. CBSUB is not a bank and is not regulated by the OCC and FDIC.

14. Although all of the Stipulation of Claims and Facts between the parties and dated March 1, 2016 are not reiterated here, they are nonetheless my findings as well.

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ISSUES

1. Which of the "Certus entities" is contractually liable to each of the Plaintiffs for any payments provided for in §33 of each Plaintiff's Employment Agreement?

A legal distinction must be made between the various "Certus entities." CertusBank, N.A. is a subsidiary of CertusHoldings, Inc., which was formerly known as Blue Ridge Holdings, Inc. Each of the Plaintiffs entered into his or her Employment Agreement with Blue Ridge Holdings, Inc. as the named "Company" for an exchange of responsibilities and services by each executive for the compensation set out in the respective Employment Agreements. The face of each Employment Agreement appears to render Blue Ridge Holdings, Inc. as the obligor for payment of compensation. Each of the Plaintiffs bargained to perform services for the "Company," which is defined under the Employment Agreement to be Blue Ridge Holdings, Inc. However, in actuality, the Plaintiffs served in executive capacities for CertusBank, N.A., which also apparently undertook to pay the Plaintiffs, blurring and apparently ignoring any distinction between the Defendants. While I do not consider it to be in the province of an arbitrator or any court to rewrite any contract or realign the parties, I must recognize the alignment and actual course of dealing between the parties and give legal effect to that which the parties undertook if it can be reconciled with the Employment Agreements. Whether it be through invocation of an implied novation or delegation of contractual duties or by judicial estoppel or concluding that Blue Ridge Holding, Inc. was an undisclosed principal for CertusBank, I am compelled to recognize the true substance of the relationship between the parties that governed their conduct and enforce it.

I, therefore, conclude that just as CertusHoldings, Inc./Blue Ridge Holdings, Inc. and CertusBank, N.A. considered CertusBank, N.A. to be an obligor under the respective

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Employment Agreements, so, too, must I recognize CertusBank, N.A. as obligated under Paragraph 33 of each Employment Agreement. Apparently, CertusBank, N.A. paid the regular periodic compensation of the Plaintiffs, and there is no logical reason to find that it had no obligation under Paragraph 33. Just as it found it appropriate to pay the Plaintiffs their salary, so too, is it obligated to make any payments due under Paragraph 33. This finding is buttressed not only by the course of dealing between the parties but also by Stipulations in this matter and filings in the Federal Court case of *Milton Jones, Jr. et al v. CertusBank, N.A.*, et al 6:16-cv-1633, especially CertusBank moving to compel arbitration under the various Employment Agreements.

I, therefore, hold that CertusBank, N.A. as well as CertusHoldings, Inc. may both be liable to each of the Plaintiffs under each Plaintiff's Employment Agreement. Hereafter, CertusBank, N.A. and CertusHoldings, Inc. are collectively referred to as CertusBank with the same rights and obligations.

2. Are payments of the compensation set forth in ¶33 of each Employment Agreement prohibited as "golden parachute payments" pursuant to 12 USC §1828(k) and 12 CFR §359.1 and is CertusBank's obligation discharged?

There are several issues which now arise: (1) is the provision of a release and waiver of claims a condition precedent to CertusBank's obligation to pay that has not occurred, and (2) to what extent does any determination that such payments are "golden parachute payments" affect any liability under the Employment Agreements?

First, the Defendants argue that each Employment Agreement required each Plaintiff to deliver to CertusBank a waiver and release of claims prior to any right to receive the severance payments. In particular, the Employment Agreement provides:

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> The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer....

The Defendants assert this provision as a condition precedent to its obligation to make those payments. It is certainly true as a matter of contract law that any promise that is conditioned upon the occurrence of a condition precedent does not become absolute until and unless that condition precedent has either been met or has been waived. Until such condition precedent has been met or has been waived, the promisor's obligation to perform does not become absolute and unconditional, and a party is not liable for breach of a contract unless its promise has become unconditional and absolute.

I do not find the foregoing provision to be a condition precedent, but instead to be a condition concurrent. A condition concurrent means that each party's performance is to be tendered and rendered simultaneously, and the tender of each party's promise is an implied or constructive condition precedent to the other party's performance. In this instance, the exchange of performances of the release/waiver, on the one hand, and the payment of the lump sum payment, on the other hand, are expected to occur simultaneously. In order to recover from another party for breach of a contract with conditions concurrent, the "aggrieved" party must tender its performance in order to make the other party's promise absolute and unconditional. In this instance, CertusBank has denied liability and has not tendered its performance. Therefore, the duty to provide any such release has not yet arisen. That matter becomes ripe upon offer of payment. Even if the release and waiver must first be provided as a condition precedent, it still is not ripe since CertusBank has announced that it cannot pay the compensation. CertusBank cannot expect delivery of a release/waiver until it has indicated a willingness to perform.

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I, therefore, conclude that the tender of a release was not a condition precedent, and such defense is premature.

I next reach the issue of whether the payment of a lump sum amount of a year's compensation constitutes a "golden parachute payment" within the meaning of 12 CFR §359 and is barred pursuant to 12 USC §1828(k) and its effect on any contractual obligation on the part of CertusBank.

The Plaintiffs challenge whether I have authority to determine whether such payments are golden parachute payments or not. The Plaintiffs also assert that I do not have authority to alter or modify the Employment Agreements.

I find that I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute. My authority is limited to that to which the parties agree, and there does not appear to be any agreement on this issue. I can only determine the effect on the contractual obligations if the payments are indeed golden parachute payments.

Code section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.

I do have authority, however, to determine if any such bar discharges CertusBank's obligation under the Employment Agreement or merely renders it potentially unenforceable.

The Defendants urge me to rule that the doctrine of impossibility of performance discharges the duty of CertusBank to pay. That doctrine provides that a party's obligation to perform a contractual obligation is discharged (without being liable for nonperformance) if it is

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objectively impossible for anyone to perform that obligation. If that defense is applicable, it discharges CertusBank's contractual obligation to make the lump sum payment.

I find that there are exceptions to the bar against golden parachute payments as provided in the Regulations. I further find that a party may seek approval of the FDIC for payment despite any bar. I do not find that any bar operates to discharge the bank's performance or obligation. If the bar is applicable, then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable. I find that any bar, if there is one, does not affect CertusBank's liability to the Plaintiff's but that any applicable bar simply renders that provision unenforceable to the extent of any applicable bar. To hold that the contractual obligation to make the lump sum payment is discharged, that would be inconsistent with seeking FDIC permission for payment of the contractual obligation, and that would lead to incongruous results.

I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc.) are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

Finally, CBSUB, Inc. is the successor corporation to the dissolved CertusBank, N.A. To the extent that CertusBank has liability to the Plaintiffs, those liabilities have been assumed by CBSUB, Inc., and it is liable to each Plaintiff. However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC

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golden parachute statute and Regulations. Therefore, liability for the lump sum payments remains with CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc.

Therefore, I hold:

1. CertusBank, N.A. and CertusHoldings, Inc. and CBSUB, Inc. are liable to each Plaintiff under each Plaintiff's Employment Agreement.
2. Any Federal FDIC bar to golden parachute payments does not discharge the contractual liability of CertusBank, N.A., CertusHoldings, Inc. or CBSUB , Inc. to make the lump sum payment to each of the Plaintiffs under Paragraph 33 of their respective Employment Agreements, but instead may render them unenforceable to the extent that the bar against golden parachute payments prohibits payment.
3. I do not decide whether such payments are in fact barred under 12 USC §1828(k) and 12 CFR §359. If that issue is submitted to me, then I shall make that decision.

Thomas W. Traxler (SC Bar #5624) ARBITRATOR
CARTER, SMITH, MERRIAM,
ROGERS & TRAXLER, P.A.
900 E. North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
(864) 242-3566 / Fax: (864) 232-1558
tom.traxler@carterlawpa.com

Dated: ~~February 28, 2017~~ March 17, 2017
Greenville, South Carolina

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AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and Milton H. Jones Jr., an individual resident of the State of Georgia ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Chairman, President and Chief Executive Officer of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

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that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Forty Thousand Dollars ($340,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase 270,351 shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of 118,135 shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms

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and conditions of that agreement and the Plan. The shares of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

e. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of his duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Chairman, President and Chief Executive Officer of the Company and shall faithfully devote his best efforts and all of his business time to his position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by his position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of

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directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts. In addition, the new duties and responsibilities must be consistent with the Executive's role as the Chairman, President and Chief Executive Officer of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, he has a fiduciary duty of loyalty to the Employer and its affiliates, and that he will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on his own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for himself or herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of his employment with the Employer, he will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In his position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of his employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by

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this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that he has no agreements with, or obligations to, any party, and during the term of this Agreement he will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of his employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees

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that during the continuation of this Agreement and for a period of one year following the termination of this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that his obligations under this Section D shall not be assignable by him or her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which he may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting

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bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

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e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

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26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or his estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing his duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of his duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of his duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform his duties will be final and binding. During any period prior to termination during which the Executive fails to perform his duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive his full salary at the rate then in effect for such period until his employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to his estate in the event of his subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to his estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with his duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in his possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-37 shall survive the termination of this Agreement.

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G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

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The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

L. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that his rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to him under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and

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other applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing; and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

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Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(h)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

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42. The Executive acknowledges and agrees that his obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to his employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

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the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make himself or herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

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creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that his service as an employee of the Employer will not violate any agreement: (i) he has made that prohibits him or her from disclosing any information he acquired prior to him or her becoming employed by the Employer; or (ii) he has made that prohibits him or her from accepting employment with the Employer or that will interfere with his compliance with the terms of this Agreement. Executive further represents that he has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed him or her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chief Operating Officer

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If to Executive:
233 Peachtree Circle, NE
Atlanta, Georgia 30309

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

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[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte, NC

MILTON H. JONES, JR.

BLUE RIDGE HOLDINGS, INC.

By: K. Angela Webb

Name: K. Angela Webb

Title: Senior Executive Vice President

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AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and Walter L. Davis, an individual resident of the State of North Carolina ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Vice Chairman and Chief Credit Officer of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

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that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Twenty-Five Thousand Dollars ($325,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase 270,351 shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of 118,135 shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms

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and conditions of that agreement and the Plan. The shares of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

e. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of his duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Vice Chairman and Chief Credit Officer of the Company and shall faithfully devote his best efforts and all of his business time to his position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by his position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of

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directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts. In addition, the new duties and responsibilities must be consistent with the Executive's role as the Vice Chairman and Chief Credit Officer of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, he has a fiduciary duty of loyalty to the Employer and its affiliates, and that he will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on his own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for himself or herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of his employment with the Employer, he will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In his position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of his employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by

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this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that he has no agreements with, or obligations to, any party, and during the term of this Agreement he will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of his employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees

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that during the continuation of this Agreement and for a period of one year following the termination of this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, leader, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that his obligations under this Section D shall not be assignable by him or her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under these NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which he may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting

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bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

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e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

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26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or his estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing his duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of his duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of his duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform his duties will be final and binding. During any period prior to termination during which the Executive fails to perform his duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive his full salary at the rate then in effect for such period until his employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to his estate in the event of his subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to his estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Propriety Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with his duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in his possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-57 shall survive the termination of this Agreement.

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G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

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The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

L. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that his rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to him under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and other

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applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the BESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing; and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

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Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(h)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

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42. The Executive acknowledges and agrees that his obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans refecenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to his employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

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the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make himself or herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

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creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that his service as an employee of the Employer will not violate any agreement: (i) he has made that prohibits him or her from disclosing any information he acquired prior to him or her becoming employed by the Employer; or (ii) he has made that prohibits him or her from accepting employment with the Employer or that will interfere with his compliance with the terms of this Agreement. Executive further represents that he has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed him or her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chairman

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If to Executive:
9521 Greyson Ridge Drive
Charlotte, North Carolina 28277

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

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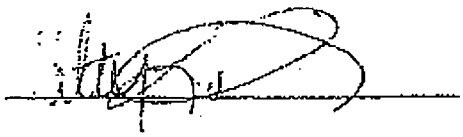
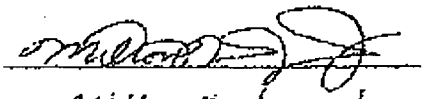
[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte, NC.

WALTER L. DAVIS



BLUE RIDGE HOLDINGS, INC.

By: 

Name: Milton K. Toses Jr.

Title: Chairman, CEO & President

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AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of this 22nd day of February, 2011, by and between Blue Ridge Holdings, Inc. (the "Company"), a Delaware corporation, and K. Angela Webb, an individual resident of the State of North Carolina ("Executive").

WHEREAS, the Agreement was originally executed on May 27, 2010, in connection with the closing of the Stock Purchase Agreement, dated May 25, 2010, between the Company and each of the investors identified on the signature pages thereto (the "Stock Purchase Agreement");

WHEREAS, the Agreement has been amended and restated to reflect terms that were revised in the process of the Company's efforts to obtain preliminary conditional approval and clearance to bid on failed banks from the Federal Deposit Insurance Corporation, as receiver;

WHEREAS, the Executive has considerable experience, expertise and training in management related to banking services;

WHEREAS, the Company desires for the Executive to be employed as the Executive Vice President, Treasurer and Assistant Secretary of the Company, and Executive desires to accept employment, subject to and on the terms and conditions set forth in this Agreement;

WHEREAS, the Company and the Executive agree that on the Effective Date (as defined in Paragraph 1), the Company shall be the "Employer" under this Agreement and that on or after a Bank Acquisition (as defined in Paragraph 1), the Company may assign this Agreement to an existing or future "subsidiary" corporation (within the meaning of Section 424 of the Internal Revenue Code of 1986, as amended (the "Code")) of the Company (hereinafter referred to as "affiliate"), in which case such affiliate thereafter shall be the "Employer" under this Agreement; and

WHEREAS, both the Company and the Executive have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the Executive and the Company agree as follows:

A. DURATION

1. This Agreement shall become effective (the "Effective Date") upon the "First Closing Date" (as defined in the Stock Purchase Agreement); provided, however, that Sections H and I of this Agreement shall not become effective until the date that the Company completes a "Bank Acquisition" (as defined in the Stock Purchase Agreement) (the "Closing Date"). Subject to Paragraphs 2 and 3 below, this Agreement will expire and terminate by its own terms on the day before the fifth anniversary of the Effective Date, unless earlier terminated as provided herein.

2. Both the Employer and the Executive acknowledge and agree that the parties may agree to continue the employment relationship upon such terms as they may mutually agree. Following the initial five year term, this Agreement automatically shall renew annually for an additional one (1) year term unless either party elects to terminate this Agreement by sending written notice of non-renewal at least thirty (30) days prior to the expiration of the then current term. Both parties acknowledge and agree

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that, in the event this Agreement does not renew, this Agreement shall terminate automatically upon the expiration of the then current term without any additional liability or obligation on the part of either party, except as expressly provided herein.

3. Paragraphs 1 and 2 to the contrary notwithstanding, if a Change in Control occurs during the term of this Agreement, this Agreement shall continue in effect and the term of this Agreement shall not end before the first anniversary of the Change in Control.

B. COMPENSATION

4. All payments of salary and other compensation to the Executive shall be payable in accordance with the Employer's ordinary payroll and other policies and procedures.

a. During the term of this Agreement, the Employer agrees to pay the Executive a base salary of not less than Three Hundred Thousand Dollars ($300,000) annually, appropriately prorated for partial months at the commencement and end of the term of this Agreement.

b. During the term of this Agreement, it is anticipated that the Employer will adopt an executive incentive bonus plan based upon the asset growth and profitability of the Company, an affiliate of the Company or the Company and one or more affiliates or such other criteria as may be established by the Employer's board of directors or a delegated committee thereof. The Executive will be entitled to participate in such plan. Any incentive bonus opportunities established or awarded before the Company's filing of a shelf registration statement shall be subject to the restrictions described in the following sentence. With respect to any incentive bonus payable after the "Shelf Registration Statement Filing Deadline" (as defined in the Registration Rights Agreement dated May 27, 2010, among the Company and the "Participants" (as defined therein)) (i) such incentive bonus shall not be paid before the shelf registration statement is filed, (ii) the amount of such incentive bonus otherwise payable shall be reduced by fifty percent (50%) if the shelf registration statement is not filed by the Shelf Registration Statement Filing Deadline, other than as a result of the Securities and Exchange Commission being unable to accept such filing for reasons unrelated to the filing itself or the Company and (iii) the amount of such incentive bonus otherwise payable shall be further reduced by an additional ten percent (10%) for each whole month after the Shelf Registration Statement Filing Deadline in which the shelf registration statement is not filed.

c. On the Effective Date, the Executive shall be granted options to purchase ninety thousand five hundred forty-seven (90,547) shares of Class A voting common stock, par value $0.001 per share, of the Company ("Class A Voting Common Stock") under the Company's 2010 Equity Incentive Plan (the "Plan"). The option shall be evidenced by a stock option agreement and the Executive's rights under the option shall be governed solely by the terms and conditions of that agreement and the Plan. The option shall have an exercise price per share equal to $20. The option shall have a term of ten years from the date of issuance and to the extent permitted by law, shall be treated as incentive stock option. Subject to the terms of the stock option agreement, the option shall vest and become exercisable with respect to one-half of the shares subject to the option on the fourth anniversary of the Effective Date and with respect to the remaining shares subject to the option on the fifth anniversary of the Effective Date.

d. On the Effective Date the Executive shall receive an award of forty-six thousand eight hundred fifty (46,850) shares of Class A Voting Common Stock under the Plan. The award shall be evidenced by a restricted stock agreement and the Executive's rights under the award shall be governed solely by the terms and conditions of that agreement and the Plan. The shares

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of Class A Voting Common Stock initially shall be nontransferable and subject to a substantial risk of forfeiture. The shares of Class A Voting Common Stock shall become transferable and vested upon meeting the performance objectives and other terms and conditions prescribed by the stock award agreement that evidences the grant.

e. The Executive shall be eligible to participate in the employee benefit plans, fringe benefit programs and perquisite plans or programs established by the Company or an affiliate in which other executives of the Employer are eligible to participate. The Executive's right to receive benefits under any such employee benefit plan, fringe benefit program or perquisite plan or program shall be governed by the terms of the applicable plan document or program which, in accordance with the terms and provisions thereof, may be modified or terminated at any time.

5. The Employer shall reimburse the Executive for all reasonable expenses, including, but not limited to, travel expenses, lodging expenses, and meals and entertainment expenses, that the Executive may incur in the performance of her duties and obligations under this Agreement; provided, however, that the Executive shall be required to submit receipts or other acceptable documentation to the cashier of the Employer or such other officer designated by the Employer to verify such expenses prior to any reimbursements. In addition to the reimbursement of expenses listed in this Paragraph 5, the Employer shall pay, or reimburse the Executive, for reasonable initiation fees for trade association memberships deemed to be acceptable and appropriate by the board of directors of the Employer. Reimbursement payments shall be paid to the Executive in accordance with the Employer's expense reimbursement policy but in all events no later than March 15 of the year following the year in which the reimbursable expense was incurred by the Executive.

6. The Employer's board of directors or a delegated committee shall review the amount of the Executive's compensation, including the Executive's base salary, not less than annually and shall increase such base salary as a result of such review and provide reasonable cost of living adjustments, all in the discretion of the Employer's board of directors or such committee and consistent with safe and sound banking practices.

7. The Employer shall have the right to deduct from any payment of compensation to the Executive hereunder any federal, state or local taxes required by law to be withheld with respect to such payments and any other amounts specifically authorized to be withheld or deducted by the Executive.

8. The parties hereto acknowledge that the compensation set forth herein and the other covenants and agreements of the Employer contained herein are fair and adequate compensation for the Executive's services and for the covenants of the Executive as set forth herein.

C. RESPONSIBILITIES

9. On the Effective Date the Executive shall be employed as the Executive Vice President, Treasurer and Assistant Secretary of the Company and shall faithfully devote her best efforts and all of her business time to her position with the Company. On and after a Bank Acquisition and the assignment of this Agreement to an affiliate of the Company, the Executive shall be employed by the Employer in a position consistent with the Executive's position with the Company on the date of such assignment.

10. The Executive acknowledges and agrees that the duties and responsibilities of the Executive required by her position with the Employer are wholly within the discretion of the Employer's board of directors, and may be modified, or new duties and responsibilities imposed by the board of directors. However, these new duties and responsibilities may not constitute immoral or unlawful acts.

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In addition, the new duties and responsibilities must be consistent with the Executive's role as the Executive Vice President, Treasurer and Assistant Secretary of a financial institution.

11. The Executive acknowledges and agrees that, during the term of this Agreement, she has a fiduciary duty of loyalty to the Employer and its affiliates, and that she will not engage in any activity during the term of this Agreement, which will or could, in any significant way, harm the business, business interests, or reputation of the Employer or its affiliates or the reputation of the board of directors of the Employer or an affiliate.

12. The Executive shall not directly or indirectly engage in competition with the Employer or an affiliate at any time during the existence of the employment relationship between the Employer and the Executive, and the Executive will not on her own behalf, or as another's agent or employee, engage in any of the same or similar duties and/or Employer-related responsibilities required by the Executive's position with the Employer, other than as an employee of the Employer pursuant to this Agreement or as specifically approved by the Employer's board of directors. In addition, without the prior written consent of the Employer's board of directors, during the employment relationship Executive shall not usurp for herself any corporate opportunity available to the Employer or an affiliate.

D. NONINTERFERENCE

This Section D sets forth certain covenants that apply during the Executive's employment with the Employer and, as provided below, following the termination of that employment; provided, however, that this Section D shall not apply following the termination of the Executive's employment prior to the Closing Date on account of a termination without Good Cause or a resignation with Good Reason. The covenants set forth in paragraphs 15, 16, 17, and 19 shall not restrict or prohibit the Executive from providing services to Integrated Capital Strategies, LLC ("ICS") (or its successor-in-interest) provided that such services do not prevent the Executive from discharging all of the Executive's duties and obligations under this Agreement.

13. The Executive acknowledges that, as part of her employment with the Employer, she will become familiar with the salary, pay scale, capabilities, experiences, skill and desires of the Employer's employees. The Executive agrees to maintain the confidentiality of such information. The Executive further covenants and agrees that, for a period of one year subsequent to the termination of this Agreement, whether such termination occurs at the insistence of the Employer or the Executive, the Executive shall not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees of the Employer, nor shall the Executive contact or communicate with any employees of the Employer or an affiliate for the purpose of inducing such employees to terminate their employment with the Employer or an affiliate. For purposes of this covenant, "employees of the Employer or an affiliate" shall refer to employees who are still actively employed by or were employed by the Employer or an affiliate within the prior year at the time of the attempted recruiting or hiring.

14. In her position of employment, the Executive will be exposed to confidential information and trade secrets (hereafter "Proprietary Information") pertaining to, or arising from, the business of the Employer and its affiliates (if any). The Executive hereby agrees and acknowledges that such Proprietary Information is unique and valuable to the business of the Employer and its affiliates and that the Employer or an affiliate would suffer irreparable injury if this information were publicly disclosed. Therefore, the Executive agrees to keep in strict secrecy and confidence, both during and after the period of her employment, any and all Proprietary Information which the Executive acquires, or to which the Executive has access, during employment by the Employer, that has not been publicly disclosed by the Employer or an affiliate and is not otherwise publicly available. The Proprietary Information covered by this Agreement shall include, but shall not be limited to: (i) the identities of the existing and prospective

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customers or clients of the Employer or an affiliate, including names, addresses, credit status, and pricing levels; (ii) the buying and selling habits and customs of the existing and prospective customers or clients of the Employer or an affiliate; (iii) non-public financial information about the Employer and its affiliates; (iv) product and systems specifications, concepts for new or improved products and other product or systems data; (v) the identities of, and special skills possessed by, the employees of the Employer or an affiliate; (vi) the identities of and pricing information about the suppliers and vendors of the Employer or an affiliate; (vii) training programs developed by the Employer or an affiliate; (viii) pricing studies, information and analyses; (ix) current and prospective products and inventories; (x) financial models, business projections and market studies; (xi) the financial results and business conditions of the Employer or an affiliate; (xii) business plans and strategies; (xiii) special processes, procedures, and services of the Employer or an affiliate and their suppliers and vendors; and (xiv) computer programs and software developed by the Employer or an affiliate or its consultants. The provisions and agreements entered into herein shall survive the term of the Executive's employment to the extent reasonably necessary to accomplish their purpose in protecting the interests of the Employer and its affiliates in any Proprietary Information disclosed to, or learned by, the Executive while employed.

15. The Executive expressly represents that she has no agreements with, or obligations to, any party, and during the term of this Agreement she will not have any agreements with, or obligations to, any party, which conflict, or may conflict, with the interests of the Employer or an affiliate or with the Executive's duties as an employee of the Employer.

16. The Executive acknowledges that the special relationship of trust and confidence between the Executive, the Employer, and its clients and customers creates a high risk and opportunity for the Executive to misappropriate the relationship and goodwill existing between the Employer and its clients and customers. The Executive further acknowledges and agrees that it is fair and reasonable for the Employer to take steps to protect itself from the risk of such misappropriation. The Executive further acknowledges that, at the outset of her employment with the Employer and throughout the Executive's employment with the Employer, the Executive will be provided with access to and informed of Proprietary Information, which will enable the Executive to benefit from the Employer's goodwill and know-how.

17. The Executive acknowledges that it would be inevitable in the performance of the Executive's duties as a director, officer, employee, investor, agent or consultant of any person, association, entity, or company which competes with the Employer or an affiliate, or which intends to or may compete with the Employer or an affiliate, to disclose and/or use Proprietary Information, as well as to misappropriate the goodwill and know-how of the Employer or an affiliate, to or for the benefit of such other person, association, entity, or company. The Executive also acknowledges that the Proprietary Information is the property of the Employer. The Executive also acknowledges that, in exchange for the execution of the non-solicitation restriction set forth in these NONINTERFERENCE provisions, the Executive has received substantial, valuable consideration, including: (i) confidential trade secret and proprietary information relating to the identity and special needs of the Employer's current and prospective customers, the Employer's current and prospective services, the Employer's business projections and market studies, the Employer's business plans and strategies, the Employer's studies and information concerning special services unique to the Employer; (ii) employment; and (iii) compensation and benefits as described in this Agreement. The Executive further acknowledges and agrees that this consideration constitutes fair and adequate consideration for the execution of the non-solicitation restriction set forth herein.

18. In consideration for the above-recited valuable consideration, as well as to protect the vital interests described in these NONINTERFERENCE provisions, the Executive understands and agrees that during the continuation of this Agreement and for a period of one year following the termination of

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this Agreement by either party, for any reason, the Executive will not be or become engaged in any way (directly or indirectly), as an individual proprietor, beneficiary, trustee, owner, partner, stockholder, officer, director, executive, investor, lender, sales representative, or in any other capacity, whatsoever, in any activity or endeavor which competes or conflicts with the business of the Employer or the business of any of the Employer's affiliates (if any), as such business has been conducted during the years of the Executive's employment with the Employer, within fifty (50) miles of any office or branch of the Employer, or its affiliates (if any). It is the parties' desire that these restrictions be enforced to the fullest extent allowed by law.

19. The Executive agrees that the restrictions set forth in Paragraph 18 above are ancillary to an otherwise enforceable agreement, are supported by independent valuable consideration, and that the limitations as to time, geographical area, and scope of activity to be restrained by Paragraph 18 are reasonable and acceptable, and do not impose any greater restraint than is reasonably necessary to protect the goodwill and other business interests of the Employer and its affiliates. The Executive further agrees that such restrictions do not create undue hardship for the Executive or for the public. The NONINTERFERENCE provisions in this Section D are not intended to be construed as a general restraint from engaging in a lawful profession or a general covenant against competition. Nothing herein will prohibit the Executive's (i) beneficial ownership of less than 5% of the publicly traded capital stock of a corporation listed on a national securities exchange so long as this is not a controlling interest, or (ii) ownership of mutual fund investments or any interest in ICS. The Executive may not avoid the purpose and intent of this paragraph by engaging in conduct within the geographically limited area from a remote location through means such as telecommunications, written correspondence, computer generated or assisted communications, or other similar methods. The Executive agrees that if, at some later date, a court of competent jurisdiction determines that the covenants set forth in this Section D do not meet the criteria set forth by applicable law, then such agreement may be reformed by the court and enforced to the maximum extent permitted under applicable law. The Executive understands that her obligations under this Section D shall not be assignable by her.

20. The Executive acknowledges that the covenants set forth in these NONINTERFERENCE provisions are material conditions to the Company's willingness to execute and deliver this Agreement and for the Employer to provide Executive the compensation and benefits and other consideration provided hereunder. The parties agree that the existence of any claim or cause of action of Executive against the Employer, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Employer of such covenants. It is specifically acknowledged that the periods following the termination of employment stated in Paragraphs 13 and 18, during which the agreements and covenants of Executive made in such Paragraphs are effective, are to be computed by excluding from such computation any time during which Executive is in violation of any provision of Paragraph 13 or 18. The covenants contained in these NONINTERFERENCE provisions will not be affected by any breach of any other provision hereof by any party hereto. In addition, Executive's obligations under those NONINTERFERENCE provisions shall survive the termination of this Agreement and Executive's employment with the Employer. Executive's obligations under these NONINTERFERENCE provisions are in addition to, and not in limitation or preemption of, all other obligations of confidentiality which she may have to Employer under general legal or equitable principles, or other policies of the Employer.

E. REMEDIES

21. In the event that the Executive violates any of the provisions set forth in this Agreement relating to NONINTERFERENCE, Executive acknowledges that the Employer and its affiliates would suffer immediate and irreparable harm and would not have an adequate remedy at law for money damages. Accordingly, Executive agrees that, without the necessity of proving actual damages or posting bond or other security, the Employer shall be entitled to temporary or permanent injunction or injunctions

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to prevent breaches of such performance and to specific enforcement of such covenants in addition to any other remedy to which the Employer may be entitled, at law or in equity. In such a situation, the parties agree that the Employer may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement relating to NONINTERFERENCE, and the pursuit of any particular remedy or remedies shall not be deemed an election of remedies or waiver of the right to pursue any other remedy.

F. TERMINATION

22. The Employer, by action of its board of directors, shall be entitled to terminate the Executive's employment for any reason by providing the Executive with thirty (30) days' written notice of the termination. The effective date of such termination shall be the thirtieth (30th) day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the termination is with Good Cause for a reason described in Paragraph 23(a), (b) or (d), the effective date of such termination shall be the last day of the thirty (30) day cure period under Paragraph 23(a), (b) or (d). If the Executive's employment is terminated by the Employer, the Employer shall pay the Executive any compensation previously earned but unpaid (including base salary, annual incentives and payment for accrued but unused vacation) (the "Standard Termination Benefits") and shall pay or provide any other amounts or benefits that the Executive is entitled to receive in accordance with the terms of any employee benefit plan or other plan program or agreement (including option, restricted stock or other equity or equity-based award) (collectively the "Other Benefits") and, except as provided in Paragraphs 30, 31 and 33, shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

23. For purposes of this Agreement, "Good Cause" shall be defined as the occurrence of one or more of the following:

a. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that Executive has materially breached this Agreement or is grossly negligent in the performance of the Executive's duties hereunder, and has failed to cure such violation or the effects of such gross negligence within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged violation;

b. The determination by the Employer's board of directors, in the exercise of its reasonable judgment, that (i) Executive has failed to follow the policies adopted by the board of directors and has failed to cure such failure within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the alleged failure; or (ii) Executive has engaged in such actions or omissions that would constitute unsafe or unsound banking practices;

c. The Executive is convicted of a misdemeanor involving moral turpitude or a felony;

d. The determination by the Employer's board of directors, in the exercise of its reasonable judgment and in good faith, that the Executive's job performance is substantially unsatisfactory and that Executive has failed to cure such performance within the thirty (30) day period after written notice to the Executive by the Employer specifying in reasonable detail the nature of the unsatisfactory performance; or

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e. The Executive is prohibited from engaging in the business of banking by any governmental regulatory agency having jurisdiction over the Employer.

24. Prior to the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment with Good Reason or for a Personal Reason (which means on account of a severe and extended illness of a member of Executive's immediate family or on account of any other personal reason that is approved by a majority of the non-employee members of the Employer's board of directors or a delegated committee thereof comprised solely of non-employee members of the Employer's board of directors). On and after the fifth anniversary of the Effective Date, Executive shall be entitled to terminate the Executive's employment at any time, for any reason or no reason (including with Good Reason or for a Personal Reason). Executive shall provide the Employer thirty (30) days' written notice in order to terminate the Executive's employment in accordance with the two preceding sentences. The effective date of a resignation under this Paragraph shall be the thirtieth 30th day following the date the notice is given or such other later date as may be set forth in the notice; provided, however, that if the resignation is with Good Reason, the effective date of such resignation shall be the last day of the thirty (30) day cure period under Paragraph 25. Upon Executive's resignation, the Employer shall pay the Executive the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraphs 30, 31 and 33 shall have no further obligation to provide compensation or benefits to the Executive under this Agreement.

25. For purposes of this Agreement, "Good Reason" shall be defined as the occurrence of one or more of the following:

a. The Executive's rate of annual base salary on any date is less than eighty-five percent (85%) of the Executive's highest rate of annual base salary as in effect on any date in the preceding thirty-six (36) months or the Executive's annual incentive opportunity, *i.e.*, the amount payable for achieving the objectives, goals or targets for the annual incentive bonus, is less than eighty-five percent (85%) of the Executive's highest annual incentive opportunity for any of the three preceding years; provided, however, that a reduction in the Executive's rate of annual base salary or annual incentive opportunity shall be disregarded to the extent that the percentage reduction is applied similarly to the Employer's other executives;

b. The assignment to the Executive of any duties materially inconsistent with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section C of this Agreement, or any other action by the Employer which results in a material diminution in such position, authority, duties or responsibilities;

c. Any material breach of this Agreement by the Employer; or

d. Any requirement that the Executive's services be performed at a location more than thirty-five (35) miles from the location of the Executive's principal office immediately before such relocation.

In order to resign with Good Reason (i) the Executive shall give the Employer written notice specifying in reasonable detail the grounds or event that the Executive alleges constitute Good Reason, (ii) such notice must be given to the Employer within thirty (30) days following the Executive's knowledge of the existence of such grounds or event and (iii) the Employer shall have thirty (30) days following receipt of such written notice during which it may cure such grounds or event constituting Good Reason (and if such grounds or event are cured within the thirty (30) day period, the Executive shall not be entitled to resign with Good Reason).

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26. If Executive dies during the term of this Agreement and while in the employ of the Employer, this Agreement will terminate automatically, without notice, on the date of the Executive's death and the Employer shall pay the Standard Termination Benefits and pay or provide the Other Benefits and, except as provided in Paragraph 30 and the following sentence, shall have no further obligation to provide compensation or benefits to the Executive or her estate under this Agreement. To the maximum extent, and for the term, permitted by the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, if Executive dies during the term of this Agreement and while in the employ of the Employer, the Employer shall provide COBRA continued health plan coverage for the Executive's "qualified beneficiaries" (as defined under COBRA) at the Employer's expense and without payment of any premium by the Executive's qualified beneficiaries.

27. This Agreement will terminate immediately, without notice, in the event the Executive is prevented from performing her duties hereunder by reason of becoming physically or mentally disabled. For purposes of this Agreement, the term "disabled" shall have the meaning set forth in the Employer's long-term disability plan or, if the Employer has no long-term disability plan in effect at the time of the Executive's disability, then "disabled" shall mean that Executive has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illness) of performing the essential functions of her duties under this Agreement for a continuous period of three (3) months, as determined by the Employer's board of directors upon the advice of a qualified physician. In the event a dispute arises between Executive and the Employer concerning Executive's physical or mental ability to continue or return to the performance of her duties, then Executive shall submit to an examination by a competent physician mutually agreeable to the parties. The physician's opinion as to the Executive's capability to perform her duties will be final and binding. During any period prior to termination during which the Executive fails to perform her duties as a result of incapacity due to physical or mental illness, the Executive shall continue to receive her full salary at the rate then in effect for such period until her employment terminates pursuant to this Paragraph 27, provided that payments so made to the Executive during such period shall be reduced by the sum of the amounts, if any, payable to the Executive under any disability benefit plans of the Employer that were not previously applied to reduce such payment.

In the event of a termination of the Executive's employment pursuant to this Paragraph 27, the Employer shall be relieved of all its obligations under this Agreement, except that Employer shall pay to the Executive, or to her estate in the event of her subsequent death, the Standard Termination Benefits and pay or provide the Other Benefits. All such payments to the Executive or to her estate shall be made in the same manner as other payroll obligations.

28. Executive acknowledges that all memoranda, notes, records, reports, manuals, books, papers, letters, client and customer lists, contracts, software programs, information and records, drafts of instructions, guides and manuals, and other documentation (whether in draft or final form), and other sales or financial information and aids relating to the Employer's business, and any and all other documents containing Proprietary Information furnished to the Executive by any representative of the Employer or otherwise acquired or developed by the Executive in connection with her duties under this Agreement (collectively, the "Recipient Materials") shall at all times be the property of the Employer. Within three calendar days of the termination of this Agreement, the Executive shall return to the Employer, all Recipient Materials (including all Proprietary Information) that is in her possession, custody or control.

29. The provisions of Paragraphs 13, 14, 18-21 and 28-57 shall survive the termination of this Agreement.

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G. CHANGE OF CONTROL

30. If a Change in Control occurs and any compensation payable under this Agreement or any other plan, agreement or arrangement are determined to be "parachute payments" (as defined in Section 280G(b)(2)(A) of the Code) subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then the Executive shall receive either all of the "Parachute Payments" or the "Capped Payments" (as such terms are defined in the Company's 2010 Equity Incentive Plan), as determined in accordance with Section 11.04 of the Company's 2010 Equity Incentive Plan (or any successor provision).

31. [Omitted Intentionally.]

32. As used in this Agreement, the term "Change of Control" has the same meaning as the term is defined in the Company's 2010 Equity Incentive Plan as in effect on the Effective Date.

H. SEVERANCE

33. If the Employer terminates Executive's employment on or after the Closing Date and during the term of this Agreement without Good Cause or if Executive resigns with Good Reason on or after the Closing Date and during the term of this Agreement, then in addition to the Standard Termination Benefits and Other Benefits, the Executive shall be entitled to receive:

a. a lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) months salary, at the rate in effect on the date the Executive's employment terminates (but disregarding any reduction in base salary that constitutes Good Reason for the Executive's resignation);

b. [Omitted Intentionally];

c. a lump sum cash payment equal to the product of (i) the Executive's target annual incentive or bonus payment for the year in which the Executive's employment terminates times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer or an affiliate and the denominator of which is 365; provided, however, that if such annual incentive or bonus payment is intended to be "performance based compensation" under Section 162(m) of the Code, the lump sum cash payment will equal the product of (x) the annual incentive or bonus payable based on the actual achievement of the performance objectives or criteria times (ii) a fraction, the numerator of which is the number of days in that calendar year in which the Executive is employed by the Employer and the denominator of which is 365 and such lump sum payment shall be paid within ten (10) days after the date that achievement of the performance objectives or criteria is determined; and

d. outstanding equity or equity-based awards, including options, restricted stock, restricted stock units, etc., shall remain outstanding and will become exercisable or vested, as applicable, as if the termination had not occurred and in accordance with the terms of the applicable award agreement until the date that they would expire absent a termination of the Executive's employment; provided, however, that any equity or equity-based award (other than options and stock appreciation rights) that is intended to be "performance based compensation" under Section 162(m) of the Code shall vest on the date, and only to the extent that, the applicable performance objectives are achieved.

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The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer and its affiliates and their officers, directors and employees of all known and unknown claims (the "Release"), and the Release becomes effective on or before the forty-fifth (45th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason. Subject to the Executive's satisfaction of the requirements of the preceding sentence and subject to the provisions of Section J, the payment of the benefit described in clause a. above shall begin, and the lump sum benefits described in clauses b. and c. above shall be paid, on the sixtieth (60th) day after the Employer's termination of the Executive without Good Cause or the Executive's resignation with Good Reason.

L. EESA

34. The Employer and the Executive mutually acknowledge that the terms of this Agreement shall be subject to and limited by any requirements or limitations that may apply under any applicable law, including the Emergency Economic Stabilization Act of 2008 as amended from time to time, including as amended by the American Recovery and Reinvestment act of 2009 ("EESA"). The Executive acknowledges, understands and agrees that the Executive may be subject to the provisions and limitations of EESA and the rules, regulations and guidance issued thereunder (including without limitation the rules issued by the Department of the Treasury (the "Department") under Interim Rule 31 CFR Part 30) (the "EESA Guidance") in the event the Department or any other government entity holds any of the Company's or its affiliate's equity or debt pursuant to the terms of EESA and the EESA Guidance. Accordingly, to the extent required by applicable law, including EESA if the Company becomes subject to EESA and the Executive is an individual for whom EESA compliance is required, the parties agree as follows:

a. with respect to the Executive and solely to the extent applicable to the Executive, the Employer agrees to take reasonable action to comply with EESA, the EESA Guidance and other applicable law, including, without limitation, the requirements that the Employer's compensation committee or a committee acting in a similar capacity review the Employer's risk management policies and incentive compensation arrangements of certain identified executives (as defined by EESA and the EESA Guidance) to ensure that such compensation arrangements do not encourage unnecessary and excessive risks that threaten the value of the Employer and certify that such reviews have been undertaken in compliance with EESA, the EESA Guidance and other applicable law; and

b. the Executive agrees that her rights to compensation under this Agreement and participation in the benefit and compensation arrangements of the Employer and its affiliates (the Agreement and any and all such arrangements, collectively, the "Benefit Plans") will be limited to the extent necessary to ensure that such arrangements comply with and are administered in accordance with the provisions of EESA, the EESA Guidance and other applicable law. Accordingly, the Executive hereby (A) acknowledges and understands that any compensation payable to her under any Benefit Plan, including without limitation under this Agreement, shall be subject to EESA, the EESA Guidance and other applicable law, including, without limitation, (1) the potential for elimination or clawback of any bonus or incentive compensation paid to the Executive under any Benefit Plan (including any incentive payment) in contravention of EESA or the EESA Guidance or other applicable law and (2) the potential for the reduction in amounts payable to Executive under Paragraph 33 of this Agreement as a result of the limitations on golden parachute payments under EESA, the EESA Guidance and other applicable law, (B) consents to any future modifications and limitations with respect to and under the Benefit Plans only to the extent necessary to ensure compliance with EESA, the EESA Guidance and

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other applicable law, (C) agrees that any plan, program, policy, agreement or arrangement of the Employer and its affiliates and this Agreement shall be treated as a Benefit Plan for purposes of such limitations, (D) voluntarily waives any claim against the Employer and its affiliates for any changes to the Executive's compensation or benefits that are required to comply with the EESA Guidance or applicable law as in effect from time to time, (E) agrees that such waiver and consent shall constitute a part of and be integrated with this Agreement, (F) agrees to execute, acknowledge and deliver such documents or instruments and take such other actions as may be reasonably necessary to effectuate the foregoing; and (G) agrees that in no event shall the Executive have the right to claim a breach of this Agreement or the terms of any Benefit Plan if such claim is due to or arises from the Employer's or an affiliate's compliance or alleged failure to comply with applicable law, including without limitation EESA, the EESA Guidance or other applicable law.

35. Notwithstanding any other provisions of this Agreement and in addition to and not in contravention of the clawback provision applicable to the Executive under the EESA Guidance or other applicable law:

a. If the Employer or an affiliate is required to prepare an accounting restatement due to material noncompliance of the Employer or an affiliate as a result of misconduct, with any financial reporting requirement under the Federal securities laws, the Executive shall reimburse the Employer and its affiliates for all amounts received under any incentive compensation plans from the Employer or an affiliate during the twelve (12) month period following the first public issuance or filing with the Securities and Exchange Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and any profits realized from the sale of securities of the Company during the twelve (12) month period, unless the application of this provision has been exempted by the Securities and Exchange Commission;

b. If the compensation committee of the Company's board of directors shall determine that the Executive has engaged in a serious breach of conduct, the compensation committee may terminate any equity compensation award or require the Executive to repay any gain realized on the exercise of an award in accordance with the terms such award or the equity compensation plan governing such award; and

c. If the Executive is found guilty of misconduct by any judicial or administrative authority in connection with any (A) formal investigation by the Securities and Exchange Commission or (B) other federal or state regulatory investigation, the compensation committee of the Company's board of directors may require the repayment of any gain realized on the exercise of an award under any equity compensation plan without regard to the timing of the determination of misconduct in relation to the time of the exercise of the award.

J. CODE SECTION 409A

36. This Agreement and the amounts payable and other benefits provided under this Agreement are intended to comply with, or otherwise be exempt from, Section 409A of the Code ("Section 409A"), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12). This Agreement shall be administered, interpreted and construed in a manner consistent with Section 409A. If any provision of this Agreement is found not to comply with, or otherwise not be exempt from, the provisions of Section 409A, it shall be modified and given effect, in the sole discretion of the Employer's board of directors and without requiring the Executive's consent, in such manner as the board determines to be necessary or appropriate to comply with, or to effectuate an exemption from,

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Section 409A. Each payment under this Agreement shall be treated as a separate identified payment for purposes of Section 409A.

37. With respect to any reimbursement of expenses of, or any provision of in-kind benefits to, the Executive, as specified under this Agreement, such reimbursement of expenses or provision of in-kind benefits shall be subject to the following limitations: (i) the expenses eligible for reimbursement or the amount of in-kind benefits provided in one taxable year shall not affect the expenses eligible for reimbursement or the amount of in-kind benefits provided in any other taxable year, except for any medical reimbursement arrangement providing for the reimbursement of expenses referred to in Section 105(b) of the Code; (ii) the reimbursement of an eligible expense shall be made as specified in this Agreement and in no event later than the end of the year after the year in which such expense was incurred and (iii) the right to reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

38. If a payment obligation under this Agreement arises on account of the Executive's termination of employment and such payment obligation constitutes "deferred compensation" (as defined under Treasury Regulation section 1.409A-1(b)(1), after giving effect to the exemptions in Treasury Regulation section 1.409A-1(b)(3) through (b)(12)), it shall be payable only after the Executive's "separation from service" (as defined in Treasury Regulation section 1.409A-1(h)); provided, however, that if the Executive is a "specified employee" (as defined in Treasury Regulation section 1.409A-1(i)), any payment that is scheduled to be paid within six months after such separation from service shall accrue without interest and shall be paid on the first day of the seventh month beginning after the date of the Executive's separation from service or, if earlier, within fifteen days after the appointment of the personal representative or executor of the Executive's estate following the Executive's death.

K. SEVERABILITY

39. If any term or other provision of this Agreement is held to be illegal, invalid or unenforceable by any rule of law or public policy: (A) such term or provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision were not a part hereof; (B) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement; and (C) there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only as broad as is enforceable.

L. WAIVER

40. The parties acknowledge and agree that the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that particular provision, or of any other provisions of this Agreement.

M. SUCCESSORS AND ASSIGNS

41. The Executive acknowledges and agrees that (i) the Company may assign this Agreement to its affiliate on or after the Closing Date and (ii) the Employer may assign this Agreement to any successor-in-interest. The Executive acknowledges and agrees that upon assignment this Agreement shall inure to the benefit of, and be fully enforceable by, any successor and/or assignee; and this Agreement will be fully binding upon, and may be enforced by the Executive against, any successor and/or assignee of the Employer.

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42. The Executive acknowledges and agrees that her obligations, duties and responsibilities under this Agreement are personal and shall not be assignable, and that this Agreement shall be enforceable by the Executive only. In the event of the Executive's death, this Agreement shall be enforceable by the Executive's estate, executors and/or legal representatives, only to the extent provided herein.

N. CHOICE OF LAW

43. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO PROVISION THEREOF REGARDING CONFLICT OF LAWS. IT IS STIPULATED THAT NORTH CAROLINA HAS A COMPELLING STATE INTEREST IN THE SUBJECT MATTER OF THIS AGREEMENT, AND THAT THE EXECUTIVE HAS OR WILL HAVE REGULAR CONTACT WITH THE STATE OF NORTH CAROLINA IN THE PERFORMANCE OF THIS AGREEMENT.

O. MODIFICATION

44. The parties acknowledge and agree that this Agreement and the other agreements and plans referenced herein, including, but not limited to, the Indemnification Agreement dated May 27, 2010, between the Company and the Executive (the "Indemnification Agreement"), constitute the complete and entire agreement between the parties; that each executed this Agreement based upon the express terms and provisions set forth herein; that, in accepting employment with the Company, the Executive has not relied on any representations, oral or written, which are not set forth in this Agreement; that no previous agreement, either oral or written, shall have any effect on the terms or provisions of this Agreement; and that all previous agreements, either oral or written, are expressly superseded and revoked by this Agreement. Any amendment to this Agreement must be in a writing executed by the Executive and the Employer after approval by a majority of the non-employee members of its board of directors or a delegated committee thereof comprised solely of non-employee members of its board of directors. No waiver shall be deemed a continuing waiver or a waiver of any subsequent breach or default, either of a similar or different nature, unless expressly so stated in writing.

45. Except as otherwise expressly provided in this Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement will be effective unless hereafter made (i) in writing, (ii) referencing an express provision in this Agreement, (iii) signed by the party to be bound, , and (iv) in the case of the Employer, approved by a majority of the non-employee members of its board of directors.

P. INDEMNIFICATION

46. During the term of this Agreement, without limiting the Company's obligations under the Indemnification Agreement, the Certificate of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, the Employer shall indemnify the Executive against all judgments, penalties, fines, amounts paid in settlement and reasonable expenses (including, but not limited to, attorneys' fees) relating to her employment by the Employer to the fullest extent permissible under the law, including, without limitation, federal and/or state banking laws and regulations, and the Employer's Articles of Incorporation or Articles of Association. In the event of any conflict between this Agreement and the Indemnification Agreement with respect to matters addressed in the Indemnification Agreement,

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the Indemnification Agreement will prevail. To the extent permitted by law, the Employer may purchase such indemnification insurance as its board of directors may from time to time determine.

Q. ARBITRATION

47. Any dispute, controversy, or claim arising out of or relating to this Agreement or breach thereof, or arising out of or relating in any way to the employment of the Executive or the termination thereof, shall be submitted to arbitration in accordance with the Employment Dispute Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In reaching his decision, the arbitrator shall have no authority to ignore, change, modify, add to or delete from any provision of this Agreement, but instead is limited to interpreting this Agreement. Notwithstanding the arbitration provisions set forth in this Agreement, the Executive and the Employer acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under the NONINTERFERENCE provisions of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to this Paragraph of the Agreement. The Executive and the Employer further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

R. LEGAL CONSULTATION

48. Each party acknowledges that it has carefully read this Agreement, that it has had an opportunity to consult with his, her or its attorney concerning the meaning, import and legal significance of this Agreement, that it understands the terms of the Agreement, that all understandings and agreements between Executive and the Company relating to the subjects covered in this Agreement are contained in it, and that it has entered into the Agreement voluntarily and not in reliance on any promises or representations by the other than those contained in this Agreement.

S. MISCELLANEOUS

49. The Executive shall make herself available, upon the request of the Employer, to testify or otherwise assist in litigation, arbitration, or other disputes involving the Employer, or any of the directors, officers, employees, subsidiaries, or parent corporations of either, at no additional cost during the term of this Agreement and at any time following the termination of this Agreement.

50. The Executive shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer after the date of termination, or otherwise.

51. In the event either party institutes arbitration or litigation to enforce or protect its rights under this Agreement, the prevailing party in such arbitration or litigation shall be entitled, in addition to all other relief, to reasonable attorneys fees, out-of-pocket costs, disbursements, and arbitrator's fees relating to such arbitration or litigation.

52. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Agreement.

53. The Employer shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive or any successor-in-interest to the Executive shall be and remain simply a general creditor of the Employer in the same manner as any other

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creditor having a general unsecured claim. For purposes of the Code, the Employer intends this Agreement to be an unfunded, unsecured promise to pay on the part of the Employer. For purposes of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Employer intends that this Agreement not be subject to ERISA. If it is deemed subject to ERISA, it is intended to be an unfunded arrangement for the benefit of a select member of management, who is a highly compensated employee of the Employer for the purpose of qualifying this Agreement for the "top hat" plan exception under sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. At no time shall the Executive have or be deemed to have any lien nor right, title or interest in or to any specific investment or to any assets of the Employer. If the Employer elects to invest in a life insurance, disability or annuity policy upon the life of the Executive, then the Executive shall assist the Employer by freely submitting to a physical examination and supplying such additional information necessary to obtain such insurance or annuities.

54. When a reference is made in this Agreement to a Paragraph or a Section, such references shall be to a Paragraph or a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision in this Agreement. Each use herein of the masculine, neuter or feminine gender shall be deemed to include the other genders. Each use herein of the plural shall include the singular and vice versa, in each case as the context requires or as is otherwise appropriate. The word "or" is used in the inclusive sense. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent. References to a person are also to its permitted successors or assigns.

55. Executive represents that her service as an employee of the Employer will not violate any agreement: (i) she has made that prohibits her from disclosing any information she acquired prior to her becoming employed by the Employer; or (ii) she has made that prohibits her from accepting employment with the Employer or that will interfere with her compliance with the terms of this Agreement. Executive further represents that she has not previously, and will not in the future, disclose to Employer any proprietary information or trade secrets belonging to any previous employer. Executive acknowledges that the Employer has instructed her not to disclose to it any proprietary information or trade secrets belonging to any previous employer.

T. NOTICES

56. All notices and other communications required or permitted to be given or delivered hereunder or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given properly if (a) delivered personally, (b) delivered by a recognized overnight courier service, (c) sent by United States mail, postage prepaid, or (d) sent by facsimile transmission followed by a confirmation copy delivered by recognized overnight courier service the next day. Such notices, requests, consents and other communications shall be sent to the respective parties as follows (or at such other address for a party as shall be specified by like notice to the other party):

If to the Company:
1170 Peachtree Street, Suite 2350
Atlanta, Georgia 30309
Attention: Chairman

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If to Executive:
6005 Oxfordshire Road
Waxhaw, North Carolina 28173

57. Any notice or other communication given pursuant to this Agreement shall be effective (i) in the case of personal delivery, telex or facsimile transmission, when received; (ii) in the case of mail, upon the earlier of actual receipt or five (5) business days after deposit with the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (iii) in the case of a recognized overnight courier service, one (1) business day after delivery to the courier service together with all appropriate fees or charges and instructions for overnight delivery.

[signature page follows]

ELECTRONICALLY FILED - 2017 Mar 23 1:33 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

[signature page to Employment Agreement]

EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE IN Charlotte NC

K. ANGELA WEBB

BLUE RIDGE HOLDINGS, INC.

By:

Name: Milton H. Jones, Jr.

Title: Chairman, CEO and President

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB,	)	civil action number: 2015-CP-23-05554
	)	
Plaintiffs,	)	
v.	)	
	)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,	)	
	)	**NOTICE OF APPEARANCE**
Defendants.	)	
	)	
AND	)	
	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
	)	
Prospective Defendant Intervenor.	)	
	)	

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, S.C.
2017 MAY 23 PM 2:53

TO: ATTORNEYS FOR PLAINTIFFS AND DEFENDANTS.

Please take notice that Michael J. Thomerson, Esq. and William S.F. Freeman, Esq. of Thomerson Freeman & Rogers P.C. hereby enter their appearance as co-counsel for the Prospective Defendant Intervenor the Federal Deposit Insurance Corporation in this action.

THOMERSON FREEMAN & ROGERS P.C.

May 23, 2017
Greenville, South Carolina

Michael J. Thomerson (S.C. Bar #70832)
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ATTORNEYS FOR THE PROPOSED DEFENDANT INTERVENOR FEDERAL DEPOSIT INSURANCE CORPORATION

ELECTRONICALLY FILED - 2017 May 26 10:43 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2300554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **ORDER DENYING DEFENDANTS MOTION FOR A PROTECTIVE ORDER**

This matter comes before the Court on the motion of Defendants CertusBank, N.A. and CertusHoldings, Inc., now doing business through the successor corporation CBSUB, Inc.

Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb previously moved to enroll an arbitration award in their favor. On March 29, 2017, the Honorable Perry H. Gravely, Circuit Court Judge, granted that motion and entered an Order/Judgement and Form 4 against Defendants and CBSub, Inc. as successor corporation to CertusBank, N.A. The present motion, filed on April 13, 2017, requests a protective order allowing Defendants to file Federal Deposit Insurance Corporation (FDIC) determination letters, which Defendants claim pertain to the Plaintiffs and alleged "prohibited golden parachute payment under applicable federal banking law." Defs.' Mot., 1. Plaintiffs oppose the motion, arguing Defendants have failed to assert one of the specifically enumerated grounds on which an arbitration award can be challenged. *See* Pls.' Mem., 2 (citing S.C. Code. Ann. § 15-48-130 & -140). Plaintiffs argue further that, "even assuming FDIC has made a golden parachute determination or intends to intervene, that intervention should occur in the context of judgment *enforcement*, not enrollment." *Id.* (emphasis original).

On May 24, 2017, the Court held a hearing and heard argument from the parties. At the motions hearing, counsel for the FDIC appeared and alerted the Court to a motion filed by the

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FDIC on May 23, 2017, seeking leave to intervene. The FDIC's motion was not before the Court and will be heard in the ordinary course. However, Plaintiffs indicated they intend to oppose the FDIC's motion and argued, with respect to this motion, there was no reason to grant the protective order unless and until FDIC is permitted to intervene.

Having considered the submissions and arguments of the parties, Defendants' motion for a protective order is **DENIED**. Plaintiffs have an arbitration award that was enrolled by another member of this Court pursuant to South Carolina Code § 15-48-120. While Defendants would offer the FDIC determination letters to challenge that award, they did not ask Judge Gravely to reconsider his March 29 Order, nor have they notice appeal. Thus, there is no reason for the Court to grant a protective order to allow the FDIC letters to be filed.

AND IT IS SO ORDERED.

HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge

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Greenville Common Pleas

Case Caption:	Employment And Workforce South Carolina Department Of vs. Thaxton Investment Corp
Case Number:	2015CP2300554
Type:	Order/Protective Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

DEFENDANTS' MOTION TO VACATE JUDGMENT ENTERED ON MARCH 29, 2017

Defendants, CertusBank, N.A. and CertusHoldings, Inc. (collectively "CertusBank"), file this Motion To Vacate Judgment Entered on March 29, 2017 pursuant to Rule 60(b)(1), (2), and (4) of the South Carolina Rules of Civil Procedure. Defendants ask that its Motion to Vacate Judgment be included on the non-jury motions roster for the week of August 7, 2017, along with the FDIC's pending Motion to Intervene and Modify the March 29, 2017 Judgment to Confirm Arbitrator's Award, or in the Alternative, Set Aside the March 29 Judgment.

Procedural History

Plaintiffs, Milton Jones, Walter Davis, and Angela Webb, filed this action in the Greenville County Court of Common Pleas on September 9, 2015. Defendants answered on January 6, 2016 and the parties filed a Joint Motion to Stay this proceeding to pursue arbitration. On January 21, 2016, the Court entered an Order staying this action pending the completion of the arbitration process.

One March 17, 2017, Thomas W. Traxler, Arbitrator, concluded that pursuant to the terms of the Plaintiffs' Amended and Restated Executive Employment Agreements ("Employment Agreements") with Blue Ridge Holdings, Inc. that Plaintiff Milton Jones was

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entitled to severance in the amount of $340,000; that Plaintiff Walter Davis was entitled to severance in the amount of $325,000; and, Plaintiff Angela Webb was entitled to severance in the amount of $300,000. (*Exhibit 1* - Arbitration Award at 1-2). The Arbitrator also determined that it was not deciding whether such payments were in fact barred as golden parachute payments under 12 U.S.C. § 1828(k) and 12 C.F.R. § 359. The Arbitrator determined that the FDIC's regulations do not discharge the contractual obligation of the Defendants to make the severance payments, but held those FDIC regulations may render Defendants' ability to make those payments unenforceable. (*Exhibit 1*, Arbitration Award at 8).

Plaintiffs filed a Motion for an Order Conforming Arbitration Award and Entry of Judgment on March 23, 2017. The Motion was denied by Order of this Court on March 27, 2017. On March 28, 2017, Defendants filed an Opposition to Motion for an Order Conforming Arbitration Award and Entry of Judgment and Motion to Stay. Defendants argued that the entry of judgment ordering the payment of severance payments in this case was premature and should be stayed pending final determination by the FDIC as to whether CertusBank can legally pay the severance amounts pursuant to 12 U.S.C. § 1828(k). (Opposition at 1). Despite having filed an Opposition to the Motion for an Order Conforming Arbitration Award and Entry of Judgment, on March 29, 2017, the Court appears to have entered a Form 4 Order granting the Motion for an Order Conforming Arbitration Award and Entry of Judgment. Defendants contend that this Order was entered mistakenly or inadvertently after the Defendants had filed an Opposition on the previous day. Plaintiffs' actions indicate some confusion with the entry of judgment as well, as they filed a Memorandum of Law in Opposition to Defendants' Motion to Stay and Reply to Defendants' Memorandum in Opposition to Motion for an Order Conforming Arbitration Award and Entry of Judgment on April 4, 2017.

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On April 13, 2017, Defendants filed a Motion for Entry of Protective Order so that the Defendants could file the FDIC's Determination Letters with the Court. Counsel for Defendants was informed on April 11, 2017 that the FDIC had issued written Determination Letters for each Plaintiff. At that time, counsel for Defendants did not actually have copies of the Determination Letters and did not know the content of those Determination Letters. Plaintiffs opposed the entry of a protective order and a hearing was held on May 25, 2017. Defendants inquired from the non-jury coordinator why their Opposition to Plaintiffs' Motion for an Order Conforming Arbitration Award and Entry of Judgment had not been scheduled for a hearing. The non-jury coordinator indicated that it had not been set for a hearing because it was couched as an Opposition, as well as a Motion to Stay and thus a hearing was not scheduled.

Defendants now move this Court for an Order vacating the March 29 Judgment pursuant to Rule 60(b)(1), (2), and (4).

Legal Argument

Defendants move pursuant to Rule 60(b)(1), (2), and (4) of the South Carolina Rules of Civil Procedure to have the judgment entered on March 29 vacated. First, based on the procedural history in this case, it appears that the March 29 Order granting Plaintiffs' Motion for an Order Conforming Arbitration Award and Entry of Judgment was entered mistakenly or entered inadvertently by the Court. Second, newly discovered evidence (Determination Letters issued by the FDIC on April 7, 2017) now warrant that the judgment entered on March 29 be vacated. Third, the judgment is void because the judgment does not conform with the terms of the Arbitrator's Award issued on March 17, 2017 and is void and unenforceable pursuant to the golden parachute rules and Determination Letters entered by the FDIC on April 7, 2017. (*See*, 12 C.F.R. § 359).

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1. The March 29 Judgment should be vacated pursuant to Rule 60(b)(1).

Rule 60(b)(1) of the South Carolina Rules of Civil Procedure permits relief from a judgment due to "mistake, inadvertence, surprise, excusable neglect." Rule 60(b)(1)(SCRP). Defendants seek an Order vacating the March 29 Judgment pursuant to Rule 60(b)(1) on the grounds that the Court denied Plaintiffs' Motion for an Order Conforming Arbitration Award and Entry of Judgment on March 27, 2017. The next day, Defendants filed an Opposition to the Motion for an Order Conforming Arbitration Award and Entry of Judgment and Motion to Stay. The very next day, on March 29, 2017, a Form 4 Order/Judgment was entered by the Court. It appears based on the docket in the case that the Court denied Plaintiffs' Motion on March 27, 2017 and then granted it two days later on March 29. On the interim date of March 28, Defendants filed an Opposition and Motion to Stay. It appears that the Order granting Plaintiffs' Motion for an Order Conforming Arbitration Award and Entry of Judgment was a mistake or entered inadvertently and should be vacated.

First, Defendants had filed an Opposition between the time the Court had denied Plaintiffs' Motion for an Order Conforming Arbitration Award and Entry of Judgment and the time that it was granted. Second, the March 29 Judgment was entered prior to the expiration of time provided for parties to petition the Court to vacate or modify the Arbitrator's Award under South Carolina Code Ann. 15-48-130 or 140. The March 29 Judgment enrolling the Arbitrator's Award was premature and preempted Defendants' constitutional due process rights under the South Carolina Uniform Arbitration Act. Moreover, the Arbitrator's decision contemplated that the FDIC would ultimately make a determination as to whether the proposed severance payments were enforceable pursuant to 12 C.F.R. § 359. The Arbitrator's Award merely stated that the Defendants were contractually obligated to make the severance payments, but the Award did not say that those payments were, in fact, due and payable at the time the arbitration decision was

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rendered. (*See. Exhibit 1*, Arbitration Award at 8). The Arbitrator's decision specifically stated that Defendants' obligation to pay may not be legally enforceable depending on determination of the applicability of golden parachute rules by the FDIC. (*Id*). As such, the Court's entry of a judgment before the FDIC's Determination Letters were issued was premature and entered based on mistake and inadvertence. The Judgment entered does not reflect the Arbitrator's decision.

For the reasons set forth above, the judgment entered on March 29, 2017 should be vacated pursuant to Rule 60(b)(1).

2. The March 29 Judgment should be vacated pursuant to Rule 60(b)(2).

Rule 60(b)(2) of the South Carolina Rules of Civil Procedure provides, in part, for relief from a judgment when newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b). The March 29 Judgment should be vacated pursuant to Rule 60(b)(2) because newly discovered evidence since the time the judgment was entered clearly indicates that the judgment should be vacated. The judgment in this case was entered on March 29, 2017. At the time the judgment was entered, the FDIC had not issued its Determination Letters with respect to whether the golden parachute regulations were applicable to the severance payments required to be paid by Defendants pursuant to the terms of Plaintiffs' Employment Agreements. Counsel for Defendants did not learn that the FDIC had issued Determination Letters until April 11, 2017. Even on that date, counsel for Defendants had not been provided a copy of those Determination Letters and did not know the outcome of those Determination Letters. Merely, counsel for Defendants had been advised that FDIC Determination Letters had been issued and should be filed with the Court but that a Protective Order would be required prior to filing. Counsel for the Defendants did not have copies of the FDIC Determination Letters nor did counsel for Defendants know that the FDIC

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had issued Determination Letters within ten days of the entry of judgment on March 29. The FDIC Determination Letters were filed as Exhibits to the FDIC's Motion to Intervene dated May 23, 2017. (*See.* FDIC Motion to Intervene, Exhibits 2, 3, and 4). The determination by the FDIC was made after the March 29 Judgment was entered.

Pursuant to the FDIC's Determination Letters, the proposed severance payments owed to Plaintiffs pursuant to their Employment Agreements are prohibited as golden parachute payments. Moreover, the FDIC found that CBSUB is a successor by merger to the troubled entities from whom the payment obligations arise, is subject to the golden parachute rules, and prohibited from making payments to the Plaintiffs without approved golden parachute applications. (*See.* FDIC's Motion to Intervene, Exhibits 2, 3, and 4). Applications for approval to make severance payments to the Plaintiffs have been denied by the FDIC. (*Id).* The federal golden parachute restrictions bar the sums that Plaintiffs seek under state law. *See. Rohr v. Reliance Bank*, 826 F.3d 1046, 1053 (8th Cir. 2016)("...the bank's obligation to pay [plaintiff] was rendered impossible when the FDIC determined the payment was a golden parachute").

It is inequitable for Defendants to be faced with conflicting requirements, a March 29 Judgment to pay, but a federal prohibition from making payment under the ruling set forth in the FDIC's Determination Letters.

For this reason, pursuant to Rule 60(b)(2), the March 29 Judgment should be vacated.

3. The March 29 Judgment should be vacated pursuant to Rule 60(b)(4).

Rule 60(b)(4) provides in part for relief from a judgment that is void. Judgments which deny a party proper due process meet the definition of a void judgment that can be set aside pursuant to Rule 60(b)(4). See. *Linda MC Co., Inc. v. Shore*, 390 S.C. 543, 554, 703 S.E.2d 499, 503 (2010). Plaintiffs filed a motion with the court to enroll the arbitrator's judgment seven

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days after the arbitrator's decision on March 17, 2017. Judgment was entered on March 29—only 12 days after the arbitrator's decision. The entry of the judgment prior to the expiration of the time provided for parties to petition the court to vacate or modify an arbitrator's award under South Carolina Code Ann. 15-48-130 or 140 had the practical effect of denying Defendants' due process. Defendants had 20 days after issuance of the arbitrator's decision to file a motion to vacate or modify the arbitrator's award. The judgment entered on March 29 precedes the 20-day period pursuant to § 15-48-100, resulting in the denial of due process rights to Defendants.

Additionally, based on the Determination Letters issued by the FDIC, the judgment entered on March 29 should be vacated on the grounds that it is now void, as the FDIC has determined that pursuant to golden parachute rules, Defendants are prohibited from making severance payment to Plaintiffs. Thus, Defendants are in a position where they cannot legally comply with the March 29 Judgment entered by this Court. Based on the fact that the judgment was entered prematurely, that the judgment may have been mistakenly entered, and that there is now new evidence that directly impacts the judgment entered on March 29, the Judgment should be vacated as it is now void.

A judgment ordering Defendants to pay Plaintiff Jones $340,000, Plaintiff Davis $325,000, and Plaintiff Webb $300,000, is unenforceable pursuant to 12 U.S.C. § 1828(k); 12 C.F.R. § 359; and, the FDIC Determination Letters issued on April 7, 2017. The judgment entered by this Court on March 29 is preempted by federal law and, thus, void as a matter of law. It is undisputed that the FDIC has acted pursuant to its authority in issuing the Determination Letters barring severance payments sought in this case. The FDIC is a federal agency charged by Congress to administer 12 U.S.C. § 1828(k) and has promulgated the implementing of Part 359 regulations (12 C.F.R. § 359 *et seq.*). The FDIC has appropriately exercised its authority by

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barring payments sought by the Plaintiffs in this case. Thus, the March 29 Judgment is preempted by federal law—the subsequently issued FDIC Determination Letters. *See. Grogan v. Seattle Bank*, 195 Wash. App. 500 (Wa. Ct. App. 2016)(FDIC's determination that Bank was prohibited from paying more than one year's salary preempts any state court authority to order more)(*Exhibit 2, copy attached*). As such, any judgment ordering Defendants to make severance payments pursuant to the March 29 Judgment is now void and unenforceable. For that reason, the judgment should be vacated by this Court pursuant to Rule 60(b)(4).

Conclusion

For the foregoing reasons, Defendants respectfully request to move this Honorable Court to vacate the March 29 Judgment pursuant to Rule 60(b)(1), (2), and (4) of the South Carolina Rules of Civil Procedure.

Dated this 30th day of May, 2017.

Respectfully submitted,

s/Charles E. McDonald, III
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Jones, et al. v. CertusBank, N.A., et al.
C.A. No.: 2015-CP-23-0554

EXHIBIT 1

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, And Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants.	)	ARBITRATION AWARD C.A. No.: 2015-CP-23-05554

FINDINGS OF FACT

1. Each of the Plaintiffs entered into an Amended and Restated Executive Employment Agreement ("Employment Agreement(s)") with Blue Ridge Holdings, Inc., and the terms of each of the Employment Agreements for the Plaintiffs are identical except for the amount of compensation.

2. CertusBank, N.A. is a wholly-owned subsidiary of Blue Ridge Holdings, Inc.

3. Blue Ridge Holdings, Inc. subsequently became known as CertusHoldings, Inc.

4. Each Employment Agreement for each Plaintiff provided for each Plaintiff to be paid a "lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) month's salary, at the rate in effect on the date the Executive's employment terminates..." [¶33 of each Employment Agreement]. I refer to this simply as the lump sum payment in this Award.

5. If the Plaintiff Milton Jones is determined to be entitled to severance, the amount of severance to Plaintiff Jones is $340,000.

6. If the Plaintiff Walter Davis is determined to be entitled to severance, the amount of severance to Plaintiff Davis is $325,000.

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7. If the Plaintiff Angela Webb is determined to be entitled to severance, the amount of severance to Plaintiff Webb is $300,000.

8. Plaintiffs were terminated without cause pursuant to their respective Employment Agreements on April 9, 2014, by the Combined CertusHoldings, Inc. and CertusBank's Board of Directors. In place as of the date of termination of each of the Plaintiffs on April 9, 2014, were a statute and Regulations prohibiting payment of "golden parachute payments" by financial institutions in a "troubled condition." See below.

9. CertusBank's status as an independent depository institution terminated on or about October 23, 2015, via an Order of Approval of Termination of Insurance by the FDIC.

10. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

11. In or about November, 2015, with the surrender of its charter as a national bank to the OCC, CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

12. In or about November, 2015, a new corporation, CBSUB, Inc. was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any liabilities the bank may owe the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

13. CBSUB is not a bank and is not regulated by the OCC and FDIC.

14. Although all of the Stipulation of Claims and Facts between the parties and dated March 1, 2016 are not reiterated here, they are nonetheless my findings as well.

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ISSUES

1. **Which of the "Certus entities" is contractually liable to each of the Plaintiffs for any payments provided for in ¶33 of each Plaintiff's Employment Agreement?**

A legal distinction must be made between the various "Certus entities." CertusBank, N.A. is a subsidiary of CertusHoldings, Inc., which was formerly known as Blue Ridge Holdings, Inc. Each of the Plaintiffs entered into his or her Employment Agreement with Blue Ridge Holdings, Inc. as the named "Company" for an exchange of responsibilities and services by each executive for the compensation set out in the respective Employment Agreements. The face of each Employment Agreement appears to render Blue Ridge Holdings, Inc. as the obligor for payment of compensation. Each of the Plaintiffs bargained to perform services for the "Company," which is defined under the Employment Agreement to be Blue Ridge Holdings, Inc. However, in actuality, the Plaintiffs served in executive capacities for CertusBank, N.A., which also apparently undertook to pay the Plaintiffs, blurring and apparently ignoring any distinction between the Defendants. While I do not consider it to be in the province of an arbitrator or any court to rewrite any contract or realign the parties, I must recognize the alignment and actual course of dealing between the parties and give legal effect to that which the parties undertook if it can be reconciled with the Employment Agreements. Whether it be through invocation of an implied novation or delegation of contractual duties or by judicial estoppel or concluding that Blue Ridge Holding, Inc. was an undisclosed principal for CertusBank, I am compelled to recognize the true substance of the relationship between the parties that governed their conduct and enforce it.

I, therefore, conclude that just as CertusHoldings, Inc./Blue Ridge Holdings, Inc. and CertusBank, N.A. considered CertusBank, N.A. to be an obligor under the respective

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Employment Agreements, so, too, must I recognize CertusBank, N.A. as obligated under Paragraph 33 of each Employment Agreement. Apparently, CertusBank, N.A. paid the regular periodic compensation of the Plaintiffs, and there is no logical reason to find that it had no obligation under Paragraph 33. Just as it found it appropriate to pay the Plaintiffs their salary, so too, is it obligated to make any payments due under Paragraph 33. This finding is buttressed not only by the course of dealing between the parties but also by Stipulations in this matter and filings in the Federal Court case of *Milton Jones, Jr. et al v. CertusBank, N.A.*, et al 6:16-cv-1633, especially CertusBank moving to compel arbitration under the various Employment Agreements.

I, therefore, hold that CertusBank, N.A. as well as CertusHoldings, Inc. may both be liable to each of the Plaintiffs under each Plaintiff's Employment Agreement. Hereafter, CertusBank, N.A. and CertusHoldings, Inc. are collectively referred to as CertusBank with the same rights and obligations.

2. **Are payments of the compensation set forth in ¶33 of each Employment Agreement prohibited as "golden parachute payments" pursuant to 12 USC §1828(k) and 12 CFR §359.1 and is CertusBank's obligation discharged?**

There are several issues which now arise: (1) is the provision of a release and waiver of claims a condition precedent to CertusBank's obligation to pay that has not occurred, and (2) to what extent does any determination that such payments are "golden parachute payments" affect any liability under the Employment Agreements?

First, the Defendants argue that each Employment Agreement required each Plaintiff to deliver to CertusBank a waiver and release of claims prior to any right to receive the severance payments. In particular, the Employment Agreement provides:

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> The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer....

The Defendants assert this provision as a condition precedent to its obligation to make those payments. It is certainly true as a matter of contract law that any promise that is conditioned upon the occurrence of a condition precedent does not become absolute until and unless that condition precedent has either been met or has been waived. Until such condition precedent has been met or has been waived, the promisor's obligation to perform does not become absolute and unconditional, and a party is not liable for breach of a contract unless its promise has become unconditional and absolute.

I do not find the foregoing provision to be a condition precedent, but instead to be a condition concurrent. A condition concurrent means that each party's performance is to be tendered and rendered simultaneously, and the tender of each party's promise is an implied or constructive condition precedent to the other party's performance. In this instance, the exchange of performances of the release/waiver, on the one hand, and the payment of the lump sum payment, on the other hand, are expected to occur simultaneously. In order to recover from another party for breach of a contract with conditions concurrent, the "aggrieved" party must tender its performance in order to make the other party's promise absolute and unconditional. In this instance, CertusBank has denied liability and has not tendered its performance. Therefore, the duty to provide any such release has not yet arisen. That matter becomes ripe upon offer of payment. Even if the release and waiver must first be provided as a condition precedent, it still is not ripe since CertusBank has announced that it cannot pay the compensation. CertusBank cannot expect delivery of a release/waiver until it has indicated a willingness to perform.

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I, therefore, conclude that the tender of a release was not a condition precedent, and such defense is premature.

I next reach the issue of whether the payment of a lump sum amount of a year's compensation constitutes a "golden parachute payment" within the meaning of 12 CFR §359 and is barred pursuant to 12 USC §1828(k) and its effect on any contractual obligation on the part of CertusBank.

The Plaintiffs challenge whether I have authority to determine whether such payments are golden parachute payments or not. The Plaintiffs also assert that I do not have authority to alter or modify the Employment Agreements.

I find that I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute. My authority is limited to that to which the parties agree, and there does not appear to be any agreement on this issue. I can only determine the effect on the contractual obligations if the payments are indeed golden parachute payments.

Code section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.

I do have authority, however, to determine if any such bar discharges CertusBank's obligation under the Employment Agreement or merely renders it potentially unenforceable.

The Defendants urge me to rule that the doctrine of impossibility of performance discharges the duty of CertusBank to pay. That doctrine provides that a party's obligation to perform a contractual obligation is discharged (without being liable for nonperformance) if it is

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objectively impossible for anyone to perform that obligation. If that defense is applicable, it discharges CertusBank's contractual obligation to make the lump sum payment.

I find that there are exceptions to the bar against golden parachute payments as provided in the Regulations. I further find that a party may seek approval of the FDIC for payment despite any bar. I do not find that any bar operates to discharge the bank's performance or obligation. If the bar is applicable, then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable. I find that any bar, if there is one, does not affect CertusBank's liability to the Plaintiff's but that any applicable bar simply renders that provision unenforceable to the extent of any applicable bar. To hold that the contractual obligation to make the lump sum payment is discharged, that would be inconsistent with seeking FDIC permission for payment of the contractual obligation, and that would lead to incongruous results.

I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc.) are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

Finally, CBSUB, Inc. is the successor corporation to the dissolved CertusBank, N.A. To the extent that CertusBank has liability to the Plaintiffs, those liabilities have been assumed by CBSUB, Inc., and it is liable to each Plaintiff. However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC

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golden parachute statute and Regulations. Therefore, liability for the lump sum payments remains with CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc.

Therefore, I hold:

1. CertusBank, N.A. and CertusHoldings, Inc. and CBSUB, Inc. are liable to each Plaintiff under each Plaintiff's Employment Agreement.
2. Any Federal FDIC bar to golden parachute payments does not discharge the contractual liability of CertusBank, N.A., CertusHoldings, Inc. or CBSUB , Inc. to make the lump sum payment to each of the Plaintiffs under Paragraph 33 of their respective Employment Agreements, but instead may render them unenforceable to the extent that the bar against golden parachute payments prohibits payment.
3. I do not decide whether such payments are in fact barred under 12 USC §1828(k) and 12 CFR §359. If that issue is submitted to me, then I shall make that decision.

/ Thomas W. Traxler

Thomas W. Traxler (SC Bar #5624) ARBITRATOR
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Dated: ~~February 28, 2017~~ March 17, 2017
Greenville, South Carolina

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Jones, et al. v. CertusBank, N.A., et al.
C.A. No.: 2015-CP-23-0554

EXHIBIT 2

ELECTRONICALLY FILED - 2017 May 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

195 Wash.App. 500
Court of Appeals of Washington,
Division 1.

John Grogan, an individual, Appellant,
v.
Seattle Bank, a Washington State registered bank; and Patrick Patrick, an individual; and J.D. Delafield, an individual, Respondents.

No. 73704–0–I
FILED: August 22, 2016

Synopsis
Background: Executive employee brought breach of contract action against employer, which was a bank, regarding employee's severance compensation after Federal Deposit Insurance Corporation (FDIC) declined to approve any severance payment to employee greater than 12 months' salary. The Superior Court, King County, Douglass A. North, J., dismissed action. Employee appealed.

[Holding:] The Court of Appeals, Leach, J., held that FDIC determination prohibiting bank from paying more than one year's salary as severance, pursuant to federal regulation prohibiting golden parachute payments, preempted any state court authority to order more severance payment based on employee's contract.

Affirmed.

West Headnotes (8)

[1] **States**
⇐Conflicting or conforming laws or regulations
States
⇐Occupation of field

Under the supremacy clause of the United States constitution, federal law preempts state law where Congress indicates an express or implied intent to occupy a field or where a state law would conflict with federal law. U.S. Const. art. 6.

Cases that cite this headnote

[2] **States**
⇐Preemption in general

A defendant may assert federal preemption as a defense to state court actions.

Cases that cite this headnote

[3] **States**
⇐Preemption in general

There is a strong presumption against preemption, and state laws are not superseded by federal law unless that is the clear and manifest purpose of Congress.

Cases that cite this headnote

[4] **States**
⇐Federal administrative regulations

Federal regulations, within the scope of an agency's authority, have the same preemptive effect as federal statutes.

Cases that cite this headnote

[5] **Banks and Banking**
⇐Compensation
Banks and Banking
⇐Powers, functions and dealings in general
States
⇐Banking and financial or credit transactions

Under doctrine of conflict preemption, as

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provided for by supremacy clause, determination of Federal Deposit Insurance Corporation (FDIC) prohibiting bank from paying bank's executive employee more than one year's salary as severance, including amounts for attorney fees, costs, and interest, on basis of federal regulation prohibiting golden parachute payments, preempted any state court authority to order more severance payment based on employee's contract with bank; bank could not comply with both FDIC's direction not to pay employee anything more than 12 months' pay as well as a trial court order requiring it to pay more, and state courts could not enforce contract provisions that contradicted federal law. U.S. Const. art. 6; 12 CFR 359 et. seq.

Cases that cite this headnote

[6] **States**
⚖=Conflicting or conforming laws or regulations

State courts may not enforce contract provisions that contradict federal law.

Cases that cite this headnote

[7] **Courts**
⚖=Construction of federal Constitution, statutes, and treaties

When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted.

Cases that cite this headnote

[8] **States**
⚖=Conflicting or conforming laws or regulations

To the federal statute and policy, conflicting state law and policy must yield.

Cases that cite this headnote

**159 Appeal from King County Superior Court, 12–2–27553–0, Honorable Douglass A. North.

Attorneys and Law Firms

John David Du Wors, Newman Du Wors LLP, 2101 4th Ave Ste. 1500, Seattle, WA, 98121–2336, for Counsel for Appellant.

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Opinion

Leach, J.

*502 ¶ 1 John Grogan appeals the trial court's dismissal of this lawsuit against Seattle Bank (Bank). When the Bank hired Grogan, it agreed to pay severance equal to three years' salary if his employment ended within 12 months of a change in the Bank's control. As required by their agreement and Federal Deposit Insurance Corporation (FDIC) regulations, the Bank sought FDIC approval to pay an agreed severance payment plus attorney fees, costs, and interest. The FDIC determined that any payment to Grogan greater than 12 months' salary, inclusive of amounts allocated to fees, costs, and interest, violated its regulations about golden parachute payments and denied approval. Grogan claims that the trial court should have ignored the FDIC determination because it was wrong. The trial court decided that FDIC's determination preempted its authority to order any further payment to Grogan. We agree and affirm.

FACTS

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¶ 2 Seattle Bank hired John Grogan as its chief credit officer and executive vice president in October 2008. The Bank agreed to pay Grogan a severance payment equal to three years' salary if the Bank changed control and Grogan resigned. The Bank did not seek preapproval of this employment agreement from the FDIC. In December, the FDIC designated the Bank as "troubled." The FDIC issued a cease and desist letter to the Bank in June 2009, which was replaced by a memorandum of understanding.

¶ 3 In June 2010, Seattle Financial Group, the Bank's sole shareholder, sold its shares, and the new shareholders *503 elected a new board of directors. Grogan resigned in May 2011 and requested a $540,000 severance payment he claimed under his employment agreement. The Bank disputed that a change in control had occurred and informed him that it needed FDIC approval before it could pay him any amount. The parties negotiated unsuccessfully.

¶ 4 Grogan sued the Bank, its CEO (chief executive officer), Patrick Patrick, and a board member, J.D. Delafield. In March 2013, the Bank and Grogan negotiated a $500,000 settlement, subject to FDIC and Washington Department of Financial Institutions approval. The Bank asked the FDIC for approval. In May 2013, the FDIC rejected the settlement because the settlement amount constituted a golden parachute payment under its regulations. It indicated that **160 it would consider approving a settlement that did not exceed 12 months' salary.

¶ 5 On April 25, the trial court ordered the Bank to obtain the regulatory permission it needed to pay Grogan one year's salary, $180,000. The trial court also ordered the Bank to pay Grogan attorney fees and costs and prejudgment interest, with the amounts to be determined later. The FDIC sent a letter dated May 6 to the Bank stating that

> any payments to IAP's [institution-affiliated parties] that left the Bank while a troubled designation was in force would be subject to golden parachute restrictions and prohibited without prior FDIC approval. Such payments include any amounts payable to or for the benefit of IAPs pursuant to arbitration awards, judgments, orders or other payments.

¶ 6 The Bank applied to the FDIC on May 23 for permission to pay Grogan $180,000.00. Before the FDIC responded, the trial court awarded Grogan $300,114.38 in attorney fees and $1,597.16 in costs but did not address prejudgment interest. On June 12, the FDIC confirmed its receipt of the application and advised the Bank that it would consider any attorney fees, costs, and prejudgment interest subject to golden parachute regulations. It reminded *504 the Bank that it could not make these payments without first obtaining FDIC approval and also reminded the Bank that it had denied the Bank's earlier application to pay Grogan $500,000.

¶ 7 The Bank filed a supplemental application on June 20 requesting permission to pay Grogan the attorney fees and costs awarded by the trial court, plus interest. It included a request that the FDIC make separate determinations for the severance payment, the attorney fees, costs, and interest. In a July 2 letter, the FDIC denied all requests. It considered the requested payments in the aggregate and found that together they constituted an excessive golden parachute payment. It stated that it considered the amounts requested in the aggregate because "the entire amount is for the benefit of Mr. Grogan and therefore no meaningful distinction exists between the various types of proposed payments for purposes of regulatory approval." The Bank requested reconsideration on July 17, which the FDIC denied.

¶ 8 The parties then agreed to a $250,000 settlement, subject to FDIC approval or nonobjection. The FDIC denied approval because the settlement amount exceeded 12 months' salary.

¶ 9 At the Bank's request, the trial court vacated its orders and ordered the Bank to seek FDIC approval to pay Grogan one year's severance. After the FDIC approved the Bank's application, the Bank paid Grogan. The trial court then dismissed the case. Grogan appeals.

STANDARD OF REVIEW

¶ 10 This court reviews a trial court's order on summary judgment de novo, affirming where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[1]

*505 ANALYSIS

¶ 11 Grogan argues that the trial court should have

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ignored the FDIC decisions denying the Bank permission to pay attorney fees, costs, interest, and the full agreed severance amount. We disagree.

¶ 12 The FDIC insures all bank and savings association deposits and regulates all insured depository institutions.[2] FDIC regulations prohibit insured depository institutions like the Bank from making golden parachute payments to IAPs like Grogan.[3] A "golden parachute payment" is one

> in the nature of compensation by any insured depository institution ... for the benefit of any current or former IAP pursuant to an obligation of such institution ... that ... [i]s received on or after ... [a] determination by the insured depository institution's ... appropriate federal **161 banking agency [that it is] in a troubled condition.[4]

FDIC's regulations permit payment of certain contractual obligations when that payment falls outside the golden parachute payment definition or when an exception applies.[5]

¶ 13 One exception allows payment when an employment contract provides for a reasonable severance "not to exceed twelve months salary" to an IAP triggered by a change in *506 control of the institution.[6] The FDIC must approve a payment under this exception before it is made.[7]

¶ 14 The employment agreement between Grogan and the Bank made the agreement terms subject to the FDIC's regulations about golden parachute payments:

> Notwithstanding anything in this Agreement to the contrary, if the payments or benefits to be provided under this Agreement, together with any other payments or benefits which the Executive has the right to receive from the Bank or any entity which is a member of an "affiliated group" of which the Bank is a member, constitute an "impermissible parachute payment" (as defined in 12 CFR 359 et. seq. (the "FDIC Parachute Payment Regulation")), then the obligations under this Agreement shall be modified so as to be consistent with FDIC Parachute Payment Regulation and the Bank shall be allowed to modify the Agreement as required to ensure ongoing compliance with such laws.

¶ 15 Grogan challenges the trial court's deference to two FDIC determinations. He claims that the FDIC made wrong decisions that the trial court should have ignored. He contends that the FDIC improperly considered the payment of attorney fees, costs, and interest to be part of a golden parachute payment. And he claims that the FDIC erred by failing to apply an exception for payments required by a state statute.[8]

¶ 16 Grogan argues that "[a]ttorneys' fee awards under Washington law are not part of any 'golden parachute' and therefore do not require FDIC permission." He asserts that an attorney fee award is not " 'in the nature of compensation,' " which is what golden parachute regulations control. He points to a different FDIC regulation that prohibits the payment of both an indemnification payment and attorney fees to an IAP and invokes a canon of statutory construction *507 to show that FDIC did not include attorney fee payments in the regulation barring golden parachute payments.[9]

¶ 17 Grogan also points to an Internal Revenue Code (IRC) provision about employer deductions that defines an excess parachute payment almost the same as the FDIC regulations define a golden parachute payment. Because the IRC provision has been interpreted by the Internal Revenue Service and courts not to include attorney fees and costs paid or incurred in connection with excess parachute payments, Grogan contends fees and costs cannot be considered part of a golden parachute payment.[10]

¶ 18 Grogan also contends that the text of 12 C.F.R. § 359.1(f)(2)(vi) excepts attorney fees from the definition of a golden parachute payment:

> (2) **Exceptions.** The term golden parachute payment shall not include:
>
> ....
>
> (vi) Any severance or similar payment which is required to be made pursuant to a state statute or foreign law which is applicable to all employers within the **162 appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria).

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¶ 19 Grogan asserts that the Bank should never have asked the FDIC for permission to pay the fees, costs, and interest awarded by the trial court. He claims that the Bank's inclusion of these amounts in its supplemental request to the FDIC caused the FDIC to err as described. *508 Thus, Grogan asserts that the trial court erred when it failed to order the Bank to pay him attorney fees and it vacated its award of fees to him.

¶ 20 Grogan asked the trial court, and now asks this court, to review and reverse the FDIC's decision about what is part of a golden parachute payment. As the Bank correctly notes, the FDIC's decision preempts the authority of a state court to decide what the Bank must pay Grogan.

[1] [2] [3] [4]¶ 21 Under the supremacy clause of the United States Constitution, federal law preempts state law where Congress indicates an express or implied intent to occupy a field or where a state law would conflict with federal law.[1] A defendant may assert federal preemption as a defense to state court actions.[2] But "[t]here is a strong presumption against preemption and '[s]tate laws are not superseded by federal law unless that is the clear and manifest purpose of Congress.' "[3] "Federal regulations, within the scope of an agency's authority, have the same preemptive effect as federal statutes."[4]

[5]¶ 22 The Bank acknowledges that the federal regulations at issue do not contain an express preemption clause. But it contends that conflict preemption precludes Grogan's claims because the Bank could not comply with both the FDIC's direction not to pay Grogan anything more than 12 months' pay-including any payment characterized as attorney fees, costs, or interest--and a trial court order requiring it to pay more. We agree.

[6] *509 ¶ 23 And state courts may not enforce contract provisions that contradict federal law.[5]

[7] [8]¶ 24 When a federal statute condemns an act as unlawful the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted. To the federal statute and policy, conflicting state law and policy must yield.[6]

¶ 25 Grogan responds that the Bank cannot show that conflict preemption applies. He asserts that federal regulations governing golden parachute payments do not include attorney fees awarded under state statutes. But he ignores the circumstance that the FDIC denied the Bank's application to pay Grogan attorney fees and costs based on its interpretation of its own regulations and putting any contrary state court interpretation in direct conflict.

¶ 26 Grogan argues that Christensen v. Harris County[7] provides courts with authority to give FDIC determinations and letters less deference than FDIC regulations. Thus, he contends that FDIC determinations do **163 not preempt state court authority. But Grogan fails to appreciate that the deference discussed in Christensen is the deference a federal court gives to a federal agency interpretation offederal law when that court reviews a federal agency decision. It does not apply to a preemption analysis under the supremacy clause.

*510 CONCLUSION

¶ 27 The FDIC's determination that prohibits the Bank from paying Grogan more than one year's salary as severance, including amounts for attorney fees, costs, and interest, preempts any state court authority to order more. We affirm.

WE CONCUR:

Schindler, J.

Becker, J.

All Citations

195 Wash.App. 500, 379 P.3d 158

Footnotes

1 Annechino v. Worthy, 175 Wash.2d 630, 635, 290 P.3d 126 (2012).

2 12 U.S.C. §§ 1811, 1814.

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3 12 U.S.C. § 1828(k); 12 C.F.R. § 359.

4 12 C.F.R. § 359.1(f).

5 12 C.F.R. § 359.1(f)(2); 12 C.F.R. § 359.4(a).

6 12 C.F.R. § 359.4(a)(3).

7 12 C.F.R. § 359.4(a)(3).

8 See 12 C.F.R. § 359.1 (f)(2)(vi).

9 See 12 C.F.R. §§ 359.1(1)(1), (2)(ii); Keene Corp. v. United States, 508 U.S. 200, 208, 113 S.Ct. 2035, 124 L.Ed.2d 118 (1993) (" '[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' " (alterations in original) (internal quotation marks omitted) (quoting Russello v. United States, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983))).

10 See 26 U.S.C. § 280G(b)(2)(A); 26 C.F.R. § 1.280G–1.

11 U.S. CONST, art. VI, cl. 2; Inlandboatmen's Union of the Pac. v. Dep't of Transp., 119 Wash.2d 697, 701, 836 P.2d 823 (1992).

12 Stevedoring Servs. of Am., Inc. v. Eggert, 129 Wash.2d 17, 23, 914 P.2d 737 (1996).

13 Stevedoring, 129 Wash.2d at 24, 914 P.2d 737 (some alterations in original) (quoting Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wash.2d 299, 327, 858 P.2d 1054 (1993)).

14 Inlandboatmen's Union, 119 Wash.2d at 702, 836 P.2d 823.

15 Sola Elec. Co. v. Jefferson Elec. Co., 317 U.S. 173, 176, 63 S.Ct. 172, 87 L.Ed. 165 (1942) (holding that violation of Sherman Anti–Trust Act of 1890, 15 U.S.C. §§ 1–7, precluded enforcement of contract requiring price fixing); Awotin v. Atlas Exch. Nat'l Bank of Chicago, 295 U.S. 209, 214, 55 S.Ct. 674, 79 L.Ed. 1393 (1935) (prohibiting enforcement of contract provision violating the National Bank Act, 12 U.S.C. §§ 21–26).

16 Sola Elec. Co., 317 U.S. at 176, 63 S.Ct. 172.

17 529 U.S. 576, 587, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000).

End of Document

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **EXECUTION OF JUDGMENT**

TO: THE HONORABLE WILL LEWIS, GREENVILLE COUNTY SHERIFF

PLEASE TAKE NOTICE that pursuant to South Carolina Code §§ 15-39-10 et seq., a judgment enrolled in the Greenville County Court of Common Pleas is to be executed against Judgment Creditors CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc. through the seizure of assets sufficient to satisfy the judgment.

Pursuant to South Carolina Code § 15-39-80, as amended, the judgement in this matter is a Form 4 Judgment in a Civil Case (attached to this execution as **Exhibit A**) in favor of and against the following parties in the amounts as follows:

Judgment in Favor of	Judgment Against	Judgment Amount
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

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Property sufficient to satisfy this judgment is being held by CertusBank, N.A. and CertusHoldings, Inc.'s successor corporation: CBSub, Inc. The location of CBSub assets were identified during the January 26, 2016 deposition of a corporate representative of CertusBank, N.A. and CertusHoldings, Inc. The location of CBSUB assets for execution are as follows:

No.	Property Subject to Execution	Location
1.	CBSUB bank account with assets, as of December 31, 2015, exceeding the judgment here.	SunTrust Bank 300 East McBee Avenue Greenville, South Carolina 864-255-7140
2.	Physical assets, i.e., art, collectables, etc., of CBSub.	Hilldrup Moving and Storage 750 Berry Shoals Road Duncan, South Carolina 844-381-8624

Judgement creditors Jones, Davis, and Webb respectfully demand attachment and levy of all assets identified above, along with all other assets of the judgment debtors necessary to fully satisfy the judgments. Please note you are required to memorialize the property, date, and time levied during this execution and to file an appropriate return with the Clerk of Court. See S.C. Code Ann. §§ 15-39-120 & -130. You are also required to give notice of any money received during execution. See id. § 15-39-150.

[signature page follows]

ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Respectfully Submitted,

s/Richard A. Harpootlian
Richard A. Harpootlian (SC Bar No. 2725)
Christopher P. Kenney (SC Bar No. 100147)
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ATTORNEYS FOR PLAINTIFFS

June 19, 2017
Columbia, South Carolina.

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ATTESTATION OF THE CLERK

Pursuant to South Carolina Code § 15-39-80, I, _____, of the Greenville County Clerk of Court's Office attest that this Execution has been filed with the Greenville County Court of Common Pleas.

_____
Signature

Sworn to and Subscribed before me
This _____ day of June 2017.

_____
Magistrate or Notary Public for South Carolina

My Commission expires _____.

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Jones v. CertusBank, N.A.
C/A No.: 2015CP2305554
Execution of Judgment

EXHIBIT A

(Form 4 Judgment)

ELECTRONICALLY FILED - 2017 Mar 29 5:03 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb
PLAINTIFF(S)

CertusBank, NA and CertusHoldings, Inc.
DEFENDANT(S)

Submitted by: Richard A. Harpootlian	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Arbitrator Award Issued

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Execution/Issued

Attest To:

Paul B Wickensimer, Clerk Of Court Greenville County

ELECTRONICALLY FILED - 2017 Jun 20 9:46 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

MOTION TO STAY EXECUTION OF JUDGMENT

Defendants, CertusBank, N.A. and CertusHoldings, Inc. (collectively "CertusBank"), file this Motion to Stay Execution of Judgment as follows.

One March 17, 2017, Thomas W. Traxler, Arbitrator, concluded that pursuant to the terms of the Plaintiffs' Amended and Restated Executive Employment Agreements ("Employment Agreements") with Blue Ridge Holdings, Inc. that Plaintiff Milton Jones was entitled to severance in the amount of $340,000; that Plaintiff Walter Davis was entitled to severance in the amount of $325,000; and, Plaintiff Angela Webb was entitled to severance in the amount of $300,000. (*Exhibit 1* - Arbitration Award at 1-2). The Arbitrator also determined that he was not deciding whether such payments were in fact barred as golden parachute payments under 12 U.S.C. § 1828(k) and 12 C.F.R. § 359. The Arbitrator determined that the FDIC's regulations do not discharge the contractual obligation of the Defendants to make the severance payments, but held those FDIC regulations may render Defendants' ability to make those payments unenforceable. (*Exhibit 1*, Arbitration Award at 8).

Plaintiffs filed a Motion for an Order Conforming Arbitration Award and Entry of Judgment on March 23, 2017. The Motion was denied by Order of this Court on March 27,

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2017. On March 28, 2017, Defendants filed an Opposition to Motion for an Order Conforming Arbitration Award and Entry of Judgment and Motion to Stay. Despite having filed an Opposition to the Motion for an Order Conforming Arbitration Award and Entry of Judgment, on March 29, 2017, the Court appears to have entered a Form 4 Order granting the Motion for an Order Conforming Arbitration Award and Entry of Judgment. Defendants contend that this Order was entered mistakenly or inadvertently after the Defendants had filed an Opposition on the previous day.

The Federal Deposit Insurance Corporation filed a Motion to Intervene, To Modify The Arbitrator's Decision Or In The Alternative to Set Aside March 29 Judgment on May 23, 2017. On May 30, Defendants filed a Motion to Vacate Judgment Entered on March 29, 2017. Defendants' motion and the motion filed by the FDIC are currently pending for hearing before Judge Gravely on August 7, 2017. The pending motions directly involve the legality of the entered Judgment that Plaintiffs seek execution. Because the pending motions impact the Judgment that Plaintiffs are seeking to execute, execution of the Judgment at this time is improper and the Execution of Judgment should be stayed pending the outcome of Defendants and the FDIC's pending motions.

For the reasons set forth above, Defendants seek a stay of the execution of judgment in this case pending resolution of the pending motions before Judge Gravely. Defendants ask that the Clerk of Court instruct the Greenville County Sheriff not to execute the judgment until Judge Gravely has ruled on the Defendant's and the FDIC's pending motions.

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Dated this 20th day of June, 2017.

Respectfully submitted,

s/Charles E. McDonald, III
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30213564.1

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Jones, et al. v. CertusBank, N.A., et al.
C.A. No.: 2015-CP-23-0554

EXHIBIT 1

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, And Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants.	)	ARBITRATION AWARD C.A. No.: 2015-CP-23-05554

FINDINGS OF FACT

1. Each of the Plaintiffs entered into an Amended and Restated Executive Employment Agreement ("Employment Agreement(s)") with Blue Ridge Holdings, Inc., and the terms of each of the Employment Agreements for the Plaintiffs are identical except for the amount of compensation.

2. CertusBank, N.A. is a wholly-owned subsidiary of Blue Ridge Holdings, Inc.

3. Blue Ridge Holdings, Inc. subsequently became known as CertusHoldings, Inc.

4. Each Employment Agreement for each Plaintiff provided for each Plaintiff to be paid a "lump sum cash payment of the Executive's base salary in an amount equal to twelve (12) month's salary, at the rate in effect on the date the Executive's employment terminates..." [¶33 of each Employment Agreement]. I refer to this simply as the lump sum payment in this Award.

5. If the Plaintiff Milton Jones is determined to be entitled to severance, the amount of severance to Plaintiff Jones is $340,000.

6. If the Plaintiff Walter Davis is determined to be entitled to severance, the amount of severance to Plaintiff Davis is $325,000.

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7. If the Plaintiff Angela Webb is determined to be entitled to severance, the amount of severance to Plaintiff Webb is $300,000.

8. Plaintiffs were terminated without cause pursuant to their respective Employment Agreements on April 9, 2014, by the Combined CertusHoldings, Inc. and CertusBank's Board of Directors. In place as of the date of termination of each of the Plaintiffs on April 9, 2014, were a statute and Regulations prohibiting payment of "golden parachute payments" by financial institutions in a "troubled condition." See below.

9. CertusBank's status as an independent depository institution terminated on or about October 23, 2015, via an Order of Approval of Termination of Insurance by the FDIC.

10. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

11. In or about November, 2015, with the surrender of its charter as a national bank to the OCC, CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.

12. In or about November, 2015, a new corporation, CBSUB, Inc. was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any liabilities the bank may owe the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.

13. CBSUB is not a bank and is not regulated by the OCC and FDIC.

14. Although all of the Stipulation of Claims and Facts between the parties and dated March 1, 2016 are not reiterated here, they are nonetheless my findings as well.

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ISSUES

1. **Which of the "Certus entities" is contractually liable to each of the Plaintiffs for any payments provided for in ¶33 of each Plaintiff's Employment Agreement?**

A legal distinction must be made between the various "Certus entities." CertusBank, N.A. is a subsidiary of CertusHoldings, Inc., which was formerly known as Blue Ridge Holdings, Inc. Each of the Plaintiffs entered into his or her Employment Agreement with Blue Ridge Holdings, Inc. as the named "Company" for an exchange of responsibilities and services by each executive for the compensation set out in the respective Employment Agreements. The face of each Employment Agreement appears to render Blue Ridge Holdings, Inc. as the obligor for payment of compensation. Each of the Plaintiffs bargained to perform services for the "Company," which is defined under the Employment Agreement to be Blue Ridge Holdings, Inc. However, in actuality, the Plaintiffs served in executive capacities for CertusBank, N.A., which also apparently undertook to pay the Plaintiffs, blurring and apparently ignoring any distinction between the Defendants. While I do not consider it to be in the province of an arbitrator or any court to rewrite any contract or realign the parties, I must recognize the alignment and actual course of dealing between the parties and give legal effect to that which the parties undertook if it can be reconciled with the Employment Agreements. Whether it be through invocation of an implied novation or delegation of contractual duties or by judicial estoppel or concluding that Blue Ridge Holding, Inc. was an undisclosed principal for CertusBank, I am compelled to recognize the true substance of the relationship between the parties that governed their conduct and enforce it.

I, therefore, conclude that just as CertusHoldings, Inc./Blue Ridge Holdings, Inc. and CertusBank, N.A. considered CertusBank, N.A. to be an obligor under the respective

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Employment Agreements, so, too, must I recognize CertusBank, N.A. as obligated under Paragraph 33 of each Employment Agreement. Apparently, CertusBank, N.A. paid the regular periodic compensation of the Plaintiffs, and there is no logical reason to find that it had no obligation under Paragraph 33. Just as it found it appropriate to pay the Plaintiffs their salary, so too, is it obligated to make any payments due under Paragraph 33. This finding is buttressed not only by the course of dealing between the parties but also by Stipulations in this matter and filings in the Federal Court case of *Milton Jones, Jr. et al v. CertusBank, N.A.*, et al 6:16-cv-1633, especially CertusBank moving to compel arbitration under the various Employment Agreements.

I, therefore, hold that CertusBank, N.A. as well as CertusHoldings, Inc. may both be liable to each of the Plaintiffs under each Plaintiff's Employment Agreement. Hereafter, CertusBank, N.A. and CertusHoldings, Inc. are collectively referred to as CertusBank with the same rights and obligations.

2. **Are payments of the compensation set forth in ¶33 of each Employment Agreement prohibited as "golden parachute payments" pursuant to 12 USC §1828(k) and 12 CFR §359.1 and is CertusBank's obligation discharged?**

There are several issues which now arise: (1) is the provision of a release and waiver of claims a condition precedent to CertusBank's obligation to pay that has not occurred, and (2) to what extent does any determination that such payments are "golden parachute payments" affect any liability under the Employment Agreements?

First, the Defendants argue that each Employment Agreement required each Plaintiff to deliver to CertusBank a waiver and release of claims prior to any right to receive the severance payments. In particular, the Employment Agreement provides:

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> The Executive shall not be entitled to receive the additional benefits described in this Paragraph 33 unless the Executive executes a general release and waiver of claims in a form reasonably prescribed by the Employer in favor of the Employer....

The Defendants assert this provision as a condition precedent to its obligation to make those payments. It is certainly true as a matter of contract law that any promise that is conditioned upon the occurrence of a condition precedent does not become absolute until and unless that condition precedent has either been met or has been waived. Until such condition precedent has been met or has been waived, the promisor's obligation to perform does not become absolute and unconditional, and a party is not liable for breach of a contract unless its promise has become unconditional and absolute.

I do not find the foregoing provision to be a condition precedent, but instead to be a condition concurrent. A condition concurrent means that each party's performance is to be tendered and rendered simultaneously, and the tender of each party's promise is an implied or constructive condition precedent to the other party's performance. In this instance, the exchange of performances of the release/waiver, on the one hand, and the payment of the lump sum payment, on the other hand, are expected to occur simultaneously. In order to recover from another party for breach of a contract with conditions concurrent, the "aggrieved" party must tender its performance in order to make the other party's promise absolute and unconditional. In this instance, CertusBank has denied liability and has not tendered its performance. Therefore, the duty to provide any such release has not yet arisen. That matter becomes ripe upon offer of payment. Even if the release and waiver must first be provided as a condition precedent, it still is not ripe since CertusBank has announced that it cannot pay the compensation. CertusBank cannot expect delivery of a release/waiver until it has indicated a willingness to perform.

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I, therefore, conclude that the tender of a release was not a condition precedent, and such defense is premature.

I next reach the issue of whether the payment of a lump sum amount of a year's compensation constitutes a "golden parachute payment" within the meaning of 12 CFR §359 and is barred pursuant to 12 USC §1828(k) and its effect on any contractual obligation on the part of CertusBank.

The Plaintiffs challenge whether I have authority to determine whether such payments are golden parachute payments or not. The Plaintiffs also assert that I do not have authority to alter or modify the Employment Agreements.

I find that I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute. My authority is limited to that to which the parties agree, and there does not appear to be any agreement on this issue. I can only determine the effect on the contractual obligations if the payments are indeed golden parachute payments.

Code section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. I cannot bind the parties to such a determination in this arbitration.

I do have authority, however, to determine if any such bar discharges CertusBank's obligation under the Employment Agreement or merely renders it potentially unenforceable.

The Defendants urge me to rule that the doctrine of impossibility of performance discharges the duty of CertusBank to pay. That doctrine provides that a party's obligation to perform a contractual obligation is discharged (without being liable for nonperformance) if it is

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objectively impossible for anyone to perform that obligation. If that defense is applicable, it discharges CertusBank's contractual obligation to make the lump sum payment.

I find that there are exceptions to the bar against golden parachute payments as provided in the Regulations. I further find that a party may seek approval of the FDIC for payment despite any bar. I do not find that any bar operates to discharge the bank's performance or obligation. If the bar is applicable, then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable. I find that any bar, if there is one, does not affect CertusBank's liability to the Plaintiff's but that any applicable bar simply renders that provision unenforceable to the extent of any applicable bar. To hold that the contractual obligation to make the lump sum payment is discharged, that would be inconsistent with seeking FDIC permission for payment of the contractual obligation, and that would lead to incongruous results.

I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc.) are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

Finally, CBSUB, Inc. is the successor corporation to the dissolved CertusBank, N.A. To the extent that CertusBank has liability to the Plaintiffs, those liabilities have been assumed by CBSUB, Inc., and it is liable to each Plaintiff. However, I do not have the jurisdiction to order CBSUB, Inc. to pay since its obligation is likewise perhaps unenforceable under the FDIC

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golden parachute statute and Regulations. Therefore, liability for the lump sum payments remains with CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc.

Therefore, I hold:

1. CertusBank, N.A. and CertusHoldings, Inc. and CBSUB, Inc. are liable to each Plaintiff under each Plaintiff's Employment Agreement.
2. Any Federal FDIC bar to golden parachute payments does not discharge the contractual liability of CertusBank, N.A., CertusHoldings, Inc. or CBSUB , Inc. to make the lump sum payment to each of the Plaintiffs under Paragraph 33 of their respective Employment Agreements, but instead may render them unenforceable to the extent that the bar against golden parachute payments prohibits payment.
3. I do not decide whether such payments are in fact barred under 12 USC §1828(k) and 12 CFR §359. If that issue is submitted to me, then I shall make that decision.

Thomas W. Traxler (SC Bar #5624) ARBITRATOR
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ROGERS & TRAXLER, P.A.
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P.O. Box 10828 (29603)
Greenville, South Carolina
(864) 242-3566 / Fax: (864) 232-1558
tom.traxler@carterlawpa.com

Dated: ~~February 28, 2017~~ March 17, 2017
Greenville, South Carolina

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
2017 JUN 20 PM 4:23	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
FILED-CLERK OF COURT	
MILTON JONES, JR., WALTER DAVIS, JR. AND ANGELA WEBB,)	civil action number: 2015-CP-23-05554
Plaintiffs,)	
v.)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,)	**FEDERAL DEPOSIT INSURANCE CORPORATION'S EMERGENCY MOTION TO EXPEDITE THE HEARING ON ITS MAY 23, 2017 MOTIONS AND STAY EXECUTION OF JUDGMENT**
Defendants.)	
AND)	
FEDERAL DEPOSIT INSURANCE CORPORATION,)	
Prospective Defendant Intervenor.)	

The Federal Deposit Insurance Corporation in its corporate capacity ("FDIC") hereby moves the Court pursuant to Rules 62(b) and 24(b) of the South Carolina Rules of Civil Procedure and other applicable jurisprudence to: (1) expedite the hearing on its Motions to Intervene, Modify the March 29 Judgment to Conform it with the Terms of the Arbitrator's Award or in the Alternative Set Aside the March 29 Judgment, and Render Unenforceable any Obligation to make Payment of the Proposed Severance Payments, filed on May 23, 2017 ("Motions to Set Aside, Intervene, and Render Unenforceable"); and (2) stay the Execution of Judgment, pending the Court's ruling on the various pending motions. In support of this Motion, FDIC shows unto this Honorable Court the following:

ENTERED COMPUTER

Plaintiffs have provided the Clerk of Court with proposed documents which commence the Execution on the Judgment entered by the Court on March 29, 2017. However, that Judgment is presently the subject of: (1) Defendants' Motion to Vacate filed May 30, 2017, (2) FDIC's Motions to Set Aside, Intervene, and Render Unenforceable, and (3) Defendants' "Opposition To Motion For An Order Confirming Arbitration Award And Entry Of Judgment And Motion To Stay" filed March 28, 2017.[1] Moreover, the documents filed by Plaintiffs identify assets owned by CBSUB, Inc. when CBSUB is not a named party to the litigation (although it is related to the Defendants).

A hearing is presently scheduled for these motions on August 7, 2017. Accordingly, delaying enforcement of the March 29, 2017 Judgment for less than six weeks—until the scheduled hearing—will not unduly impact the Plaintiffs' rights. Moreover, the Rules specifically contemplate and provide for a Stay of Execution to be issued in such circumstances.

In support of this, FDIC further shows unto the Court:

1. FDIC's Motions to Set Aside, Intervene, and Render Unenforceable concern the enforceability of the purported judgment, upon which Plaintiffs now seek execution.
2. The Motions to Set Aside, Intervene, and Render Unenforceable demonstrate the following:
    a. The judgment upon which Plaintiffs seek to execute is inconsistent with the Arbitrator's award, and should therefore be set aside pursuant to Rule 60;

[1] Defendants' Motion To Stay was addressed to the Plaintiffs' Motion For An Order Confirming Arbitration Award And Entering Judgment filed March 23, 2017 and seeks "a stay for the entry of judgment in this case until FDIC has made its determination." The Clerk of Court indicated via email that a hearing on the Defendants' motion was not appropriate "because it was it was not filed as a Motion but as a Memo in Opposition."

b. FDIC should be permitted to intervene as a defendant pursuant to Rule 24(a)(2), or in the alternative Rule 24(b); and

c. The judgment setting forth that payments are purportedly owed is unenforceable under both the Arbitrator's award and the applicable federal law.

3. On May 30, 2017, Defendants filed a Motion to Vacate Judgment Entered on March 29, 2017. The Motion to Vacate sets forth several factual and legal grounds for the March 29, 2017 Judgment to be set aside.

4. On June 19, 2017, Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb filed a proposed Execution of Judgment.

5. Rule 62(b) provides, in relevant part, as follows:

> In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of ... a motion for relief from a judgment or order made pursuant to Rule 60.

6. FDIC filed its Motions to Set Aside, Intervene, and Render Unenforceable in part pursuant to Rule 60.

7. This Court has scheduled a hearing on the Motions to Set Aside, Intervene, and Render Unenforceable for August 7, 2017.

8. In the interim, FDIC joins Defendants in respectfully requesting the Court to stay the entry of the proposed Execution of Judgment until the resolution of the Motions to Set Aside, Intervene, and Render Unenforceable and the Defendants' Motion to Vacate.

9. An order staying the proposed Execution of Judgment and any proceedings to enforce the judgment for less than six weeks would protect the interests and rights of

Defendants, FDIC, and non-party "CBSUB." It would not be unduly burdensome to the Plaintiffs.

10. The Court, pursuant to Rule 6(d), and other applicable jurisprudence, may set a hearing with less than ten (10) days' notice to the parties.

11. FDIC further respectfully requests that the Court schedule an expedited hearing on its Motions to Set Aside, Intervene, and Render Unenforceable and Defendants' Motion to Vacate.

WHEREFORE for the reasons set forth herein, FDIC respectfully requests this Honorable Court schedule an expedited hearing of the pending motions and/or in the interim protect issue an Order to Stay to protect the status quo pending resolution of Motions.

Respectfully submitted,

June 20, 2017
Greenville, South Carolina

/s/ William S.F. Freeman

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William S. F. Freeman (S.C. Bar #16676)
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ATTORNEYS FOR THE PROPOSED DEFENDANT INTERVENOR FEDERAL DEPOSIT INSURANCE CORPORATION

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
Milton Jones Sr.)
Plaintiff,)
vs.)
Federal Deposit Insurance Corporation)
Defendant.)

2017 JUN 20 PM 4:23
FILED-CLERK OF COURT
PAUL B. WICKENSIMER

IN THE COURT OF COMMON PLEAS
13 JUDICIAL CIRCUIT
CASE NO.: 2015 -CP- 23 - 5554

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
William Freeman Bar No.	Bar No
Address: 107 Pendleton St Suite 202 Greenville	Address:
Phone: 864 941 8529 Fax	Phone: Fax
E-mail: Other:	E-mail: Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

William Freeman
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

, 20
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE
☐ Other:	Date: , 20

CLERK'S VERIFICATION

Collected by: SMansel Date Filed: , 20

☒ MOTION FEE COLLECTED: $ 25.00 CK# 4080
☐ CONTESTED - AMOUNT DUE: $

SCCA 233 (11/2003)

Thomerson Freeman Rogers

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

JOINT MOTION REQUESTING CLERK'S OFFICE HOLD JUDGMENT FUNDS IN ESCROW PENDING RULING ON DEFENDANTS' MOTION TO VACATE JUDGMENT

I. Introduction

Plaintiffs and Defendants (collectively, the "Parties"), by and through their undersigned counsel, and pursuant to Rule 67 of the South Carolina Rules of Civil Procedure ("SCRCP"), file this Joint Motion Requesting Clerk's Office Hold Judgment Funds in Escrow Pending Ruling on Defendants' Motion to Vacate Judgment. For the reasons set forth herein, the Parties request that the Court issue an Order granting this Joint Motion and show the following:

II. Procedural Background[1]

1. Plaintiffs filed this action in the Greenville County Court of Common Pleas on September 9, 2015. Defendants answered on January 6, 2016 and the parties filed a Joint Motion to Stay this proceeding to pursue arbitration. On January 21, 2016, the Court entered an Order staying this action pending the completion of the arbitration process.

[1] The parties have only included the relevant procedural background of this action in order to aid this Court in its ruling on the Joint Motion.

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2. On March 17, 2017, Thomas W. Traxler, Arbitrator, concluded that pursuant to the terms of the Plaintiffs' Amended and Restated Executive Employment Agreements ("Employment Agreements") with Blue Ridge Holdings, Inc. that Plaintiff Milton Jones was entitled to severance in the amount of $340,000; that Plaintiff Walter Davis was entitled to severance in the amount of $325,000; and, Plaintiff Angela Webb was entitled to severance in the amount of $300,000. The Arbitrator also determined he did not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute payments under 12 U.S.C. § 1828(k) and 12 C.F.R. § 359.

3. Plaintiffs filed a Motion for an Order Conforming Arbitration Award and Entry of Judgment on March 23, 2017. On March 29, 2017, the Court entered a Form 4 Order granting the Motion for an Order Conforming Arbitration Award and Entry of Judgment.

4. On May 23, 2017, the FDIC filed Motions to: (1) Intervene; (2) Modify the March 29 Judgment to Conform the March 29 Judgment with the Terms of the Arbitrator's Award or in the Alternative to Set Aside the March 29 Judgment; and (3) Render Unenforceable any Obligation to Make Payment of the Proposed Severance Payments.

5. On May 30, 2017, Defendants filed a Motion to Vacate Judgment Entered on March 29, 2017.

6. A Hearing on Defendants' Motion to Vacate Judgment is scheduled for August 7, 2017.

7. On June 19, 2017, Plaintiffs filed an Execution of Judgment and served it on the Greenville County Sheriff pursuant to South Carolina Code §§ 15-39-10 et seq.

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III. Parties' Joint Motion

8. The Parties request that CBSUB, LLC, the successor in interest to CertusBank[2], deposit the total sum $965,000.00[3] into escrow with the Clerk's office until the Court renders a determination on Defendants' Motion to Vacate Judgment.

9. Rule 67 authorizes a party, with leave of the court and notice to all other parties, may deposit with the court all or any part of such sum or thing at issue in the action. Rule 67, SCRCP. Money paid into the court under the rule "shall be deposited as directed by the court in any bank or institution authorized to receive public funds, and shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs." Id.

10. Because the Plaintiffs have initiated execution and the Defendants seek to void the judgment, the Parties agree and submit that depositing the judgment funds into escrow with the Clerk's office pending resolution of Defendants' Motion to Vacate Judgment is proper use of the rule.

IV. Conclusion

For the reasons presented by the Parties and Counsel in this Joint Motion, the Parties respectfully request that the Court enter an Order (1) granting the Joint Motion and allowing for CBSUB, LLC to deposit a lump sum of $965,000.00 to be held in escrow with the Clerk's office pending a determination of Defendants' Motion to Vacate Judgment or until further Order of the Court.

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[2] CertusBank, N.A., was established as a wholly owned subsidiary of CertusHoldings, Inc. (formerly Blue Ridge Holdings, Inc.). CertusBank began operations when it purchased a failed bank in Easley, South Carolina, from the FDIC on January 21, 2011. CertusBank's status as an insured national bank terminated on or about October 23, 2015 via an Order of Approval of termination of insurance by the FDIC. CBSUB is the successor to assets and liabilities of CertusBank and was created to wind down the assets and liabilities of the former bank.

[3] The sum of $965,000.00 represents the sum of the arbitrator's awards of Plaintiff Milton Jones ($340,000), Plaintiff Walter Davis ($325,000) and Plaintiff Angela Webb ($300,000).

ELECTRONICALLY FILED - 2017 Jun 28 12:34 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Dated this 28th day of June, 2017.

Respectfully submitted,

s/Richard A. Harpootlian
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Attorneys for Plaintiffs

Respectfully submitted,

s/Charles E. McDonald, III
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ELECTRONICALLY FILED - 2017 Jun 29 8:40 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

ORDER

This matter comes before the Court on the Parties' Joint Motion Requesting Clerk's Office Hold Judgment Funds in Escrow Pending Ruling on Defendants' Motion to Vacate Judgment. Having carefully considered the Joint Motion, the Court hereby orders as follows:

1. The Parties' Joint Motion is **GRANTED.**
2. The Parties' request to place the judgment funds in escrow with the clerk's office is reasonable under the circumstances and consistent with Rule 67, SCRCP.
3. Accordingly, CBSUB, Inc. will deposit the total sum of $965,000.00 to the clerk's office to be held in escrow for satisfaction of judgment, pending determination of the Defendants' Motion to Vacate Judgment, or until further Order of the Court.

IT IS SO ORDERED.

The Honorable Perry H. Gravely
Administrative Circuit Judge
Greenville County

June __, 2017
Greenville, South Carolina

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Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Other

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

ELECTRONICALLY FILED - 2017 Aug 01 4:45 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO VACATE JUDGMENT ENTERED ON MARCH 29, 2017

Defendants, CertusBank, N.A. and CertusHoldings, Inc. (collectively "CertusBank"), file this Supplemental Memorandum in Support of Motion to Vacate Judgment Entered on March 29, 2017 as follows.

In support of Defendants' Motion to Vacate Judgment Entered on March 29, 2017, Defendants join and incorporate the Federal Deposit Insurance Corporation's ("FDIC") Notice of Motions to: 1) Intervene; 2) Modify that March 29th Judgment to Conform it with the Terms of Arbitrator's Award or in the Alternative Set Aside the March 29th Judgment; and, 3) Render Unenforceable Any Obligation to Make Payment of the Proposed Severance Payments. Defendants fully support the FDIC's arguments and their Motion to Intervene. As the government agency authorized to determine the applicability of the golden parachute restrictions to Plaintiffs' claims for severance in this case, their Motion to Intervene is proper and consistent with South Carolina Rules of Civil Procedure.

The FDIC issued Determination Letters on behalf of each of the named Plaintiffs on April 7, 2017. (Copies attached hereto as Exhibit 1, 2, and 3). The judgment entered by this Court on March 29 is preempted by federal law and, thus, void as a matter of law. The

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proceedings in this case have placed Defendants in the untenable situation where it cannot comply with both the FDIC's Determination Letters and the March 29th Judgement entered by this Court.

For the reasons set forth more fully in Defendants' Motion to Vacate Judgment Entered On March 29, 2017 and the FDIC's pending Motion to Modify the March 29 Judgment, the judgment entered by the Court on March 29 should be vacated by this Court pursuant to Rule 60 of the South Carolina Rules of Civil Procedure. Similarly, the Execution of Judgment entered by this Court issued on June 19, 2017 should also be vacated.

Dated this 1st day of August, 2017.

Respectfully submitted,

s/Charles E. McDonald, III
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Attorneys for Defendants

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EXHIBIT 1

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FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION
Ten 10th Street, NW, Suite 800
Atlanta, Georgia 30309-3849

Atlanta Regional Office
Division of Risk Management Supervision
Division of Depositor and Consumer Protection
(678) 916-2200

April 7, 2017

Mr. Thomas Simpson
JAMES-BATES-BRANNAN-GROOVER-LLP
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326

SUBJECT: CBSUB, Inc. and CertusHoldings, Inc., successors by merger to CertusBank, N.A.
Easley, South Carolina

Golden Parachute Application—Milton Jones

Dear Mr. Simpson:

The FDIC received the applications dated on April 21, 2016, you filed on behalf of CBSUB, Inc. ("CBSUB"), and CertusHoldings, Inc. ("Company") (collectively, "Certus") as successors by merger to CertusBank, N.A. ("Bank") requesting that the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Bank of Atlanta ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "Agencies") confirm that 12 U.S.C. § 1828(k) ("Section 1828(k)") and 12 C.F.R. Part 359 ("Part 359") (collectively, "Golden Parachute Rules") apply to certain proposed payments. CBSUB also asked that the Agencies approve applications for golden parachute payments from CBSUB to Milton Jones ("Jones"), Walter L. Davis ("Davis"), and K. Angela Webb ("Webb") (collectively, "Senior Executive Officers") despite the lack of the required certifications. The applications seek approval of the proposed payments of $340,000, $325,000, and $300,000, respectively ("Proposed Payments")[1], to Jones, Davis, and Webb, though this letter regards the applicability of the Golden Parachute Rules as they pertain to Jones. The Proposed Payments constitute "golden parachute payments" under the Golden Parachute Rules, compelling the filing of applications. For the reasons set forth below, based on their involvement with the troubled condition of the Bank and the issues described below regarding their actions as Senior Executive Officers, the FDIC prohibits CBSUB under the Golden Parachute Rules from making the Proposed Payments to Jones in any amount.

Blue Ridge Holdings, Inc. ("Blue Ridge") became a bank holding company in 2011. At the time the Bank became an insured depository institution, it was a wholly owned subsidiary of Blue

[1]Proposed Payments are the amounts of severance which were determined by an arbitrator on February 28, 2017.

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Ridge.[2] In March 2014, the OCC notified the Bank that it was in "troubled condition" under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions on golden parachute payments set forth in Part 359. As a result of the Bank's deteriorating financial condition, the Bank entered into a Stipulation to the Issuance of a Consent Order ("Order") with the OCC on November 4, 2014. Due to the financial condition of the Bank, the FRB notified the Company that it was in troubled condition on April 7, 2014.

After failing to raise additional capital, Bank management submitted an application for a change in asset composition and application to merge with a non-bank affiliate to the OCC. The application incorporated a plan to divest the Bank of all banking assets. As part of its approval of this plan, the OCC approved the merger of the Bank with and into CBSUB which was effective November 2, 2015, and also cancelled the Bank's national banking charter. The Bank and the Company merged into CBSUB which was formed to dispose of the Bank's remaining assets and resolve its remaining liabilities.

Jones was President and Chief Executive Officer of the Company and the Bank from January 20, 2011, until February of 2012. Jones was Executive Chairman of the Company and the Bank from February 2012 until his termination on April 9, 2014. Jones was Chairman of the Board of the Company and the Bank from January 2011 until his termination on April 9, 2014. On February 22, 2011, Jones entered into an amended and restated employment agreement with the Company ("Employment Agreement"). The Employment Agreement provided for a base annual salary of $340,000, annual performance incentives, stock options, award of stock at the beginning of the Employment Agreement, and participation in the Company's employee benefit plans, fringe benefits, and perquisites.

Because of the condition of the Company and the Bank, the Board terminated Jones and the other Senior Executive Officers without "Good Cause" as defined in the Employment Agreements on April 9, 2014, following a Board meeting. The Board could not terminate the Senior Executive Officers for "Good Cause" under the terms of their Employment Agreements without first providing them with a 30 day "cure" period. Because of the deteriorated condition of the Bank, the Board believed that an immediate change in executive leadership was in the best interests of the Company and the Bank. Therefore, the Board terminated the Senior Executive Officers without cause pursuant to their Employment Agreements.

The termination provisions of the Employment Agreements provided that the Company, by action of its board of directors, could terminate the Employment Agreements for any reason within 30 days written notice of the termination.[3] Although there is a provision describing the grounds for termination for Good Cause, the Board did not terminate Jones for Good Cause. The Employment Agreements provided for a severance payment if he was terminated during the term of the Employment Agreement without Good Cause, in addition to the Standard Termination Benefits and Other Benefits.[4] The severance payment was to include: a cash payment for the Senior Executive Officer's base salary for 12 months; a lump sum cash payment equal to the target annual incentive pursuant to a certain formula; and their outstanding equity would become

[2] Blue Ridge became the Company in late 2011 and functioned as a bank holding company. The OCC granted a national banking charter and the FDIC approved the Bank's application for deposit insurance in January 2011.
[3] Employment Agreements, Paragraph 22.
[4] Employment Agreements, Paragraph 33. Standard Termination Benefits and Other Benefits are not defined in the Employment Agreements.

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exercisable or vest. However, the Employment Agreements expressly stated that the Senior Executive Officers were not entitled to receive these severance benefits in Paragraph 33 unless they executed a general release and waiver of claims. The Senior Executive Officers did not execute such a release and waiver.

The Senior Executive Officers filed suit in South Carolina State Court against the Company and the Bank ("Regulated Entities") on September 9, 2015, under the Employment Agreements ("State Court Action") for breach of contract. They requested damages including 22 months of salary, 22 months of medical benefits, attorney's fees, and termination without cause penalties. The complete amount of damages sought on behalf of Jones was $1,049,089.27. The State Court Action was referred to an arbitrator pursuant to the provisions in the Employment Agreements. In the arbitration proceeding, the Senior Executive Officers asserted that CBSUB did not need to obtain approval from the OCC, FDIC and/or FRB pursuant to Part 359 to make the Proposed Payments. The Arbitrator in the State Court Action determined that the Bank, the Company, and CBSUB are liable to the Senior Executive Officers for the Proposed Payments. The Arbitrator also expressly did not decide whether the Proposed Payments are barred under the Golden Parachute Rules.[5]

Pursuant to 12 C.F.R. § 359.1(f)(1), any payment in the nature of compensation that is payable to a current or former institution-affiliated party ("IAP") on or after the termination of his employment by the institution and received on or after the institution is in troubled condition is a golden parachute payment. The Senior Executive Officers were IAPs of the Bank and the Company in their capacities as officers, directors, and employees under 12 C.F.R. § 359.1(h)(1) and (f)(iii)(A). The OCC notified the Bank in March 2014 that it was in troubled condition under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions in the Golden Parachute Rules. The FRB notified the Company on April 7, 2014, that it was in troubled condition.

Jones was employed with the Bank and the Company when the OCC and the FRB notified the Bank and the Company that they were in troubled condition. Any payments that were compensation payable after Jones' termination on April 9, 2014, would have been received after the Bank and the Company were in troubled condition. The Proposed Payments meet the definition of a golden parachute payment in 12 C.F.R. § 359.1(f)(1). Further, the Proposed Payments are not covered by any of the exceptions contained in 12 C.F.R. § 359.1(f)(2). CBSUB, as successor by merger to the Bank and the Company, is subject to regulation under 12 U.S.C § 1828(k) as a "covered company." The Arbitrator also determined that CBSUB was the successor by merger to the Bank and the Company and liable for the Proposed Payments. Therefore, CBSUB could not make the Proposed Payments absent prior regulatory approval. 12 C.F.R. § 359.2.

Part 359 defines "payment" as including "[a]ny direct or indirect transfer of any funds or any asset…the conferring of any benefit …for the purpose of making, or pursuant to any agreement to make, any payment . . ." 12 C.F.R. § 359.1(k). In the State Court Action, the Senior Executive Officers asserted rights to severance payments and other payments as a result of their assertion that the Bank and Company breached the Employment Agreements. If severance payments had been made, those payments would have been made after Jones' termination from

[5] Arbitration Award, February 28, 2017.

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the troubled Bank and Company. The severance payments[6] are golden parachute payments subject to the limitations of the Golden Parachute Rules. Based on the material provided in the Applications, the Proposed Payments are derived from agreements that, by their very terms, afforded benefits upon termination of employment with the Bank and Company. The Proposed Payments constitute golden parachute payments under 12 C.F.R. § 359.1(f)(1)(i).

In determining whether CBSUB could provide the certifications required by 12 C.F.R. § 359.4(a)(4), the Board and officers of CBSUB represented that they consulted with the former human resources director of the Bank, reviewed applicable corporate governance records and regulatory correspondence, reviewed financial information regarding Jones' employment by the Company and the Bank, and considered their duties and the activities of their employment. After its review, the Board of CBSUB stated that they were unable to provide the certifications for the Jones in conjunction with the applications. The applications did not recite every factor that CBSUB and the Company considered in determining their inability to deliver the certifications but the applications did present some of those factors.

The applications stated that the Senior Executive Officers were substantially responsible for the "troubled condition" of the Bank and described the following support for that opinion. The Bank suffered steep financial losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. The applications also stated that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at a time when the Company and the Bank were reporting heavy losses. The applications stated that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operations. Based on the above described issues, the applications stated that neither the Company nor CBSUB could deliver the certifications required by 12 C.F.R. § 359.4(a)(4) with respect to the Senior Executive Officers.

We have reviewed the supervisory record and it supports the determination that the Senior Executive Officers were responsible for the decline of the overall condition of the Bank. We note that the terminations of the Senior Executive Officers were authorized by the independent members of the Board, based on findings from a forensic audit into the Senior Executive Officers' activities. We note that the OCC's Order identifies the comprehensive remedial actions that were needed at the Bank to address the management failures which occurred at the time that the Senior Executive Officers were responsible for the management policies and direction of the Bank.

Moreover, we note that recently Jones entered into orders with the OCC agreeing to personally cease and desist from certain banking activities and pay civil monetary penalties.[7] The CMP Orders recite that the Senior Executive Officers caused the Bank to violate banking laws by purchasing property for their use; failed to present to the Board for decision certain strategically important contracts or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution; and caused the Bank to incur excessive

[6] The severance payments and any payments the Senior Executive Officers sought based on alternative theories in the State Court Action are golden parachute payments.

[7] Consent Orders 2017-005, 2017-006, and 2017-007 were issued against Davis, Jones, and Webb, respectively, on January 3, 2017 (collectively, "CMP Orders").

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expenses resulting in losses to the Bank. As a result, the OCC found that the Senior Executive Officers engaged in a pattern of misconduct that supported actions pursuant to 12 U.S.C. § 1818(b) and (i) against the Senior Executive Officers. Jones agreed to personally cease and desist from certain banking activities and pay a civil money penalty of $3,500.

12 C.F.R. § 359.4(a)(1) permits the appropriate federal banking agency, with the FDIC's written concurrence, to determine that a payment is permissible. 12 C.F.R. § 359.4(b) sets forth three factors supervisory staff may consider in evaluating whether to permit a golden parachute payment and we have taken those factors into account in this determination. Each of these factors independently supports denial of the applications here. Jones had policy-making authority for the Bank. CBSUB provided substantial information about Jones' work duties, responsibilities, and areas of oversight that fell within significant areas of the Bank's operations that were criticized in the supervisory record. Additionally, the supervisory record supports a determination that Jones exercised a high degree of managerial and fiduciary responsibility. Given their executive leadership positions, the Senior Executive Officers were in a position to make decisions and policies regarding the Bank that directly contributed to the Bank and the Company's troubled condition. While CBSUB did not provide the certifications, the information that was provided is consistent with the expectations for that information described in the FDIC's FIL-66-2010, *Guidance on Golden Parachute Applications*, as it addressed the areas of regulatory criticism. The agency finds the information provided supports denial of the applications.

12 C.F.R. § 359.4(b)(2) requires the regulator, in considering whether to approve otherwise impermissible "golden parachute" payments, to consider the IAP's length of affiliation with the institution, "and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment." FDIC guidance makes clear that in evaluating the reasonableness of payment amounts, the regulators' exception[8] "should not be viewed as intended to permit golden parachute payments in excess of 12 months' salary." Here, CBSUB has sought authorization to make payments to Jones in the amount of his annual salary. We note that the original damages that Jones sought in the State Court Action far exceed twelve months' salary.

12 C.F.R. § 359.4(a)(1) and (b)(3) grants the regulator the discretion to approve otherwise impermissible payments to the extent the regulator determines such payments are permissible. There is no other information presented in the applications or the supervisory record that would warrant a departure from the exercise of normal supervisory discretion regarding the applications.

This letter documents the FDIC's determination that any payments to Jones would constitute golden parachute payments and are subject to approval of the OCC and the FRB with the concurrence of the FDIC. The FDIC determined that:

1. The Proposed Payments are subject to the limitations of the Golden Parachute Rules.
2. CBSUB is the successor by merger to the troubled entities from whom the payment obligation arises, is subject to the Golden Parachute Rules, and prohibited from

[8] 12 C.F.R. § 359.4(a)(1).

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making payments to the Senior Executive Officers without approved golden parachute applications.

3. Although the applications did not provide the certifications, based on available information, the FDIC determined that the Senior Executive Officers were substantially responsible for the troubled condition of the Bank and the Company.

4. The Senior Executive Officers were employed by the Bank from its inception until April 9, 2014, and were the most senior executive officers of the Bank until their termination after the Bank and the Company became in troubled condition; and

5. The Senior Executive Officers were in positions of managerial and fiduciary responsibility and, based on the deterioration of the Bank under their supervision, there is evidence that their acts in that capacity had a material adverse effect on the Bank.

For the foregoing reasons, and based on review of the entire record, the FDIC could not concur in the approval of any payments to Jones by either the OCC or the FRB. The FDIC therefore prohibits CBSUB from making the Proposed Payments, in any amount, to Jones. This correspondence represents the FDIC's final agency action regarding the subject applications.

If you have any questions regarding this correspondence, please contact Senior Case Manager Rick Packard at 678-916-2211.

Sincerely,

John P. Henrie
Deputy Regional Director

cc. James Zimmerman, Office of the Comptroller of the Currency
Allen Stanley, Federal Reserve Bank of Atlanta

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EXHIBIT 2

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FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION
Ten 10th Street, NW, Suite 800
Atlanta, Georgia 30309-3849

Atlanta Regional Office
Division of Risk Management Supervision
Division of Depositor and Consumer Protection
(678) 916-2200

April 7, 2017

Mr. Thomas Simpson
JAMES-BATES-BRANNAN-GROOVER-LLP
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326

SUBJECT: CBSUB, Inc. and CertusHoldings, Inc., successors by merger to CertusBank, N.A.
Easley, South Carolina

Golden Parachute Application—Walter L. Davis

Dear Mr. Simpson:

The FDIC received the applications dated on April 21, 2016, you filed on behalf of CBSUB, Inc. ("CBSUB"), and CertusHoldings, Inc. ("Company") (collectively, "Certus") as successors by merger to CertusBank, N.A. ("Bank") requesting that the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Bank of Atlanta ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "Agencies") confirm that 12 U.S.C. § 1828(k) ("Section 1828(k)") and 12 C.F.R. Part 359 ("Part 359") (collectively, "Golden Parachute Rules") apply to certain proposed payments. CBSUB also asked that the Agencies approve applications for golden parachute payments from CBSUB to Milton Jones ("Jones"), Walter L. Davis ("Davis"), and K. Angela Webb ("Webb") (collectively, "Senior Executive Officers") despite the lack of the required certifications. The applications seek approval of the proposed payments of $340,000, $325,000, and $300,000, respectively ("Proposed Payments")[1], to Jones, Davis, and Webb, though this letter regards the applicability of the Golden Parachute Rules as they pertain to Davis. The Proposed Payments constitute "golden parachute payments" under the Golden Parachute Rules, compelling the filing of applications. For the reasons set forth below, based on their involvement with the troubled condition of the Bank and the issues described below regarding their actions as Senior Executive Officers, the FDIC prohibits CBSUB under the Golden Parachute Rules from making the Proposed Payments to Davis in any amount.

Blue Ridge Holdings, Inc. ("Blue Ridge") became a bank holding company in 2011. At the time the Bank became an insured depository institution, it was a wholly owned subsidiary of Blue

[1]Proposed Payments are the amounts of severance which were determined by an arbitrator on February 28, 2017.

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Ridge.[2] In March 2014, the OCC notified the Bank that it was in "troubled condition" under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions on golden parachute payments set forth in Part 359. As a result of the Bank's deteriorating financial condition, the Bank entered into a Stipulation to the Issuance of a Consent Order ("Order") with the OCC on November 4, 2014. Due to the financial condition of the Bank, the FRB notified the Company that it was in troubled condition on April 7, 2014.

After failing to raise additional capital, Bank management submitted an application for a change in asset composition and application to merge with a non-bank affiliate to the OCC. The application incorporated a plan to divest the Bank of all banking assets. As part of its approval of this plan, the OCC approved the merger of the Bank with and into CBSUB which was effective November 2, 2015, and also cancelled the Bank's national banking charter. The Bank and the Company merged into CBSUB which was formed to dispose of the Bank's remaining assets and resolve its remaining liabilities.

Davis was Chief Credit Officer of the Company and the Bank from January 2011 until February 2012. From February 2012 until April 9, 2014, Davis was Co-Chief Executive Officer of the Company and the Bank. From January 2014 until April 9, 2014, Davis was Chief Executive Officer of the Company and the Bank. Additionally, Davis was a member of the Board of the Company and the Bank from January 2011 until April 9, 2014. On February 22, 2011, Davis entered into an amended and restated employment agreement with the Company ("Employment Agreement"). The Employment Agreement provided for a base annual salary of $325,000, annual performance incentives, stock options, award of stock at the beginning of the Employment Agreement, and participation in the Company's employee benefit plans, fringe benefits, and perquisites.

Because of the condition of the Company and the Bank, the Davis and the other Senior Executive Officers without "Good Cause" as defined in the Employment Agreements on April 9, 2014, following a Board meeting. The Board could not terminate the Senior Executive Officers for "Good Cause" under the terms of their Employment Agreements without first providing them with a 30 day "cure" period. Because of the deteriorated condition of the Bank, the Board believed that an immediate change in executive leadership was in the best interests of the Company and the Bank. Therefore, the Board terminated the Senior Executive Officers without cause pursuant to their Employment Agreements.

The termination provisions of the Employment Agreements provided that the Company, by action of its board of directors, could terminate the Employment Agreements for any reason within 30 days written notice of the termination.[3] Although there is a provision describing the grounds for termination for Good Cause, the Board did not terminate Davis for Good Cause. The Employment Agreements provided for a severance payment if he was terminated during the term of the Employment Agreement without Good Cause, in addition to the Standard Termination Benefits and Other Benefits.[4] The severance payment was to include: a cash payment for the Senior Executive Officer's base salary for 12 months; a lump sum cash payment

[2] Blue Ridge became the Company in late 2011 and functioned as a bank holding company. The OCC granted a national banking charter and the FDIC approved the Bank's application for deposit insurance in January 2011.
[3] Employment Agreements, Paragraph 22.
[4] Employment Agreements, Paragraph 33. Standard Termination Benefits and Other Benefits are not defined in the Employment Agreements.

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equal to the target annual incentive pursuant to a certain formula; and their outstanding equity would become exercisable or vest. However, the Employment Agreements expressly stated that the Senior Executive Officers were not entitled to receive these severance benefits in Paragraph 33 unless they executed a general release and waiver of claims. The Senior Executive Officers did not execute such a release and waiver.

The Senior Executive Officers filed suit in South Carolina State Court against the Company and the Bank ("Regulated Entities") on September 9, 2015, under the Employment Agreements ("State Court Action") for breach of contract. They requested damages including 22 months of salary, 22 months of medical benefits, attorney's fees, and termination without cause penalties. The complete amount of damages sought on behalf of Davis was $1,017,145.81. The State Court Action was referred to an arbitrator pursuant to the provisions in the Employment Agreements. In the arbitration proceeding, the Senior Executive Officers asserted that CBSUB did not need to obtain approval from the OCC, FDIC and/or FRB pursuant to Part 359 to make the Proposed Payments. The Arbitrator in the State Court Action determined that the Bank, the Company, and CBSUB are liable to the Senior Executive Officers for the Proposed Payments. The Arbitrator also expressly did not decide whether the Proposed Payments are barred under the Golden Parachute Rules.[5]

Pursuant to 12 C.F.R. § 359.1(f)(1), any payment in the nature of compensation that is payable to a current or former institution-affiliated party ("IAP") on or after the termination of his employment by the institution and received on or after the institution is in troubled condition is a golden parachute payment. The Senior Executive Officers were IAPs of the Bank and the Company in their capacities as officers, directors, and employees under 12 C.F.R. § 359.1(h)(1) and (f)(iii)(A). The OCC notified the Bank in March 2014 that it was in troubled condition under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions in the Golden Parachute Rules. The FRB notified the Company on April 7, 2014, that it was in troubled condition.

Davis was employed with the Bank and the Company when the OCC and the FRB notified the Bank and the Company that they were in troubled condition. Any payments that were compensation payable after Davis' termination on April 9, 2014, would have been received after the Bank and the Company were in troubled condition. The Proposed Payments meet the definition of a golden parachute payment in 12 C.F.R. § 359.1(f)(1). Further, the Proposed Payments are not covered by any of the exceptions contained in 12 C.F.R. § 359.1(f)(2). CBSUB, as successor by merger to the Bank and the Company, is subject to regulation under 12 U.S.C § 1828(k) as a "covered company." The Arbitrator also determined that CBSUB was the successor by merger to the Bank and the Company and liable for the Proposed Payments. Therefore, CBSUB could not make the Proposed Payments absent prior regulatory approval. 12 C.F.R. § 359.2.

Part 359 defines "payment" as including "[a]ny direct or indirect transfer of any funds or any asset…the conferring of any benefit …for the purpose of making, or pursuant to any agreement to make, any payment . . ." 12 C.F.R. § 359.1(k). In the State Court Action, the Senior Executive Officers asserted rights to severance payments and other payments as a result of their assertion that the Bank and Company breached the Employment Agreements. If severance payments had been made, those payments would have been made after Davis' termination from

[5] Arbitration Award, February 28, 2017.

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the troubled Bank and Company. The severance payments[6] are golden parachute payments subject to the limitations of the Golden Parachute Rules. Based on the material provided in the Applications, the Proposed Payments are derived from agreements that, by their very terms, afforded benefits upon termination of employment with the Bank and Company. The Proposed Payments constitute golden parachute payments under 12 C.F.R. § 359.1(f)(1)(i).

In determining whether CBSUB could provide the certifications required by 12 C.F.R. § 359.4(a)(4), the Board and officers of CBSUB represented that they consulted with the former human resources director of the Bank, reviewed applicable corporate governance records and regulatory correspondence, reviewed financial information regarding Davis' employment by the Company and the Bank, and considered their duties and the activities of their employment. After its review, the Board of CBSUB stated that they were unable to provide the certifications for the Davis in conjunction with the applications. The applications did not recite every factor that CBSUB and the Company considered in determining their inability to deliver the certifications but the applications did present some of those factors.

The applications stated that the Senior Executive Officers were substantially responsible for the "troubled condition" of the Bank and described the following support for that opinion. The Bank suffered steep financial losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. The applications also stated that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at a time when the Company and the Bank were reporting heavy losses. The applications stated that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operations. Based on the above described issues, the applications stated that neither the Company nor CBSUB could deliver the certifications required by 12 C.F.R. § 359.4(a)(4) with respect to the Senior Executive Officers.

We have reviewed the supervisory record and it supports the determination that the Senior Executive Officers were responsible for the decline of the overall condition of the Bank. We note that the terminations of the Senior Executive Officers were authorized by the independent members of the Board, based on findings from a forensic audit into the Senior Executive Officers' activities. We note that the OCC's Order identifies the comprehensive remedial actions that were needed at the Bank to address the management failures which occurred at the time that the Senior Executive Officers were responsible for the management policies and direction of the Bank.

Moreover, we note that recently Davis entered into orders with the OCC agreeing to personally cease and desist from certain banking activities and pay civil monetary penalties.[7] The CMP Orders recite that the Senior Executive Officers caused the Bank to violate banking laws by purchasing property for their use; failed to present to the Board for decision certain strategically important contracts or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution; and caused the Bank to incur excessive

[6] The severance payments and any payments the Senior Executive Officers sought based on alternative theories in the State Court Action are golden parachute payments.

[7] Consent Orders 2017-005, 2017-006, and 2017-007 were issued against Davis, Jones, and Webb, respectively, on January 3, 2017 (collectively, "CMP Orders").

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expenses resulting in losses to the Bank. As a result, the OCC found that the Senior Executive Officers engaged in a pattern of misconduct that supported actions pursuant to 12 U.S.C. § 1818(b) and (i) against the Senior Executive Officers. Davis agreed to personally cease and desist from certain banking activities and pay a civil money penalty of $25,000.

12 C.F.R. § 359.4(a)(1) permits the appropriate federal banking agency, with the FDIC's written concurrence, to determine that a payment is permissible. 12 C.F.R. § 359.4(b) sets forth three factors supervisory staff may consider in evaluating whether to permit a golden parachute payment and we have taken those factors into account in this determination. Each of these factors independently supports denial of the applications here. Davis had policy-making authority for the Bank. CBSUB provided substantial information Davis' work duties, responsibilities, and areas of oversight that fell within significant areas of the Bank's operations that were criticized in the supervisory record. Additionally, the supervisory record supports a determination that Davis exercised a high degree of managerial and fiduciary responsibility. Given their executive leadership positions, the Senior Executive Officers were in a position to make decisions and policies regarding the Bank that directly contributed to the Bank and the Company's troubled condition. While CBSUB did not provide the certifications, the information that was provided is consistent with the expectations for that information described in the FDIC's FIL-66-2010, *Guidance on Golden Parachute Applications*, as it addressed the areas of regulatory criticism. The agency finds the information provided supports denial of the applications.

12 C.F.R. § 359.4(b)(2) requires the regulator, in considering whether to approve otherwise impermissible "golden parachute" payments, to consider the IAP's length of affiliation with the institution, "and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment." FDIC guidance makes clear that in evaluating the reasonableness of payment amounts, the regulators' exception[8] "should not be viewed as intended to permit golden parachute payments in excess of 12 months' salary." Here, CBSUB has sought authorization to make payments to Davis in the amount of his annual salary. We note that the original damages that Davis sought in the State Court Action far exceed twelve months' salary.

12 C.F.R. § 359.4(a)(1) and (b)(3) grants the regulator the discretion to approve otherwise impermissible payments to the extent the regulator determines such payments are permissible. There is no other information presented in the applications or the supervisory record that would warrant a departure from the exercise of normal supervisory discretion regarding the applications.

This letter documents the FDIC's determination that any payments Davis would constitute golden parachute payments and are subject to approval of the OCC and the FRB with the concurrence of the FDIC. The FDIC determined that:

1. The Proposed Payments are subject to the limitations of the Golden Parachute Rules.
2. CBSUB is the successor by merger to the troubled entities from whom the payment obligation arises, is subject to the Golden Parachute Rules, and prohibited from

[8] 12 C.F.R. § 359.4(a)(i).

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making payments to the Senior Executive Officers without approved golden parachute applications.

3. Although the applications did not provide the certifications, based on available information, the FDIC determined that the Senior Executive Officers were substantially responsible for the troubled condition of the Bank and the Company.

4. The Senior Executive Officers were employed by the Bank from its inception until April 9, 2014, and were the most senior executive officers of the Bank until their termination after the Bank and the Company became in troubled condition; and

5. The Senior Executive Officers were in positions of managerial and fiduciary responsibility and, based on the deterioration of the Bank under their supervision, there is evidence that their acts in that capacity had a material adverse effect on the Bank.

For the foregoing reasons, and based on review of the entire record, the FDIC could not concur in the approval of any payments to Davis by either the OCC or the FRB. The FDIC therefore prohibits CBSUB from making the Proposed Payments, in any amount, to Davis. This correspondence represents the FDIC's final agency action regarding the subject applications.

If you have any questions regarding this correspondence, please contact Senior Case Manager Rick Packard at 678-916-2211.

Sincerely,

John P. Henrie
Deputy Regional Director

cc. James Zimmerman, Office of the Comptroller of the Currency
Allen Stanley, Federal Reserve Bank of Atlanta

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EXHIBIT 3

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FDIC

FEDERAL DEPOSIT INSURANCE CORPORATION
Ten 10th Street, NW, Suite 800
Atlanta, Georgia 30309-3849

Atlanta Regional Office
Division of Risk Management Supervision
Division of Depositor and Consumer Protection
(678) 916-2200

April 7, 2017

Mr. Thomas Simpson
JAMES-BATES-BRANNAN-GROOVER-LLP
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326

SUBJECT: CBSUB, Inc. and CertusHoldings, Inc., successors by merger to CertusBank, N.A.
Easley, South Carolina

Golden Parachute Application—K. Angela Webb

Dear Mr. Simpson:

The FDIC received the applications dated on April 21, 2016, you filed on behalf of CBSUB, Inc. ("CBSUB"), and CertusHoldings, Inc. ("Company") (collectively, "Certus") as successors by merger to CertusBank, N.A. ("Bank") requesting that the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve Bank of Atlanta ("FRB"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, "Agencies") confirm that 12 U.S.C. § 1828(k) ("Section 1828(k)") and 12 C.F.R. Part 359 ("Part 359") (collectively, "Golden Parachute Rules") apply to certain proposed payments. CBSUB also asked that the Agencies approve applications for golden parachute payments from CBSUB to Milton Jones ("Jones"), Walter L. Davis ("Davis"), and K. Angela Webb ("Webb") (collectively, "Senior Executive Officers") despite the lack of the required certifications. The applications seek approval of the proposed payments of $340,000, $325,000, and $300,000, respectively ("Proposed Payments")[1], to Jones, Davis, and Webb, though this letter regards the applicability of the Golden Parachute Rules as they pertain to Webb. The Proposed Payments constitute "golden parachute payments" under the Golden Parachute Rules, compelling the filing of applications. For the reasons set forth below, based on their involvement with the troubled condition of the Bank and the issues described below regarding their actions as Senior Executive Officers, the FDIC prohibits CBSUB under the Golden Parachute Rules from making the Proposed Payments to Webb in any amount.

Blue Ridge Holdings, Inc. ("Blue Ridge") became a bank holding company in 2011. At the time the Bank became an insured depository institution, it was a wholly owned subsidiary of Blue

[1]Proposed Payments are the amounts of severance which were determined by an arbitrator on February 28, 2017.

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Ridge.[2] In March 2014, the OCC notified the Bank that it was in "troubled condition" under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions on golden parachute payments set forth in Part 359. As a result of the Bank's deteriorating financial condition, the Bank entered into a Stipulation to the Issuance of a Consent Order ("Order") with the OCC on November 4, 2014. Due to the financial condition of the Bank, the FRB notified the Company that it was in troubled condition on April 7, 2014.

After failing to raise additional capital, Bank management submitted an application for a change in asset composition and application to merge with a non-bank affiliate to the OCC. The application incorporated a plan to divest the Bank of all banking assets. As part of its approval of this plan, the OCC approved the merger of the Bank with and into CBSUB which was effective November 2, 2015, and also cancelled the Bank's national banking charter. The Bank and the Company merged into CBSUB which was formed to dispose of the Bank's remaining assets and resolve its remaining liabilities.

Webb was the Chief Administrative Officer of the Company and the Bank from January 2011 until February 2012. From February 2012 until her termination on April 9, 2014, Webb was the President of the Company and the Bank. Webb was not a director of the Company or the Bank. On February 22, 2011, Webb entered into an amended and restated employment agreement with the Company ("Employment Agreement"). The Employment Agreement provided for a base annual salary of $300,000, annual performance incentives, stock options, award of stock at the beginning of the Employment Agreement, and participation in the Company's employee benefit plans, fringe benefits, and perquisites.

Because of the condition of the Company and the Bank, the Board terminated Webb and the other Senior Executive Officers without "Good Cause" as defined in the Employment Agreements on April 9, 2014, following a Board meeting. The Board could not terminate the Senior Executive Officers for "Good Cause" under the terms of their Employment Agreements without first providing them with a 30 day "cure" period. Because of the deteriorated condition of the Bank, the Board believed that an immediate change in executive leadership was in the best interests of the Company and the Bank. Therefore, the Board terminated the Senior Executive Officers without cause pursuant to their Employment Agreements.

The termination provisions of the Employment Agreements provided that the Company, by action of its board of directors, could terminate the Employment Agreements for any reason within 30 days written notice of the termination.[3] Although there is a provision describing the grounds for termination for Good Cause, the Board did not terminate Webb for Good Cause. The Employment Agreements provided for a severance payment if she was terminated during the term of the Employment Agreement without Good Cause, in addition to the Standard Termination Benefits and Other Benefits.[4] The severance payment was to include: a cash payment for the Senior Executive Officer's base salary for 12 months; a lump sum cash payment equal to the target annual incentive pursuant to a certain formula; and their outstanding equity would become exercisable or vest. However, the Employment Agreements expressly stated that

[2] Blue Ridge became the Company in late 2011 and functioned as a bank holding company. The OCC granted a national banking charter and the FDIC approved the Bank's application for deposit insurance in January 2011.
[3] Employment Agreements, Paragraph 22.
[4] Employment Agreements, Paragraph 33. Standard Termination Benefits and Other Benefits are not defined in the Employment Agreements.

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the Senior Executive Officers were not entitled to receive these severance benefits in Paragraph 33 unless they executed a general release and waiver of claims. The Senior Executive Officers did not execute such a release and waiver.

The Senior Executive Officers filed suit in South Carolina State Court against the Company and the Bank ("Regulated Entities") on September 9, 2015, under the Employment Agreements ("State Court Action") for breach of contract. They requested damages including 22 months of salary, 22 months of medical benefits, attorney's fees, and termination without cause penalties. The complete amount of damages sought on behalf of Webb was $920,348.17. The State Court Action was referred to an arbitrator pursuant to the provisions in the Employment Agreements. In the arbitration proceeding, the Senior Executive Officers asserted that CBSUB did not need to obtain approval from the OCC, FDIC and/or FRB pursuant to Part 359 to make the Proposed Payments. The Arbitrator in the State Court Action determined that the Bank, the Company, and CBSUB are liable to the Senior Executive Officers for the Proposed Payments. The Arbitrator also expressly did not decide whether the Proposed Payments are barred under the Golden Parachute Rules.[5]

Pursuant to 12 C.F.R. § 359.1(f)(1), any payment in the nature of compensation that is payable to a current or former institution-affiliated party ("IAP") on or after the termination of his employment by the institution and received on or after the institution is in troubled condition is a golden parachute payment. The Senior Executive Officers were IAPs of the Bank and the Company in their capacities as officers, directors, and employees under 12 C.F.R. § 359.1(h)(1) and (f)(iii)(A). The OCC notified the Bank in March 2014 that it was in troubled condition under 12 C.F.R. § 5.51(c)(7) and was therefore subject to the restrictions in the Golden Parachute Rules. The FRB notified the Company on April 7, 2014, that it was in troubled condition.

Webb was employed with the Bank and the Company when the OCC and the FRB notified the Bank and the Company that they were in troubled condition. Any payments that were compensation payable after Webb's termination on April 9, 2014, would have been received after the Bank and the Company were in troubled condition. The Proposed Payments meet the definition of a golden parachute payment in 12 C.F.R. § 359.1(f)(1). Further, the Proposed Payments are not covered by any of the exceptions contained in 12 C.F.R. § 359.1(f)(2). CBSUB, as successor by merger to the Bank and the Company, is subject to regulation under 12 U.S.C § 1828(k) as a "covered company." The Arbitrator also determined that CBSUB was the successor by merger to the Bank and the Company and liable for the Proposed Payments. Therefore, CBSUB could not make the Proposed Payments absent prior regulatory approval. 12 C.F.R. § 359.2.

Part 359 defines "payment" as including "[a]ny direct or indirect transfer of any funds or any asset...the conferring of any benefit ...for the purpose of making, or pursuant to any agreement to make, any payment . . ." 12 C.F.R. § 359.1(k). In the State Court Action, the Senior Executive Officers asserted rights to severance payments and other payments as a result of their assertion that the Bank and Company breached the Employment Agreements. If severance payments had been made, those payments would have been made after Webb's termination from the troubled Bank and Company. The severance payments[6] are golden parachute payments

[5] Arbitration Award, February 28, 2017.

[6] The severance payments and any payments the Senior Executive Officers sought based on alternative theories in the State Court Action are golden parachute payments.

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subject to the limitations of the Golden Parachute Rules. Based on the material provided in the Applications, the Proposed Payments are derived from agreements that, by their very terms, afforded benefits upon termination of employment with the Bank and Company. The Proposed Payments constitute golden parachute payments under 12 C.F.R. § 359.1(f)(1)(i).

In determining whether CBSUB could provide the certifications required by 12 C.F.R. § 359.4(a)(4), the Board and officers of CBSUB represented that they consulted with the former human resources director of the Bank, reviewed applicable corporate governance records and regulatory correspondence, reviewed financial information regarding Webb's employment by the Company and the Bank, and considered her duties and the activities of her employment. After its review, the Board of CBSUB stated that they were unable to provide the certifications for Webb in conjunction with the applications. The applications did not recite every factor that CBSUB and the Company considered in determining their inability to deliver the certifications but the applications did present some of those factors.

The applications stated that the Senior Executive Officers were substantially responsible for the "troubled condition" of the Bank and described the following support for that opinion. The Bank suffered steep financial losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. The applications also stated that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at a time when the Company and the Bank were reporting heavy losses. The applications stated that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operations. Based on the above described issues, the applications stated that neither the Company nor CBSUB could deliver the certifications required by 12 C.F.R. § 359.4(a)(4) with respect to the Senior Executive Officers.

We have reviewed the supervisory record and it supports the determination that the Senior Executive Officers were responsible for the decline of the overall condition of the Bank. We note that the terminations of the Senior Executive Officers were authorized by the independent members of the Board, based on findings from a forensic audit into the Senior Executive Officers' activities. We note that the OCC's Order identifies the comprehensive remedial actions that were needed at the Bank to address the management failures which occurred at the time that the Senior Executive Officers were responsible for the management policies and direction of the Bank.

Moreover, we note that recently Webb entered into orders with the OCC agreeing to personally cease and desist from certain banking activities and pay a civil monetary penalty.[7] The CMP Orders recite that the Senior Executive Officers caused the Bank to violate banking laws by purchasing property for their use; failed to present to the Board for decision certain strategically important contracts or contracts in amounts in excess of management's authority to bind the Bank without Board resolution prior to their execution; and caused the Bank to incur excessive expenses resulting in losses to the Bank. As a result, the OCC found that the Senior Executive Officers engaged in a pattern of misconduct that supported actions pursuant to 12 U.S.C. §

[7] Consent Orders 2017-005, 2017-006, and 2017-007 were issued against Davis, Jones, and Webb, respectively, on January 3, 2017 (collectively, "CMP Orders").

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1818(b) and (i) against the Senior Executive Officers. Webb agreed to personally cease and desist from certain banking activities and pay a civil money penalty of $27,000.

12 C.F.R. § 359.4(a)(1) permits the appropriate federal banking agency, with the FDIC's written concurrence, to determine that a payment is permissible. 12 C.F.R. § 359.4(b) sets forth three factors supervisory staff may consider in evaluating whether to permit a golden parachute payment and we have taken those factors into account in this determination. Each of these factors independently supports denial of the applications here. Webb had policy-making authority for the Bank. CBSUB provided substantial information about Webb's work duties, responsibilities, and areas of oversight that fell within significant areas of the Bank's operations that were criticized in the supervisory record. Additionally, the supervisory record supports a determination that Webb exercised a high degree of managerial and fiduciary responsibility. Given their executive leadership positions, the Senior Executive Officers were in a position to make decisions and policies regarding the Bank that directly contributed to the Bank and the Company's troubled condition. While CBSUB did not provide the certifications, the information that was provided is consistent with the expectations for that information described in the FDIC's FIL-66-2010, *Guidance on Golden Parachute Applications*, as it addressed the areas of regulatory criticism. The FDIC finds the information provided supports denial of the applications.

12 C.F.R. § 359.4(b)(2) requires the regulator, in considering whether to approve otherwise impermissible "golden parachute" payments, to consider the IAP's length of affiliation with the institution, "and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment." FDIC guidance makes clear that in evaluating the reasonableness of payment amounts, the regulators' exception[8] "should not be viewed as intended to permit golden parachute payments in excess of 12 months' salary." Here, CBSUB has sought authorization to make payments to Webb in the amount of her annual salary. We note that the original damages that Webb sought in the State Court Action far exceed twelve months' salary.

12 C.F.R. § 359.4(a)(1) and (b)(3) grants the regulator the discretion to approve otherwise impermissible payments to the extent the regulator determines such payments are permissible. There is no other information presented in the applications or the supervisory record that would warrant a departure from the exercise of normal supervisory discretion regarding the applications.

This letter documents the FDIC's determination that any payments to Webb would constitute golden parachute payments and are subject to approval of the OCC and the FRB with the concurrence of the FDIC. The FDIC determined that:

1. The Proposed Payments are subject to the limitations of the Golden Parachute Rules.
2. CBSUB is the successor by merger to the troubled entities from whom the payment obligation arises, is subject to the Golden Parachute Rules, and prohibited from making payments to the Senior Executive Officers without approved golden parachute applications.

[8] 12 C.F.R. § 359.4(a)(1).

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3. Although the applications did not provide the certifications, based on available information, the FDIC determined that the Senior Executive Officers were substantially responsible for the troubled condition of the Bank and the Company.
4. The Senior Executive Officers were employed by the Bank from its inception until April 9, 2014, and were the most senior executive officers of the Bank until their termination after the Bank and the Company became in troubled condition; and
5. The Senior Executive Officers were in positions of managerial and fiduciary responsibility and, based on the deterioration of the Bank under their supervision, there is evidence that their acts in that capacity had a material adverse effect on the Bank.

For the foregoing reasons, and based on review of the entire record, the FDIC could not concur in the approval of any payments to Webb by either the OCC or the FRB. The FDIC therefore prohibits CBSUB from making the Proposed Payments, in any amount, to Webb. This correspondence represents the FDIC's final agency action regarding the subject applications.

If you have any questions regarding this correspondence, please contact Senior Case Manager Rick Packard at 678-916-2211.

Sincerely,

John P. Henrie
Deputy Regional Director

cc. James Zimmerman, Office of the Comptroller of the Currency
Allen Stanley, Federal Reserve Bank of Atlanta

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554

Memorandum of law in opposition to Defendants CertusBank N.A. and CertusHoldings, Inc.'s motion to vacate judgment entered on March 29, 2017
and
Prospective Defendant-Intervenor Federal Deposit Insurance Corporation's motions to (1) intervene, (2) modify the March 29 judgment, and (3) render unenforceable any obligation to make payment

Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb have a legally enforceable arbitration award that this Court reduced to judgment as required by the South Carolina Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 et seq. Defendants CertusBank N.A. and CertusHoldings, Inc., and its successor CBSUB, Inc. (collectively, "CertusBank") have moved the Court to vacate that judgment claiming (1) mistake by the Court, (2) newly discovered evidence, and (3) the judgment is unenforceable. Also before the Court is a motion to intervene and vacate the judgment by the Federal Deposit Insurance Corporation (FDIC). FDIC argues the judgment should be vacated pursuant to letters purporting to find that monies owed under the judgment is violative of a so-called Golden Parachute determination.

For the reasons explained below, all of these arguments should be rejected. With respect to CertusBank, the Court should hold that Rule 60, SCRCP relief is not warranted because:

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(1) the former bank has still failed to offer a statutory ground to vacate or modify the arbitration award,

(2) there is no "mistake" to correct,

(3) the record does not support a newly-discovered-evidence claim, and

(4) there is no procedural or jurisdictional defect rendering the judgment void.

With respect to FDIC, the Court should hold:

(1) the agency's intervention request is procedurally flawed under Rule 24(c), SCRCP,

(2) the agency has not met the requirements for intervention of right or permissive intervention,

(3) ruling on the substance of FDIC's claim denies Plaintiffs procedural due process, and

(4) to the extent the Court disagrees with respect to intervention, it must afford Plaintiffs an opportunity to investigate and challenge FDIC's determination such that supplemental discovery proceedings are required.

These points are considered after a recitation of the factual and procedural background relevant to this dispute.

FACTUAL AND PROCEDURAL BACKGROUND

This dispute stems from a scurrilous but successful campaign by a scheming investor named Benjamin Weinger to convince the CertusBank board to remove Mr. Jones, Mr. Davis, and Ms. Webb from their leadership positions by conspiring with disgruntled bank employees to collect sensitive, internal bank records and use those records to levy public allegations of criminality, self-dealing, and financial mismanagement. Mr. Weinger disseminated these half-truths and out-right lies in a letter to the board. It is now known that Weinger secretly disseminated that letter to a national industry publication, The American Banker, which published and amplifying Weinger's claims and pressurizing the bank's board to terminate Mr. Jones, Mr. Davis,

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and Ms. Webb. Plaintiffs' defamation and tortious interference claims are pending in federal court before the Honorable Timothy M. Cain, United States District Judge, in a case styled Jones v. Weinger, C.A. No. 6-15-CV-03922-TMC (D.S.C.).

Having been publicly humiliated and terminated without cause, Plaintiffs demanded CertusBank pay the modest one-year severance payments to which they are entitled under their employment agreements. There is no dispute they were terminated without cause or that they have a contractual right to the monies demanded here.

As required by their employment agreements, Plaintiffs submitted their claims against the bank to binding arbitration and prevailed. CertusBank and FDIC seek to block those payments. For context, this section details some of the facts that led to Plaintiffs' termination before turning to Plaintiffs' arbitration award, and the procedural posture here.

Plaintiffs' Federal Action Against Third-Party Investor

For many years, Mr. Jones, Mr. Davis, and Ms. Webb were respected executives in the banking industry with successful careers. See Jones v. Weinger, C.A. No. 6:15-cv-03922-TMC, Dkt. No. 34 at 3 (hereafter, the "Fed. Action").[1] In 2009, they founded Blue Ridge Holdings, Inc. (Blue Ridge), which later changed its name to CertusHoldings, Inc. (CertusHoldings), with the goal of creating a national bank, i.e., CertusBank, focused on purchasing distressed assets from struggling financial institutions, returning the assets to profitability, and selling them for a gain. Id. As part of this effort, Plaintiffs obtained a "shelf charter" from the United States Office of the Controller of Currency (OCC), which authorized the acquisition of failed banks at FDIC auction. Federal Action, Dkt. No. 11 at 2–3. Plaintiffs secured commitments for up to $500 million from

[1] As the operative facts in the federal action are offered here by way of background, record evidence in support of these facts is available, as indicated, on the docket in that case.

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various investors, including 3-Sigma Value Financial Opportunities, L.P., owned and managed by Weinger. Fed. Action, Dkt. No. 34 at 3. In January 2011, CertusBank was born with its first acquisition of a troubled institution. Id. Plaintiffs served as the bank's executive leadership team with, at different times, Mr. Jones serving as Chairman of the Board, President, Chief Executive Officer and Chief Financial Officer; Mr. Davis served as CEO, Co-CEO, Chief Credit Officer, and Vice Chairman of the Board; and Ms. Webb served as President, Executive Vice-President, and Chief Administrative Officer. Id. While Plaintiffs pursued a long-term approach that would require some strategic short-term losses, not all of its investors agreed. Id. at 3.

On January 6, 2014, Weinger sent a letter to "The Stakeholders of CertusHoldings, Inc." disparaging Plaintiffs' management of the bank. Weinger argued that "financial mismanagement" eroded the bank's value and necessitated "an immediate change in the senior management team" as evidenced by "exorbitant spending on the new headquarters in Greenville, representing a complete disregard for financial responsibility." Fed. Action, Dkt. No. 34 at 3–4. Weinger also threatened a shareholder lawsuit if he did not get his way. Id. at 4. In truth, the bank's short term losses were planned and the board authorized and approved this so-called exorbitant spending. Id. During his deposition, Weinger testified the purpose of the January 6 letter was to "inform the other shareholders of the state of our investment[,]" which, in his view, was in "distress." Id.

Subsequently, Weinger began communicating with Paul Sparks, a CertusBank employee responsible for managing failed bank assets, who exchanged phone calls and emails with Weinger that resulted in Sparks disseminating internal bank records to Weinger, without authority for these leaks. See Fed. Action, Dkt. No. 34 at 5–8. Sparks also put Weinger in touch with CertusBank auditor Jesse Odom. Id. at 8. In January and February 2014, Weinger engaged in a series of phone calls and emails eliciting the disclosure of additional, internal bank records, including customer

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records. See id. at 9–13. Information in hand, Weinger drafted a second letter, dated March 5, 2014, accusing Plaintiffs of criminality, self-dealing, and financial mismanagement. See id. at 13–14. During a March 4 meeting with Mr. Jones, Mr. Davis, and a board member, Weinger threatened to release the letter to shareholders and the media, which he threatened would "crush" the bank's leadership team with "information that was toxic"—points he sought to highlight by using "Ebonics." Id. at 14 ("Angela gots to go..."). According to Weinger during his deposition, the purpose of the meeting was to "discuss the management's plans for cutting expenses and restructuring the management team." Id.

In his March 5, 2014 letter, Weinger sought to convince the bank board to change the management team. The letter concluded by inviting shareholders to participate in a town hall meeting during which Weinger would ask the other shareholders to nominate a new board in an effort to oust Plaintiffs from bank leadership and terminate their employment contracts. Fed. Action, Dkt. No. 34 at 15 (quoting the letter as threating the board should resign or "**OR BE FIRED UNDER THE HARD LIMELIGHT OF THE MEDIA.**" (emphasis original)). There is no dispute that some of the information contained in the letter was obtained by Weinger from Sparks and Odom. Id. On March 28, 2014, the American Banker published an article by Chris Cumming and Andy Peters titled "Certus Dream Team Gets Its Wake-Up Call," based on allegations levied by Weinger's March 5 letter. The article claimed:

> "Over the past two years more than 100 million of equity capital has been erased in the most baseless and irresponsible way by spending exorbitantly on personal excess masked as corporate expense," wrote Benjamin Weinger, managing partner of 3-Sigma Value Financial Opportunities, a New York hedge fund in a March 5th letter to fellow investors that was obtained by American Banker. "This can go on no longer."

Id. at 16–17.

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Weinger's sworn deposition testimony has since been shown to be riddled with lies as he personally orchestrated the American Banker article and the timing of its release. Weinger lied when he testified (three times) that he did not speak to the media when, in fact, he had at least one face to face meeting and numerous email communications American Banker reporter, the text of which strongly suggests phone calls as well. See Fed. Action, Dkt. No. 72-1 at 1–11 (moving the federal court to strike Weinger's answer). Weinger lied when he claimed he did not know whether the media was working on an article when he wrote his March 5 letter when, in fact, his January 6 letter prompted the American Banker's inquiry, and Weinger worked closely with the trade publication's reporter and editor while preparing a second letter (what became the March 5 letter) that could be amplified by the American Banker's report. See id. Weinger also lied when asked whether he provided the March 5 letter to the American Banker, testifying he did not when his own emails show otherwise. See id.

Weinger's smear campaign against Plaintiffs came to a head during two days of board meetings in April 2014. According to the bank's then-secretary, on April 8, the board met with Mr. Jones, Mr. Davis, and Ms. Webb to cover an agenda that "included a discussion of Benjamin Weinger and 3- Sigma Value Financial Opportunities, LP's shareholder letter." Fed. Action, Dkt. No. 34 at 18. After the April 9 meeting, the board issued Plaintiffs an ultimatum: resign or be terminated. Id. When Plaintiffs refused to resign, they were terminated. Id.

Underlying Arbitration Award

On September 9, 2015, Plaintiffs filed this action in the Greenville County Court of Common Pleas. CertusBank answered and, on January 6, 2016, the parties filed a joint motion to stay this proceeding to pursue arbitration, noting "[t]he parties are in agreement that Plaintiffs'

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claims asserted against Defendants are subject to arbitration[.]" On January 21, 2016, the Court entered an Order staying this action pending the completion of arbitration.

The dispute was submitted to Thomas W. Traxler, Esquire (Arbitrator) with a Stipulation of Claims and Facts providing in relevant part:

> 9. Pursuant to Section H of Plaintiffs' respective Amended and Restated Executive Employment Agreements, each Plaintiff is entitled to severance if their employment terminated under certain circumstances. [...]
>
> 12. Plaintiffs were terminated without cause pursuant to their respective Amended and Restated Executive Employment Agreements on April 9, 2014 by the Combined CertusHoldings, Inc. and CertusBank Board of Directors. [...]
>
> 15. Plaintiffs' termination without cause on April 9, 2014 triggered the severance pay provision in Paragraph 33 of the respective Amended and Restated Executive Employment Agreements. There are no other facts or circumstances that Plaintiffs contend triggered a right to payment under the Amended and Restated Executive Employment Agreements.
>
> 16. At the time Plaintiffs were terminated on April 9, 2014, the Office of the Comptroller of the Currency ("OCC") had designated CertusBank to be in "troubled condition" pursuant to 12 CFR § 303.101(c).
>
> 17. CertusBank has not paid severance to Plaintiffs because it is CertusBank's position that it is legally prohibited from making such severance payments because such payments constitute a "golden parachute payment" set forth in 12 CFR § 359.1.
>
> 18. If Plaintiff Milton Jones is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Jones is $340,000.
>
> 19. If Plaintiff Walter Davis is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Davis is $325,000.
>
> 20. If Plaintiff Angela Webb is determined to be legally entitled to severance, the amount of severance owed to Plaintiff Webb is $300,000.
>
> 21. CertusBank's status as an insured depository institution terminated on or about October 23, 2015 via an Order of Approval of termination of insurance by the FDIC.
>
> 22. CertusBank surrendered its charter as a national bank to the OCC on or about November 2, 2015.

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> 23. In or about November 2015 with the surrender of its charter as a national bank to the OCC[,] CertusBank, N.A. ceased being supervised by any regulator, FDIC and OCC, and ceased being a bank.
>
> 24. In or about November, 2015 a new corporation, CBSUB, Inc., was incorporated to receive the residual assets and liabilities of CertusBank, N.A., including any liability the bank may owe to the Plaintiffs. On the merger of the bank's residual assets and liabilities with CBSUB, Inc., CertusBank, N.A. was formally dissolved.
>
> 25. CBSUB, Inc. is not a bank and is not regulated by the OCC and FDIC. CBSUB, Inc.'s principal place of business is located at 24 Poinsett Avenue, Greenville, South Carolina. CBSUB, Inc. maintains a bank account at SunTrust Bank, Greenville, South Carolina.

FDIC Mot. at Ex. 1 ¶¶ 9, 12, 15–25.

On March 17, 2017, the Arbitrator issued an award in Plaintiffs' favor, awarding $340,000 to Mr. Jones, $325,000 to Mr. Davis, and $300,000 to Ms. Webb against CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc. With respect to CertusBank's golden parachute argument The Arbitrator held, in relevant part:

> I find that I do not have authority to determine in a binding way that the lump sum compensation is or is not a golden parachute. My authority is limited to that to which the parties agree, and there does not appear to be agreement on this issue. I can only determine the effect on the contractual obligations if the payments are indeed golden parachute payments.
>
> Code section 12 USC §1828(k) authorizes the FDIC to bar payment of golden parachute payments. 12 CFR §359 implements that bar, but subject to various exceptions. Those exceptions are not before me. Further, as I read those Regulations, certain golden parachute payments are permissible under certain circumstances and subject to FDIC approval. *I cannot bind the parties to such a determination in this arbitration.*
>
> I do have authority, however, to determine if any such bar discharges CertusBank's obligation under the Employment Agreement or merely renders it potentially unenforceable.
>
> The Defendants urge me to rule that the doctrine of impossibility of performance discharges the duty of CertusBank to pay. That doctrine provides that a party's obligation to perform a contractual obligation is discharged (without being liable

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> for nonperformance) if it is objectively impossible for anyone to perform that obligation. If that defense is applicable, it discharges CertusBank's contractual obligation to make the lump sum payment.
>
> I find that there are exceptions to the bar against golden parachute payments as provided in the Regulations. I further find that a party may seek approval of the FDIC for payment despite any bar. I do not find that any bar operates to discharge the bank's performance or obligation. If the bar is applicable, then it does not discharge the contractual obligation and erase liability, but instead merely makes such obligation unenforceable, recognizing the difference between a contractual provision being void or discharged as opposed to being unenforceable. I find that any bar, if there is one, does not affect CertusBank's liability to the Plaintiff's but that any applicable bar simply renders that provision unenforceable to the extent of any applicable bar. To hold that the contractual obligation to make the lump sum payment is discharged, that would be inconsistent with seeking FDIC permission for payment of the contractual obligation, and that would lead to incongruous results.
>
> I conclude that the foregoing Federal statute and accompanying Regulations do not render the obligation as void or discharged, but instead render it unenforceable to the extent the bar applies. CertusBank (CertusBank, N.A. and CertusHoldings, Inc. are liable under Paragraph 33 of each Employment Agreement, although those payment provisions may be rendered unenforceable by 12 USC §1828(k) and 12 CFR §359.1.

FDIC Mot. at Ex. 8, pp. 6–7 (emphasis added). Unware of any FDIC determination, Plaintiffs proceeded to have the arbitration award enrolled as judgment.

Enrollment and Post-Judgment Procedure

On March 23, 2017, Plaintiffs moved the Court to enroll the arbitration award and requested judgment in the amount awarded by the Arbitrator. Enrollment of an arbitration award is a ministerial act that limits the Court's discretion:

> Upon application of a party, *the court shall confirm* an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140.

S.C. Code Ann. § 15-48-120 (emphasis added). Thus, only an exception to the statutory mandate requiring confirmation of an award are those specifically enumerated in South Carolina Code §§

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15-48-130 and 15-48-140 concerning fraud, partiality, *ultra vires* acts, miscalculation, mistake, or other procedural defects. Instead of raising a statutory objection to the arbitration award, on March 28, 2017, CertusBank moved to stay the entry of judgment, arguing FDIC *might* seek to disallow the award. As CertusBank explains in its pending motion, the March 28 motion "argued that the entry of judgment ordering the payment of severance payments in this case was premature and should be stayed pending final determination by the FDIC as to whether CertusBank can legally pay the severance amounts pursuant to 12 U.S.C. § 1828(k)." CertusBank Mot., 2.

On March 29, 2017, the Court entered a Form 4 Order granting Plaintiffs' motion to enroll the arbitration award as judgment.[2] CertusBank did not move the Court to alter or amend that judgment, nor did it notice appeal.

On April 13, 2017, CertusBank moved for a protective order that would allow it to file FDIC determination letters with the Court. As CertusBank's pending motion explains, its counsel was "informed on April 11, 2017 that the FDIC had issued written Determination Letters" but that CertusBank "did not actually have copies of the Determination Letters and did not know the content of those Determination Letters." CertusBank Mot., 3. Plaintiffs opposed the motion via written memorandum and during a May 25, 2017 hearing before the Honorable William H. Seals, Jr., Circuit Court Judge. Judge Seals denied the motion on May 26, 2017, explaining:

> Plaintiffs have an arbitration award that was enrolled by another member of this Court pursuant to South Carolina Code § 15-48-120. While Defendants would offer the FDIC determination letters to challenge that award, they did not ask Judge Gravely to reconsider his March 29 Order, nor have they notice[d] appeal. Thus, there is no reason for the Court to grant a protective order to allow the FDIC letters to be filed.

[2] The docket includes a March 27 Order that appears to deny Plaintiffs' motion. This Order appears to have been entered in error or prematurely and replaced by the March 29 Order enrolling the Judgment.

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See Order Den. Defs.' Mot. Prot. Order, 2 (attached as **Exhibit A**).

On May 23, 2017, FDIC filed its pending motion, seeking to intervene, modify the judgment, and render any CertusBank payment obligation unenforceable. On May 30, 2017, CertusBank filed the present motion seeking to vacate the March 29 judgment.

ARGUMENT

The Court should deny the pending motions and hold that CertusBank is not entitled to post-judgment relief because (1) it has still failed to offer a statutory ground to vacate or modify the arbitration award, (2) there is no "mistake" to correct, (3) the record does not support a newly-discovered-evidence claim, and (4) there is no procedural or jurisdictional defect rendering the judgment void. The Court should also hold FDIC is not entitled to intervene because (1) its request is procedurally flawed and (2) it has not met the substantive requirements for intervention. As to the substance of FDIC's effort to disallow Plaintiffs' severance as golden parachute payments, the Court should hold that (3) ruling on the substance of FDIC's claim denies procedural due process and (4) if FDIC is permitted to intervene, supplemental discovery proceedings are necessary to afford Plaintiffs an opportunity to investigate and challenge FDIC's determination. These points are considered in turn.

I. CertusBank's motion should be denied.

Certus Bank urges the Court to vacate Plaintiffs' judgment pursuant to Rule 60(b)(1), (2), and (4) of the South Carolina Rules of Civil Procedure. See CertusBank Mot., 3. These arguments are considered in turn below, and should be rejected.

However, at the outset, the Court should conclude that CertusBank's reliance on Rule 60(b) is misplaced and procedurally incorrect. Rule 60(b) provides:

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> On motion *and upon such terms as are just*, the court *may* relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); [...]
>
> (4) the judgment is void[.]

Rule 60(b)(1), (2) & (4), SCRCP (emphasis added). Thus, the decision to grant or deny a Rule 60(b) motion is left to the discretion of the court and is disturbed only where the exercise of that discretion turns on an error of law or factual findings that lack evidentiary support. Ware v. Ware, 404 S.C. 1, 10–11, 743 S.E.2d 817, 822 (2013).

Rule 60(b) is not the proper analytical rubric for CertusBank's arguments. Statutes controlling relief from an arbitration award require confirmation of an award absent the exceptions specifically enumerated in South Carolina Code §§ 15-48-130 and 15-48-140 concerning fraud, partiality, *ultra vires* acts, miscalculation, mistake, or other procedural defects. However, "the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award." S.C. Code Ann. § 15-48-130(a). These statutory provisions provide a procedure for review that requires referral back to the arbitrator, not a decision by the court. See id. § 15-48-130(c). Court-ordered modification is only permitted to correct "an evidence miscalculation" or "evident mistake" in the description of the thing awarded, vacate awards concerning matters not submitted to arbitration, or make other superficial corrections. See id. § 15-48-140. "If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award." Id. § 15-48-130(d). These statutory grounds to take exception to an arbitration award are designed to advance the strong state (and federal) policy favoring the resolution of disputes through arbitration. See Simpson v. MSA

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of Myrtle Beach, Inc., 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007); see also Heffner v. Destiny, Inc., 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995) ("The policy of the United States and this State is to favor arbitration of disputes."). CertusBank makes no such argument here. Nor, as Judge Seals' Order aptly points out, did CertusBank move the Court to alter or amend the March 29 judgment within the time allowed by Rule 59(e) or take appeal from that decision.

Thus, to the extent CertusBank seeks Rule 60(b) relies, the Court should either conclude it is procedurally incorrect and CertusBank's sole recourse is a statutory exception under South Carolina's Uniform Arbitration Act—an argument the former bank does not advance here—or, for the reasons that follow, exercise its discretion and decline to grant relief.

A. There is no "mistake" warranting Rule 60 relief.

CertusBank argues the Court mistakenly entered the March 29 Judgment. See CertusBank Mot., 4. The basis for this contention is the Court's March 27 filing appearing to deny Plaintiffs' motion. Plaintiffs presume the March 27 filing constitutes an error, not the March 29 Judgment. This conclusion is supported by three reasons.

First, our state's courts are required to confirm an arbitration award absent statutory grounds to vacate or modify the award. See S.C. Code Ann. § 15-48-120. "South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution, including arbitration." C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." Id. (quoting Cissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). "An award will be vacated only under narrow, limited circumstances, inter alia, when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law." Id. (internal quotation omitted). Thus, if the Court intended to deny Plaintiffs' motion to enroll an arbitration

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award, it was required to offer some reasoning to support the decision to depart from the statutory presumption that the award was valid. The more plausible view is that the March 27 filing was an oversight the Court corrected on March 29 when it enrolled the arbitration award.

Second, either while a Rule 59(e) motion or prior to the expiration of 10 days, a circuit court retains jurisdiction to *sua sponte* reconsider its own order. Levinet v. Sonoco Prod. Co., 339 S.C. 492 493–94, 530 S.E.2d 127, 128 (2000); see also Ness v. Eckerd Corp., 350 S.C. 399, 402–03, 566 S.E.2d 193, 195 (Ct. App. 2002). To the extent the March 27 filing was intended, and not an oversight, the Court was well-within its authority to amend it two days later, on motion of a party or of its own volition.

Finally, CertusBank argues the judgment "was premature and preempted Defendants' constitutional due process rights under the South Carolina Uniform Arbitration Act." CertusBank Mot., 4. The former bank does not say what process was purportedly due. When the Court entered judgment, Plaintiffs' had moved the Court to enroll judgment (March 23) and CertusBank opposed the effort by asking the Court to stay (but failed to argue a statutory exception warranting a stay)—in that order. The Court presumably credited its statutory mandate that it "shall confirm" an award (S.C. Code § 15-48-120) and enrolled judgment. CertusBank was heard; it is not clear what additional process it should have been afforded or how it was denied. Due process does not guarantee a preferred outcome, it merely guarantees notice, an opportunity to be heard in a meaningful way, and judicial review. See Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). Due process does not require a trial-like hearing in every conceivable case. Id.; see also Olds v. City of Goose Creek, 418 S.C. 573, 585, 795 S.E.2d 163, 170 (Ct. App. 2016), reh'g denied (Jan. 20, 2017). CertusBank's was on record with the Court and no aspect of the motion required an in-person hearing. To the extent it sought an opportunity

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to challenge the March 29 judgment, its opportunity to do so was a motion under Rule 59(e) or an appeal to the South Carolina Court of Appeals. The former bank pursued neither option.

After raising the constitutional specter, CertusBank focuses the bulk of its discussion construing the arbitration award. See CertusBank Mot., 4–5 ("...the Arbitrator's decision contemplated that the FDIC would ultimately make a determination as to whether the proposed severance payments were enforceable pursuant to 12 C.F.R. § 359). A quarrel with the decision rendered does not constitute the denial of whatever process was due and CertusBank's Rule 60(b)(1) arguments should be rejected.

B. Assuming they are entitled to any weight, it unclear whether the FDIC determination letters are "newly discovered evidence" under Rule 60(b).

CertusBank asks that the Court void the judgment because after the Court entered judgment "[c]ounsel for Defendants did not learn that the FDIC Determination Letters had been issued" and that pursuant to those letters "the proposed severance payments owed to Plaintiffs [...] are prohibited as golden parachute payments." CertusBank Mot., 5–6. This is not a proper application of Rule 60(b)(2)'s newly discovered evidence doctrine.

Evidence is not "newly discovered" if it is known at trial and in the party's possession. See Hous. Found. v. Smith, 380 S.C. 621, 637, 670 S.E.2d 680, 688 (Ct. App. 2008). When an issue could have been resolved at trial or within 10 days of judgment, it is not newly discovered within the meaning of Rule 60. See id. 637, 670 S.E.2d at 688–89 ("Because the resolution could not have been filed with the trial court before entry of summary judgment or in time to move for a new trial under Rule 59(b), SCRCP, the resolution is the proper subject of a 60(b)(2) motion."). Here, the FDIC's determination letters to CertusBank are dated April 7, 2017. See FDIC Mot. at Exs. 2–4. Judgement was entered on March 29—leaving sufficient time for CertusBank to make a Rule 59

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motion. In its motion, CertusBank claims, "Counsel for Defendants did not learn that the FDIC had issued Determination Letters until April 11, 2017." CertusBank Mot., 5. This assertion is unaccompanied by any sworn statement (or other evidence) to support this conclusion over the notion that CertusBank learned of FDIC's decision on April 7—or possibly sooner. Indeed, CertusBank's March 28, 2017 filing argued this Court should stay entry of judgment because FDIC *might* seek to intervene and disallow the payments.

It is an open question what CertusBank knew and when it knew it such that the Court cannot conclude, as a matter of fact, that this argument could not have been raised in a Rule 59 motion. Having made no such evidentiary showing, and there being evidence (the FDIC letters) suggesting otherwise the Court should decline to grant Rule 60(b)(2) relief or, at a minimum, hold the former bank's request for relief cannot be granted without supplementary discovery proceeding to determine when CertusBank (and its counsel) learned of the FDIC determination.

C. The judgment is not "void" because it is neither procedurally nor jurisdictionally flawed as required by the rule.

CertusBank argues (again) it was denied due process because judgment was entered "prior to the expiration of the time provided for parties to petition the court to vacate or modify an arbitrator's award under South Carolina Code Ann. [§] 15-48-130 or 140[.]" CertusBank Mot., 6–7 (citing Rule 6)(b)(4), SCRCP). Rule 60(b)(4) authorizes a court to grant relief from a judgment that is void. However, the rule's definition of "void" only encompasses judgments from courts that failed to afford due process or lacked jurisdiction. Linda Mc Co. v. Shore, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010). Neither is the case here.

CertusBank's complaint is that it was never afforded a procedural opportunity it has still failed to pursue. The Arbitrator issued his award on March 17, Plaintiffs moved to have it enrolled on March 23, and the Court enrolled the award on March 29. At no point then or since has

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CertusBank filed a motion under statutory provisions it concedes must control any decision vacating the arbitration award. It asks the Court to vacate under Rule 60(b)(4), but to what end? CertusBank still has not made a § 15-48-130 or -140 argument, thus it is unclear what opportunity it was denied. Because there is no dispute stemming from the Arbitrator's jurisdiction or CertusBank opportunity to present the Arbitrator or this Court with a valid statutory argument, Rule 60(b)(4) relied is inappropriate.

CertusBank also argues the judgment is void pursuant to the FDIC's golden parachute provisions. That argument is dealt with below.

II. FDIC's motion should be denied or, if permitted to intervene, Plaintiffs must be afforded an opportunity to discovery and challenge FDIC's determination.

FDIC contends that because it has now issued final agency decision determination letters purporting to bar Plaintiffs' contractual severance payments as prohibited golden parachute payments, it should be permitted to intervene for that purpose. See FDIC Mot., 1–2. FDIC's motion should be denied as procedurally flawed, untimely, and an effort to enforce a determination against Plaintiffs that afforded them no notice, no meaningful chance to be heard, and no opportunity for judicial review. Crediting FDIC's determination here *is* a violation of due process. While the motion to intervene should be denied, if the Court disagrees, Plaintiffs must be afforded an opportunity to test the FDIC's determination through adversarial supplemental proceeding that afford Plaintiffs an opportunity to investigate the determination process, which will ensure this Court's substantive ruling is informed by a complete record. These points are considered in turn.

A. FDIC's motion is procedurally flawed.

FDIC's motion must be denied as procedurally flawed. Rule 24(c), establishing procedure, requires a motion to intervene to "be accompanied by *a pleading* setting forth the claim or defense

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for which intervention is sought." Rule 24(c), SCRCP (emphasis added). "Pleadings" are those expressly defined by the civil rules:

> There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; *a third-party complaint, if a person who was not an original party is summoned under Rule 14*, and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).

Rule 7(a), SCRCP (emphasis added). As suggested by the rule's text, requiring a party to file a pleading affords notice, allows the responding party to plead affirmative defenses, and joins issues for discovery and litigation.

FDIC's motion fails to include a pleading to join issues properly before the Court. Even if the Court wanted to authorize intervention, FDIC has not submitted the procedural vehicle to join its claim, an omission that courts have viewed as problematic. For instance, in GB&S Corp. v. Cty. of Florence, No. 2005-UP-171, 2005 WL 7083837 (S.C. Ct. App. Mar. 9, 2005) (attached as **Exhibit B**), the court rejected efforts by a belated intervenor that never filed a pleading to assert appellate rights of the properly joined party. Strict compliance with Rule 24(c)'s pleading requirement is procedurally fair. Plaintiffs and CertusBank filed pleadings that defined the subsequent arbitration and their litigation choices reflected as much. Unless FDIC files a pleading joining a claim for relief, it cannot be permitted to have its position dictate the substantive rights of the parties. The only means to ensure all parties have an opportunity to join permissive and compulsory claims is to require adherence to Rule 24(c) and Plaintiffs respectfully demand as much and ask the motion be denied on that basis.

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B. FDIC's request fails to satisfy the test for intervention of right or permissive intervention.

FDIC should not be permitted to intervene because it lacks a statutory right or an interest in the property or a claim with a common question to warrant intervention of right or permissive intervention. Rule 24(a) grants a right to intervene upon timely application to a litigant with a statutory right to intervene or "when the applicant claims an interest relating to the property or transaction" an the intervenor's ability to protect his interest is impaired by his absence. Rule 24(a), SCRCP. When there is no statute conferring an unconditional right to intervene, subsection (a)(1) of Rule 24 is inapplicable. South Carolina Tax Com'n v. Union County Treasurer, 8295 S.C. 257, 260, 368 S.E.2d 72, 73–74 (Ct. App. 1988). Thus, a party seeking intervention without a statutory right must "(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties." In re Horry Cty. State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004) (citing Ex Parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993)). Assuming, for the sake of argument, FDIC's regulatory mandate grants it a colorable interest in this litigation, its bid for intervention should fail on timeliness and adequacy grounds.

First, the motion is untimely. A court must consider the following factors when determining whether a motion to intervene is timely:

> the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

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Reichlyn, 310 S.C. at 500, 427 S.E.2d at 664 (quoting Davis v. Jennings, 304 S.C. 502, 504 405 S.E.2d 601, 603 (1991)). Each factor mitigates against intervention and in support of a finding FDIC is untimely. This action was filed on September 9, 2015 and referred to arbitration on January 6, 2016. According to the determination letters, they were not sought until April 21, 2016—more than seven months after CertusBank had notice of this claim. While it is not entirely clear when FDIC knew or should have known about this action, this litigation is effectively over. Even assuming FDIC learned of this action the same day it received CertusBank's application, there is no explanation as to why it took FDIC more than 16 months to make a determination and file a motion to intervene. Indeed, had FDIC made a more timely motion, the parties might have agreed to submit the totality of the dispute to the Arbitrator or FDIC's motion could have been litigated conterminously with the arbitration. Instead, FDIC took one year to formulate its position and another four-plus months to file a motion seeking a "do-over" on the underlying dispute.

Second, there is no need to allow FDIC to intervene where CertusBank is advancing the position it seeks to pursue. "The burden of demonstrating inadequacy of representation is on the applicant." In re Horry Cty. State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004). This decision factor turns on "(1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent." Id. at 508–09, 604 S.E.2d at 726. Here, CertusBank has shown itself eager to make FDIC's argument. Unlike FDIC, CertusBank has joined the defense to a pleading. Moreover, the FDIC's determination letters appear to rest entirely on the one-sided presentation offered to it by CertusBank. See, e.g., FDIC Mot. at Ex. 2, p. 4 ("In determining whether CBSUB could provide the certification required by 12 C.F.R. § 359.4(a)(4),

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the Board and officers of CBSUB *represented* that *they consulted* with the former human resources director of the Bank, reviewed applicable corporate governance records and regulatory correspondence, reviewed financial information regarding Jones' employment by the Company and the Bank, and considered their duties and the activities of their employment." (emphasis added)). Whereas CertusBank has already apparently collected and presented the factual evidence supporting a golden parachute argument (a presentation Plaintiffs must have an opportunity to challenge), there is no reason to allow FDIC to appear and puppet CertusBank's arguments. Accordingly, FDIC's Rule 24(a)(1) argument should be rejected.

FDIC's claim of permissive intervention should also be rejected. Permissive intervention is appropriate upon timely application where the intervenor has a conditional statutory right or when "an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b), SCRCP. While the rule on permissive intervention contemplates agency intervention when a party's claim or defense turns on an agency determination, the court retains discretion and must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Id. The delay and prejudice at issue here are significant. Moreover, permissive intervention is inconsistent with precedent defining the contours of when it is appropriate. As the court of appeals explained in affirming a circuit court's declination to allow the tax commission to intervene in a dispute between a taxpayer and local auditor:

> Like permissive joinder, Rule 24(b) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions. See, TPI Corp. v. Merchandise Mart of South Carolina, Inc., 61 F.R.D. 684 (D.S.C.1974). The typical situation for which the Rule was designed is one where the prospective intervenor might institute or be called upon to defend a separate proceeding that would substantially duplicate the one in question. With this analogy to permissive joinder, it seems clear *the better rule is that permissive intervention should be allowed only where the prospective intervenor has a cause of action or defense it could bring or*

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> *assert*. Viewed in this light, the Commission could not become a party to suit where its claim or defense would be identical to the County Officers in the instant action.

S.C. Tax Comm'n, 295 S.C. at 263–64, 368 S.E.2d at 75–76 (emphasis added). FDIC has no such claim here. Instead, the golden parachute rules contemplate determinations being sought *from* FDIC, not actions brought by FDIC. See, e.g., 12 C.F.R. § 359.6 ("Requests to make excess nondiscriminatory severance plan payments...shall be submitted in writing to the appropriate regional director (DSC)."). Because FDIC has no claim or defense, its position is indistinguishable from the South Carolina Tax Commission agency and it should likewise be excluded from this action.

Finally, FDIC repeatedly claims the Arbitrator "specifically contemplated" FDIC would make a determination here. See FDIC Mot.,12, 14 & 19. Not so. The arbitration award merely observes that the golden parachute issue was not before him, but that an adverse determination *could* excuse CertusBank's obligation to pay had one been made. When the arbitration award issued, no determination apparently had been made. FDIC's suggestion that its own agency review process was foreordained and required by the arbitration award is misplaced. Thus, the Court should deny FDIC's request to intervene here.

C. Plaintiffs have had no opportunity to litigate the substantive claims that FDIC asks the Court to reduce to judgment based on its representation.

The fundamental problem with the substantive relief sought by FDIC is that Plaintiffs were afforded no notice, no opportunity to be heard, and no appellate review with respect to FDIC's determinations. According to the determination letters, all of the facts FDIC relied on in reaching its decision were furnished in CertusBank's application. See, e.g., FDIC Mot. at Ex. 2, p. 4 ("The applications stated that the Senior Executive Officers were substantially responsible for the 'troubled condition' of the Bank and described the following support for that opinion."). Plaintiffs

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had no opportunity to dispute these assertions (which they do). The determination letters also include several conclusions, the origin of which is unclear. For instance, FDIC contends: "Because of the deteriorated condition of the Bank, the Board believed that an immediate change in executive leadership was in the best interests of the Company and the Bank." See FDIC Mot. at Ex. 2, p. 2. Presumably, CertusBank furnished some or all of the information supporting this assertion. Plaintiffs submit the Board's decision to terminate them was ill-informed and reactionary as a result of the pressurized media environment created by Weinger's dealings with the American Banker, but FDIC never invited Plaintiffs to present these facts or argument supporting another conclusion. A determination made on such a record cannot stand.

Procedural due process constrains government deprivations of property unsupported by notice, an opportunity to be heard at a meaningful time and in a meaningful manner, and judicial review. See Mathews v. Eldridge, 424 U.S. 319, 348–49 (1976). Federal law codifies a right to judicial review of agency action. 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."). An agency is required to present a reasoned analysis so a reviewing court can understand the basis of the agency's action. Baltimore Gas and Elec. Co. v. Heintz, 760 F.2d 1408, 1418–19 (4th Cir. 1985) (quoting Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 808 (1973)). "One legal basis for this requirement is the statutory requirement in the Administrative Procedure Act, 5 U.S.C. § 557(c) (1984), that the agency provide 'findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion.'" Id. (quoting Morton v. Ruiz, 415 U.S. 199, 231–34 (1974)). "If the agency fails to fulfil this requirement, then it may be deemed to have acted arbitrarily." Id. The Court cannot credit FDIC's determinations because, by any measure, Plaintiffs have not been

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afforded these minimal procedural protections. Plaintiffs never received notice of CertusBank's applications to FDIC. FDIC never invited Plaintiffs to appear and respond. FDIC never invited Plaintiffs to present evidence or argument on their behalf, and FDIC has never disclosed the underlying record purporting to support its determinations beyond the description set forth in its letters. This Court is in no position to credit that record for the reason explained in Baltimore Gas and Electric Co., namely, the litigants with something to lose never had an occasion to participate in that process.

Indeed, the bizarre posture of FDIC's putative role here finds no support in precedent concerning the golden parachute doctrine. For example, in McCarron v. FDIC, 111 F.3d 1089 (3rd Cir. 1997), FDIC litigated its determination as a party in a suit by an executive against FDIC as receiver for the bank. Among the issues litigated was the question "whether the FDIC communicated clearly and unambiguously to McCarron that his Severance Compensation Agreement was repudiated[,]" whether FDIC was judicially or equitably estopped from disallowing the payment, and whether a golden parachute exception applied. See id. at 1094–98. The record here does not permit consideration of any such arguments. Similarly, in Rohr v. Reliance Bank, 826 F.3d 1046 (8th Cir. 2016), an executive sued FDIC alongside his former bank to challenge the agency's golden parachute determination. The declaratory action allowed the executive to challenge whether FDIC's determination in his case was "arbitrary, capricious, [or] an abuse of discretion." See id. at 1050 (quoting 5 U.S.C. § 706(2)(A)). The Rohr court explained:

> An agency action is arbitrary or capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

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Id. (quoting El Dorado Chemical Co. v. EPA, 763 F.3d 950, 955–56 (8th Cir. 2014)); see also, e.g., Harrison v. Ocean Bank, 614 Fed. Appx. 429, 433–36 (11th Cir. 2015) (former executive's suit against bank and FDIC resolved on a motion for summary judgment). Put differently, the facts before the agency matter. But here, Plaintiffs have been afforded no opportunity to examine or challenge those facts and thus are in no position to say whether FDIC's position reflects the sound exercise of agency discretion or whether the federal agency simply rubberstamped suspect, one-sided claims submitted by a self-interested party seeking to disallow Plaintiffs' payments. As footnote 47 to FDIC's motion concedes, the agency's claim that the employment agreements are "now unenforceable" is subject to the considerable caveat: "Without limiting the remedies available to the Plaintiffs, the Administrative Procedure Act, 5 U.S.C. § 706 et seq. can provide an avenue for review." FDIC Mot., 24 n.47. Respectfully, FDIC's request that the Court credit its determination letters as determinative of anything is a fundamental denial of due process that cannot stand.

D. In the alternative, the Court should authorize discovery on FDIC's determination prior to ruling on the substantive question presented.

The Court cannot grant FDIC relief on this record because the factual predicates are undeveloped and unsupported. For instance, the determination letters attached to FDIC's motion are not sworn or verified. There is no testimony establishing the nature of FDIC's investigation, the totality of the evidence it considered, or the identity of the person(s) requesting the determination. See FDIC Mot. At Exs. 2–4. Indeed, in its effort to establish that CertusBank was in "troubled condition", thus implicating the golden parachute rules, FDIC's motion quotes the determination letters to read:

> *The applications stated* that the Senior Executives Officers [the Plaintiffs] were substantially responsible for the "troubled condition" of the Bank [CertusBank] and described the following support for that opinion. The Bank suffered steep financial

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> losses in 2012 and 2013 and was deemed to be in troubled condition by the OCC in early 2014. *The applications also stated* that the Senior Executive Officers were responsible for the Bank's entering into costly long-term leases and purchased expensive furnishings and works of art at the time when the Company [CertusHoldings, Inc.] and the Bank were reporting heavy losses. *The applications stated* that, due to the decisions of the Senior Executive Officers to encumber the Bank with the exorbitant costs associated with the leases and other non-income producing assets, the Bank was forced to enter into a voluntary liquidation of its banking operation. ...

FDIC Mot., 3 (emphasis added, brackets and ellipses original). The "applications" that formed the factual predicate for FDIC's conclusions are *CertusBank's* applications to the FDIC seeking disallowance of the payments. See FDIC Mot. at Exs. 2-4, p.1 ("The FDIC received the applications dated on April 21, 2016, you filed on behalf of CBSUB, Inc. ..."). In other words, FDIC's conclusions credit the entity seeking to avoid payment with identifying facts to support that conclusion. This is unjust, particularly where Plaintiffs have never even seen these applications or any other part of the file FDIC amassed in the 16 months the applications were pending with FDIC.

Thus, prior to any ruling on the merits of FDIC's claim, the Court should order supplemental proceedings to allow Plaintiffs an opportunity to conduct discovery on FDIC's determination process.

CONCLUSION

For the reasons explained here, CertusBank and FDIC's respective motions should be denied. If FDIC is permitted to intervene, the Court should refrain for ruling on the substance of its argument and authorize supplemental proceedings allowing Plaintiffs to conduct fact discovery concerning FDIC's purported golden parachute determinations so any substantive ruling on the FDIC's motion is supported by an adequate factual record.

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Respectfully submitted by,

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ATTORNEYS FOR PLAINTIFFS

August 7, 2017
Columbia, South Carolina.

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Jones v. CertusBank, N.A.
C/A No.: 2015CP2305554
Memorandum of law in opposition to Defendants CertusBank, NA and CertusHolding, Inc.'s motion to vacation judgment entered on March 29, 2017 and prospective Defendant - Intervenor FDIC's motion to (1) intervene (2) modify the March 29 judgement (3) render unenforceable any obligation to make payment

EXHIBIT A

(Order Denying Defendants Motion for a Protective Order, May 26, 2017)

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ELECTRONICALLY FILED - 2017 May 26 10:43 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-5554 **ORDER DENYING DEFENDANTS MOTION FOR A PROTECTIVE ORDER**

This matter comes before the Court on the motion of Defendants CertusBank, N.A. and CertusHoldings, Inc., now doing business through the successor corporation CBSUB, Inc.

Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb previously moved to enroll an arbitration award in their favor. On March 29, 2017, the Honorable Perry H. Gravely, Circuit Court Judge, granted that motion and entered an Order/Judgement and Form 4 against Defendants and CBSub, Inc. as successor corporation to CertusBank, N.A. The present motion, filed on April 13, 2017, requests a protective order allowing Defendants to file Federal Deposit Insurance Corporation (FDIC) determination letters, which Defendants claim pertain to the Plaintiffs and alleged "prohibited golden parachute payment under applicable federal banking law." Defs.' Mot., 1. Plaintiffs oppose the motion, arguing Defendants have failed to assert one of the specifically enumerated grounds on which an arbitration award can be challenged. *See* Pls.' Mem., 2 (citing S.C. Code. Ann. § 15-48-130 & -140). Plaintiffs argue further that, "even assuming FDIC has made a golden parachute determination or intends to intervene, that intervention should occur in the context of judgment *enforcement*, not enrollment." *Id.* (emphasis original).

On May 24, 2017, the Court held a hearing and heard argument from the parties. At the motions hearing, counsel for the FDIC appeared and alerted the Court to a motion filed by the

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FDIC on May 23, 2017, seeking leave to intervene. The FDIC's motion was not before the Court and will be heard in the ordinary course. However, Plaintiffs indicated they intend to oppose the FDIC's motion and argued, with respect to this motion, there was no reason to grant the protective order unless and until FDIC is permitted to intervene.

Having considered the submissions and arguments of the parties, Defendants' motion for a protective order is **DENIED**. Plaintiffs have an arbitration award that was enrolled by another member of this Court pursuant to South Carolina Code § 15-48-120. While Defendants would offer the FDIC determination letters to challenge that award, they did not ask Judge Gravely to reconsider his March 29 Order, nor have they notice appeal. Thus, there is no reason for the Court to grant a protective order to allow the FDIC letters to be filed.

AND IT IS SO ORDERED.

HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge

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Greenville Common Pleas

Case Caption: Employment And Workforce South Carolina Department Of vs. Thaxton Investment Corp

Case Number: 2015CP2300554

Type: Order/Protective Order

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2017-05-26 10:08:46 page 3 of 3

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Jones v. CertusBank, N.A.
C/A No.: 2015CP2305554
Memorandum of law in opposition to Defendants CertusBank, NA and CertusHolding, Inc.'s motion to vacation judgment entered on March 29, 2017 and prospective Defendant -Intervenor FDIC's motion to (1) intervene (2) modify the March 29 judgement (3) tender unenforceable any obligation to make payment

EXHIBIT B

(unpublished case law - GB&S Corp v. County of Florence)

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2005 WL 7083837
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

GB & S CORPORATION, Respondent,
v.
COUNTY OF FLORENCE, Karl Gene Smith, and HS, Inc., Appellants.

No. 2005–UP–171.
|
Heard Jan. 12, 2005.
|
Decided March 9, 2005.

Appeal from Florence County; Paula H. Thomas, Circuit Court Judge.

Attorneys and Law Firms

Brown W. Johnson, of Florence, for Appellant HS, Inc.

Charlie J. Blake, Jr., of Florence, for Appellants Florence County and Karl Gene Smith.

Kermit S. King, and David C. Shea, both of Columbia, for Respondent GB & S Corporation.

Opinion

PER CURIAM.

*1 The County of Florence through its treasurer, Karl Gene Smith (collectively, the County) sold GB & S Corporation property at a tax sale, after the property's former owner, HS, Inc., became delinquent in taxes owed on the property. GB & S brought this declaratory judgment action seeking to require the County to execute and deliver a tax deed for the property. The County alone defended the matter in pre-trial proceedings, with HS's informal assistance, until the circuit court granted summary judgment to GB & S. HS intervened during the pendency of the County's motion for reconsideration, which was denied. HS—and presumably the County—now appeal the circuit court's grant of summary judgment against the County. We dismiss this appeal, finding: (1) the County abandoned its defense of this action in the circuit court; and (2) HS, which has never filed a pleading, failed to properly raise any of the issues on appeal before the circuit court.

FACTS/PROCEDURAL BACKGROUND

GB & S purchased property in Florence County through a tax sale in October 1996. The property had been subject to the tax sale because its former owner, HS, owed delinquent taxes from the years 1994 and 1995. However, the County later found the tax sale invalid and set it aside.

In June 1998, GB & S brought the present action against the County seeking declaratory judgment that the sale was valid. The action also sought an order requiring that the County execute and deliver to GB & S a tax deed for the property.

The County answered in July 1998. Its sole argument was the tax sale was invalid because the County failed to comply with South Carolina Code section 12–45–410, which requires "[a]ny taxes paid by a delinquent taxpayer to a county treasurer or tax collector must be applied to the oldest chronological delinquency on the property for which payment was intended." S.C.Code Ann. § 12–45–410 (2000) (the statute). Specifically, the County argued it erroneously applied money paid by HS in 1996 to taxes due for the 1995 tax year rather than the older debt from the 1994 tax year, and that its non-compliance with the statute rendered the tax sale invalid. Additionally, it admitted paragraph twelve of GB & S's complaint that asserted HS received notice of the levy.

In May 1999, GB & S moved for summary judgment, arguing the tax sale was valid as a matter of law because the undisputed facts indicated that even if the County had properly applied HS's delinquent tax payments pursuant to the statute, a deficiency would have remained. The County responded, arguing its failure to strictly comply with the statute precluded a finding that GB & S was entitled to summary judgment as a matter of law. HS elected not to intervene at this time, opting instead to monitor the litigation and lend assistance to the County.

At the summary judgment hearing in January 2000, only attorneys representing GB & S and the County appeared. The arguments before the able circuit judge were confined to those matters arising from the County's failure to

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strictly comply with section 12–45–410. Although the issue of notice was conceded in the County's answer, a memorandum submitted to the circuit court contained a general challenge to the issue of proper notice. Contrary to the admission in the County's answer, the County furnished an affidavit--prepared by an owner of HS --contending that service on "Donice Majors" was insufficient, for she "has never been an agent or in any way connected with HS, Inc." The County's memorandum conversely referred to Donice Majors as an "agent for HS, Inc." The issue of notice--with the County's conflicting submissions—was not pursued at the hearing and the circuit court addressed only the issue argued at the hearing, that is, the County's failure to strictly comply with section 12–45–410.

*2 The circuit court granted summary judgment to GB & S in March 2000, finding that even if the County had properly applied section 12–45–410, "there would still have been due and owing an amount in excess of $406 for the tax year 1994" and $1,437.61 in taxes for 1995. The court also found that "[a]t no time prior to the tax sale were the property taxes paid in full." The court declared the sale valid and ordered the County to issue a tax deed to GB & S.

The County made a motion to amend in March 2000. Over three years later, HS filed a memorandum in support of the County's motion.

During the pendency of the court's decision on the County's motion for reconsideration, the County informed counsel for HS that it did not wish to continue participating in the litigation and the County "was not particularly interested in seeing this decision overturned." In response, HS made a motion to intervene in April 2000. In an affidavit accompanying the motion, counsel for HS stated, among other things:

> 4. [GB & S's] suit did not include as a party HS, Inc., the former owner of the property and the delinquent taxpayer.
>
> ...
>
> 6. HS, Inc. assisted [the County] in this action to the extent of providing information and an affidavit from the owner of HS, Inc. with the assurance from the [the County] that the interest of HS, Inc. would be protected and the [the County] would vigorously defend the suit.
>
> 7. After the Court issued a summary judgment in favor of [GB & S], counsel for [the County] for the first time informed me that [the County] was not interested in seeing this decision overturned. Therefore, in order to protect its interest, HS, Inc. should be allowed to intervene pursuant to Rule 24(a)(2) since HS, Inc. has an interest in the property and its interest will not be adequately represented by the existing party. In fact, it appears the suit may be a friendly suit between the existing parties.

Judge Casey Manning granted HS's motion to intervene in October 2002.

In June 2003, the circuit court held a hearing on the County's motion for reconsideration, at which counsel for GB & S and HS were present. However, "no representative of, or attorney for, County of Florence appeared" in spite of having received proper notice. The court denied the motion for reconsideration.

HS appealed, and the County, at the behest of HS, executed the notice of appeal.

DISCUSSION

This appeal presents a procedural morass. HS seeks to posture itself as a proper party on appeal by claiming to represent not only its interests but also the interests of the County. We reject the suggestion by counsel for HS at oral argument that he is also counsel of record for the County. During the preliminary stages of the appeal process, GB & S sought dismissal of this appeal. [1] Because the County had not filed an initial brief, this court sought to determine if the County claimed an interest in the appeal. The court was informed that the Appellants had filed a joint initial brief. Counsel for the County—as listed in the caption of this opinion—wrote the following letter to this court's docketing clerk:

> *3 I represent the County of Florence and Karl Gene Smith ... My clients and HS, Inc. have filed a joint Brief, and I did not intend to file a separate brief. Please advise if you need any additional information.

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> Our review of the file further reveals the absence of a motion seeking substitution of counsel. *See* Rule 235, SCACR ("The attorneys ... of the respective parties in the court below shall be deemed the attorneys ... of the same parties in the appellate court until withdrawal is approved"). There is no support for the position that counsel for HS is counsel of record for the County.

We address the Appellants separately.

The County

The record leaves no doubt that the County abandoned its opposition to the grant of summary judgment to GB & S. Following the grant of summary judgment and the filing of its reconsideration motion, the County, through counsel, made it perfectly clear that it was "not interested" in seeking reversal of the circuit court's summary judgment decision. Counsel for the County failed to appear at the hearing on its reconsideration motion. Counsel for the County even failed to appear at oral argument in this court. A party may not abandon its position in the trial court and then resurrect it on appeal. *See State v. Benton*, 338 S.C. 151, 156–57, 526 S.E.2d 228, 231 (2000), *cert. denied* 530 U.S. 1209 (2000) (An issue conceded in the trial court cannot be argued on appeal); *Ex parte McMillan*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (A party cannot acquiesce to an issue at trial and then complain on appeal).

HS

At the outset, HS sought to protect its interest by monitoring the litigation. HS thus elected to allow the County to protect its interest. Only when the County decided to throw the towel in did HS seek to intervene as a party pursuant to Rule 24, SCRCP.[2] HS was granted leave to intervene and responded by filing a "memorandum in support of motion to amend findings and judgment" in support of GB & S's reconsideration motion. The circuit court, at the hearing on the County's reconsideration motion, noted that HS had filed no "pleading" as mandated by Rule 24(c), SCRCP.[3] The circuit court further found:

> HS, Inc.[ ] has filed no pleading and therefore neither has raised nor joined any issue with [GB & S]; and HS, Inc.[ ] has filed no motion for reconsideration; and in the view of this Court, HS, Inc.[ ] has nothing pending before this Court as to which counsel for HS, Inc.[ ] should be permitted to argue or as to which the undersigned needs to render a decision.

We concur with the finding of the circuit court in this regard. We do, however, accept HS's argument that its interest in the underlying property gave it standing to intervene. Yet standing, by itself, does not a lawsuit make, nor does it satisfy all the requirements of intervention. A party must take all proper steps to properly avail itself of the courts of this state. HS has failed to do so and acknowledged at oral argument its noncompliance with Rule 24.

*4 We further reject for two reasons the attempt of HS to borrow the appellate rights of the County. First, an appellant may not preserve an issue for appeal by way of a co-defendant's objection. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). Secondly, the County—having abandoned in the circuit court its right to challenge the grant of summary judgment—has no appellate rights from which to borrow.

This appeal is

APPEAL DISMISSED.

HUFF, KITTREDGE, and BEATTY, JJ., concur.

All Citations

Not Reported in S.E.2d, 2005 WL 7083837

Footnotes

1 Judge Cureton, on behalf of this court, denied the motion of GB & S "to quash HS, Inc.'s notice of appeal," with leave to renew the motion in its brief. GB & S reasserted its motion to "quash" in its brief.

2 HS never sought to be substituted for the County.

3 HS has never filed a pleading in this case.

End of Document

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ELECTRONICALLY FILED - 2017 Aug 07 10:19 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB,	)	civil action number: 2015-CP-23-05554
	)	
Plaintiffs,	)	
v.	)	
	)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,	)	
	)	
Defendants.	)	**FEDERAL DEPOSIT INSURANCE CORPORATION'S MOTION FOR ADMISSION PRO HAC VICE FOR ERIK BRENDON BOND, ESQ.**
	)	
AND	)	
	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
	)	
Prospective Defendant Intervenor.	)	
	)	

FILED-CLERK OF COURT
PAUL B. LANDRUM
2017 MAR -8 P8

YOU WILL PLEASE TAKE NOTICE that Prospective Defendant Intervenor Federal Deposit Insurance Corporation ("FDIC") hereby moves the Court for the admission *pro hac vice* of Erik Brendon Bond, Esq. as counsel for FDIC. FDIC shows the Court that Mr. Bond is not a resident of South Carolina, is not regularly employed in South Carolina, and is not engaged in the practice of law as a professional activity in South Carolina on a regular basis, as shown by the Affidavit of Erik Brendon Bond, Esq. A true and correct copy of the Affidavit of Erik Brendon Bond, Esq. is attached hereto as Exhibit A.

FDIC further shows the Court that Mr. Bond, together with the undersigned counsel, has filed a Verified Application for Admission *Pro Hac Vice* with the Supreme Court of South Carolina pursuant to Rule 404 of the South Carolina Appellate Rules. A true and correct copy of Mr. Bond's Verified Application for Admission *Pro Hac Vice* is attached hereto as Exhibit B.

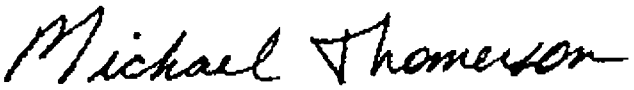
SCANNED COMPUTER

FDIC further shows the Court that it notified Counsel for the Plaintiffs and counsel for the Defendants of this Motion and that neither opposed it.

Therefore, FDIC respectfully requests this Court to grant its motion for Mr. Bond's admission *pro hac vice* in this case.

Respectfully submitted,

THOMERSON FREEMAN & ROGERS P.C.



Michael J. Thomerson (S.C. Bar # 70832)
Post Office Box 473
Greenville, South Carolina 29602
T: (864) 991-8329
F: (864) 991-8330
Michael@tmlawpc.com
Attorney for Prospective Defendant Intervenor
Federal Deposit Insurance Corporation

August 8, 2017
Greenville, South Carolina

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB,	)	civil action number: 2015-CP-23-05554
	)	
Plaintiffs,	)	
v.	)	
	)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,	)	
	)	**AFFIDAVIT OF ERIK BRENDON BOND, ESQ.**
Defendants.	)	
	)	
AND	)	
	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
	)	
Prospective Defendant Intervenor.	)	
	)	

Personally appeared before the undersigned officer duly authorized by law to administer oaths, Erik Brendon Bond, Esq., who first being duly sworn, states as follows:

1. My name is Erik Brendon Bond. I am *sui juris* and competent in all respects to make this affidavit. Unless otherwise indicated herein, the statements contained in this affidavit are based upon my personal knowledge. This affidavit is given for use in the proceedings in the above-styled case and in particular in support of my application to be admitted *pro hac vice* in this case.

2. I am not a resident of South Carolina.

3. I am not regularly employed in South Carolina.

4. I am not engaged in the practice of law or in professional activities in South Carolina on a regular basis.

EXHIBIT A

FURTHER AFFIANT SAYETH NAUGHT.

This 7th day of August, 2017.

Erik Brendon Bond

SWORN TO AND SUBSCRIBED
before me this 7th day of August, 2017.

Brenda P. Cohen

Notary Public

My commission expires: 12-31-2021

BRENDA P. COHEN
NOTARY PUBLIC
REG # 7525568
MY COMMISSION EXPIRES
12/31/2021
COMMONWEALTH OF VIRGINIA

VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE* IN THE STATE OF SOUTH CAROLINA

Milton Jones, Jr., Walter Davis, and Angela Webb Plaintiffs	2015-CP-23-05554 Case No.	Court of Common Pleas, Thirteenth Judicial Circuit Tribunal

vs.

Mailing Address of Tribunal: Courthouse

CertusBank, N.A. and CertusHoldings, Inc.
Defendants

305 E North Street

Greenville, SC 29601

AND

Federal Deposit Insurance Corporation
Prospective Defendant
Intervenor

RECEIVED
JUL 31 2017
S.C. SUPREME COURT
FILED-CLERK (illegible)
PAUL D. BRIDGES
2017 AUG -7 P 12:48

Comes now Erik Brendon Bond, applicant herein, and respectfully represents the following:

1. Applicant resides at:

Street Address

City	Fairfax County	VA State	Zip Code

Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of) Federal Deposit Insurance Corporation, Legal Division, with offices at

3501 Fairfax Drive, Room VS-D-7026
Street Address

Arlington City	Arlington County	VA State	22226 Zip Code
703-562-6461 Primary Telephone	Cell Phone	703-562-6461 Fax Number	erbond@fdic.gov Email Address

3. Applicant has been retained personally or as a member of the above-named law firm by Federal Deposit Insurance Corporation to provide legal representation in connection with the above case now pending before the above-named tribunal of the State of South Carolina.

4. Since April 18 of 2005, applicant has been, and presently is, a member in good standing of the bar of the highest court of the District of Columbia or the State of New York. Attached is a certificate of good

standing dated within the last 90 days from the bar of the highest court of the District of Columbia or the State where applicant regularly practices law.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
State of New York, First Appellate Department	2005
United States District Court for the Southern District of New York	2005
United States District Court for the Eastern District of New York	2005
Ohio Supreme Court	2011 (inactive)
United States District Court for the Southern District of Ohio	2011
United States Court of Appeals for the Sixth Circuit	2011
United States District Court for the District of Columbia	2013
United States District Court for the Northern District of Ohio	2013
United States District Court for the Western District of Washington	2014
United States District Court for the District of Hawaii	2014
United States District Court for the District of Delaware	2014
United States District Court for the Northern District of California	2014
United States District Court for the Southern District of Florida	2015
United States District Court for Western District of North Carolina	2016
United States District Court for the District of Oregon	2016
United States District Court for the District of Rhode Island	2016
United States District Court for the Western District of Virginia	2017

(List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

Supreme Court of Ohio (inactive)

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court date):

N/A

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

N/A

8. Applicant never has had any certificate or privilege to appear and practice before any court or administrative body suspended or revoked, except as provided below (give particulars, e.g., date, court, administrative body, date of suspension and reinstatement):

N/A

9. Local counsel of record associated with applicant in this case is Michael J. Thomerson of the Thomerson Eeeman & Rogers P.C. law firm, which has offices at:

607 Pendleton Street, Suite 202
Street Address

Greenville	Greenville	SC	29601
City	County	State	Zip Code
864-991-8329		864-991-8330	mthomerson@tmlawpc.com
Primary Telephone	Cell Phone	Fax Number	Email Address

70892
South Carolina Bar Number

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

N/A

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above-named tribunal for this case only.

DATED this 27th day of July, 2017

APPLICANT

VERIFICATION

STATE OF Virginia)
COUNTY OF Arlington)

I, Erik Brendon Bond, do hereby swear or affirm under penalty of perjury that I am the applicant in the above-styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true. I understand that I am under a continuing duty to promptly update the information provided in the application until the tribunal has ruled on the motion for admission pro hac vice. Further, if the motion is granted, I understand that I am under a continuing duty to promptly update the information provided in the application as long as I continue to appear pro hac vice in the action or proceeding. Any updated information shall be provided to both the tribunal that granted the motion and to the tribunal in which the action or proceeding may then be pending.

APPLICANT/AFFIANT

Subscribed and sworn to before me this 27th day of July, 20 17

Brenda P. Cohen

Notary Public for the State of Virginia
My Commission Expires: 12-31-2021

BRENDA P. COHEN NOTARY PUBLIC REG # 7525588 MY COMMISSION EXPIRES 12/31/2021 COMMONWEALTH OF VIRGINIA

LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 28th day of July, 20 17

Michael Thomerson
LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by FedEx addressed to: South Carolina Supreme Court Office of Bar Admissions, Supreme Court Building, 1231 Gervais Street, Columbia, South Carolina 29201, accompanied by payment of the $250 filing fee payable to the South Carolina Supreme Court on this

28th day of July, 20 17

Michael Thomerson
APPLICANT/AFFIANT

Appellate Division of the Supreme Court of the State of New York First Judicial Department

I, Susanna Rojas, Clerk of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, certify that

ERIK BRENDON BOND

was duly licensed and admitted to practice as an Attorney and Counsellor at Law in all the courts of the State of New York on April 18, 2005, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counsellors at Law on file in my office, has duly registered with the administrative office of the courts, and according to the records of this court is in good standing as an attorney and counsellor at law.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this court on

July 17, 2017

3457

Clerk of the Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-23-05554

MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB

Plaintiff,

vs.

CERTUSBANK, N.A., AND CERTUS HOLDINGS, INC.,

Defendants

AND

FEDERAL DEPOSIT INSURANCE CORPORATION

Prospective Defendant Intervenor

Defendant.

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

FILED-CLERK OF COURT
PAUL A. BRADY
GREENVILLE, SC
2017 NOV -3 PM 4:42

Plaintiff's Attorney:	Defendant's Attorney:
Richard A. Harpootlian, Bar No. 2725 Christopher P. Kenny 100147 Address: Post Office Box 1090 Columbia, South Carolina 29202 Phone: _____ Fax _____ E-mail: _____ Other: _____	Charles E. McDonald, III, Bar No. 9612 Address: 300 North Main Street, Suite 500 Greenville, South Carolina 29601 Phone: _____ Fax_____ E-mail: _____ Other: Defendant-Intervenor Attorney: William S. F. Freeman, Bar Number 16676 Address: Post Office Box 473 Greenville, South Carolina 29602 phone: (864) 991-8329 fax: (864) 991-8330 email: William@tmlawpc.com

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

W M Freeman 08/08/17

Signature of Attorney for ☒ Defendant-Intervenor Attorney Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25 =

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by SMansel Date Filed: _____

☒ MOTION FEE COLLECTED: $ 25.00 CK#4141 Thomerson Freeman + Rogers PC

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX (803) 734-0394

August 3, 2017

FILED-CLERK OF COURT
PAUL B. [illegible]
CASE [illegible]
2017 AUG 16 PM 3:41

Clerk of Court
Greenville County Courthouse
305 E. North St.
Greenville, SC 29601

In Re: Milton Jones, Jr., et al v. CertusBank, N.A. et al
Case No.: 2015-CP-23-05554

Dear Clerk of Court:

I certify that the Office of Bar Admissions has received a verified application requesting Erik Brendon Bond be admitted *pro hac vice* in the above action. The $250 filing fee for the applicant for the above action has been paid.

Yours truly,

Margaret C. McGee/st

Deputy Clerk for Bar Admissions

MCM/st

ENTERED COMPUTER

IN THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB,)	civil action number: 2015-CP-23-05554
Plaintiffs,)	
v.)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,)	
Defendants.)	**~~PROPOSED~~ ORDER GRANTING FEDERAL DEPOSIT INSURANCE CORPORATION'S MOTION FOR ADMISSION PRO HAC VICE FOR ERIK BRENDON BOND, ESQ.**
AND)	
FEDERAL DEPOSIT INSURANCE CORPORATION,)	
Prospective Defendant Intervenor.)	

FILED-CLERK OF COURT
2017 AUG 16 PM 12:

THIS MATTER comes before the Court on Federal Deposit Insurance Corporation's Motion for Admission *Pro Hac Vice* for Erik Brendon Bond, Esq. filed on August 8, 2017. Federal Deposit Insurance Corporation moved to have Erik Brendon Bond, Esq. admitted *pro hac vice* before this Court for the above-referenced case. The Motion was heard on August 10, 2017.

NOW THEREFORE, the Court hereby orders that Federal Deposit Insurance Corporation's Motion for Admission *Pro Hac Vice* for Erik Brendon Bond, Esq. is granted.

ORDERED this 10th day of August 2017.

By: _____
The Honorable Perry H. Gravely

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2305554

Milton Jones Jr	Walter Davis	CertusBank NA CBSub Inc	CertusHoldings Inc

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Sealed); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	8/17/2017 Date

For Clerk of Court Office Use Only

This judgment was entered on August 16th, 2017, and a copy mailed first class or placed in the appropriate attorney's box on August, 17, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Richard A. Harpootlian Richard A. Harpootlian, P.A. PO Box 1090 Columbia, SC 29202

Charles Edgar McDonald III Ogletree, Deakins, Nash, Smoak & Stewart, P.C. PO Box 2757 Greenville, SC 29602
L. Gray Geddie Jr. Ogletree, Deakins, Nash, Smoak & Stewart, P.C. PO Box 2757 Greenville, SC 29602
William S.F. Freeman Thomerson Freeman & Rogers P.C. PO Box 473 Greenville, SC 29602
Erik Brendon Boyd Federal Deposit Insurance Corporation 3501 Fairax Drive, Room VS-D-7026 Arlington, VA 22226

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **OPINION AND ORDER**

This matter comes before the Court on the motions of Defendants CertusBank, N.A. and CertusHoldings, Inc., now doing business through the successor corporation CBSUB, Inc. (hereafter, "CertusBank"), and Prospective Defendant-Intervenor Federal Deposit Insurance Corporation (FDIC). CertusBank moved the Court to vacate a judgment entered March 29, 2017 (hereafter, the "Judgment"), claiming the Judgment (1) was mistakenly entered by the Court, (2) should be vacated on account of newly discovered evidence, and (3) that the judgment is unenforceable. FDIC's motion seeks (1) leave to intervene, (2) to modify the Judgment and hold it unenforceable pursuant to FDIC determination letters concluding payment of the Judgment is barred by federal law. Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb (collectively, "Plaintiffs") oppose both motions and all relief sought.

Having considered the memoranda submitted by the litigants and the arguments presented during the August 7, 2017 hearing, the Court **GRANTS** the motion of FDIC to intervene and **DENIES** the motions of CertusBank and the FDIC to vacate or modify the Judgment. The Court also finds the issue of unenforceability of the Judgment not properly before it, and therefore **DENIES** the relief requested.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

RELEVANT PROCEDURAL HISTORY

On March 17, 2017, Thomas W. Traxler, Esquire, as Arbitrator, held that CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc. were liable to Plaintiffs under the terms of certain employment agreements. Plaintiffs thereafter moved to enroll the arbitration award. On March 29, 2017, the Court granted that motion and entered an Order/Judgment and Form 4 against the Defendants and CBSUB, Inc. The Clerk of Court caused the denominated March 29 Judgment to be entered against the Defendants and CBSUB, Inc. for $965,000.00. CertusBank did not move the Court to alter or amend the Judgment, nor did it notice an appeal.

Instead, on April 13, 2017, CertusBank moved for a protective order to allow it to file FDIC determination letters, which it claimed prohibited it from making the payment of monies to Plaintiffs. On May 24, 2017, the Honorable William H. Seals, Jr., Circuit Court Judge, heard argument from the parties. By Order dated May 26, 2017, Judge Seals denied CertusBank's motion for a protective order, explaining:

> While Defendants would offer the FDIC determination letter to challenge that [arbitration] award, they did not ask Judge Gravely to reconsider his March 29 Order, nor have they notice[d] appeal. Thus, there is no reason for the Court to grant a protective order to allow the FDIC letters to be filed.

Order Den. Mot. Prot., 2.

On May 23, 2017, the FDIC moved to intervene and asked the Court to modify the Judgment and render it unenforceable. On May 30, 2017, CertusBank moved to vacate the Judgment. On June 28, 2017, the Court granted a joint motion by Plaintiffs and CertusBank requesting the Clerk of Court hold funds in escrow for the satisfaction of the Judgment pending a ruling on the motion to vacate. Pursuant to this Court's Order, CBSUB paid $965,000.00 in escrow to the Clerk of Court on or before July 19, 2017.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having carefully considered the submissions of the litigants and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

I. FDIC intervention.

A non-party can seek to intervene either as a matter of right or with permission from the court. See Rule 24, SCRCP. Upon timely application, permissive intervention is appropriate under two circumstances: "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b), SCRCP. The rule also explains that permissive intervention can be appropriate where a claim turns on a federal agency determination. See id. Thus, the Court finds that permissive intervention under Rule 24(b) is appropriate and FDIC's motion to intervene is granted.

Plaintiffs challenge FDIC's right to intervene under any theory. The Court has considered those arguments, including Plaintiffs' claim that FDIC's motion is untimely, but nevertheless finds permissive intervention appropriate. "In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b), SCRCP. The Court has weighed these considerations here and finds no prejudice in considering FDIC's arguments in support of vacating the Judgment alongside CertusBank's motion. As explained below, the Court rejects FDIC's arguments in support of vacating the Judgment, but allows permissive intervention for anticipated supplemental proceedings.

II. Rule 60 Relief.

CertusBank and FDIC ask the Court to vacate or modify the Judgment. Rule 60(a) authorizes relief from a judgment or order to correct clerical mistakes or oversights. Rule 60(a), SCRCP. Rule 60(b) authorizes a court to relieve a party from a final judgment or order, in relevant

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

part, because of mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence; or where the judgment is void. Rule 60(b)(1), (2) & (4), SCRCP. The decision to grant relief under Rule 60(b) is a matter of discretion not to be disturbed unless the circuit court's decision turns on an error of law or factual finding without evidentiary support. Ware v. Ware, 404 S.C. 1, 10–11, 743 S.E.2d 817, 822 (2013). The Court declines to grant relief from the Judgment to either CertusBank or FDIC because neither movant meets the requirements for relief under Rule 60.

Citing subsections (a) and (b)(1), movants claim the Judgment is the product of a clerical mistake or the result of mistake, inadvertence, surprise, or excusable neglect. CertusBank also cites subsections (b)(2) and (b)(4), which authorize relief on account of newly discovered evidence or a void judgment. None of these arguments warrant vacating or modifying the Judgment because movants' theories turn on the same claim: that determination letters filed by FDIC undermine its finality and efficacy. As Judge Seals explained in his Order of May 26, 2017, authorizing CertusBank to file the determination letters would be a futile act because the Judgment became final after it was enrolled on March 29, 2017 and CertusBank failed to move the Court to reconsider its order or notice an appeal.

The same reasoning applies here. Based on movants' submissions, CertusBank "filed its applications with the FDIC on or about April 21, 2016 seeking a determination of whether the severance payments owed to Plaintiffs ... constitute prohibited golden parachute payments under applicable federal banking law." Defs.' Mot. Prot. Order, 1. FDIC's determination letters issued on April 7, 2017. See FDIC Mot. at Exs. 2–4. Thus, FDIC had almost a year to make a determination or seek intervention before the Judgment became final. Likewise, CertusBank had sufficient time to move the Court to reconsider its Order entering Judgment or take appeal of that decision. The Judgment became final upon expiration of time in which to take either action.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

CertusBank and FDIC argue that the March 29 Order does not reflect the decision reached by the Arbitrator and pursuant to Rule 60 should be vacated or modified to reflect the Arbitrator's determination. CertusBank and FDIC assert that the Arbitrator only determined that CertusBank contractually owed the severance payments to Plaintiffs pursuant to their Employment Agreements but made no determination on whether CertusBank could lawfully pay the severance under the FDIC golden parachute rules as that question was not before the Arbitrator. Plaintiffs argue the various Rule 60 subsections cited by the movants are not applicable here. The Court agrees. The Court finds that subsections (a) and (b)(1), concerning clerical error or mistake do not apply as the Judgment is not the product of error or a mistake. Generally, an arbitration award is conclusive and courts will refuse to review the merits save for very limited circumstances. C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). Absent a statutory exception, a circuit court is required to confirm an arbitration award and reduce it to judgment. See S.C. Code Ann. § 15-48-120; see also id. §§ 15-48-130 & -140 (defining grounds to challenge an award). Here, CertusBank and FDIC did not allege, much less show, any statutory exception warranting a departure from the Court's mandate to confirm the arbitration award and the Court enrolled the Judgment pursuant to its statutory duty under § 15-48-120. Accordingly, the Court finds there has been no clerical error or mistake concerning entry of the Judgment.

Plaintiffs also argue Rule 60(b)(2)'s newly discovered evidence provision is inapplicable here. The Court agrees. Evidence is not "newly discovered" if it is known at trial or can be resolved within 10 days of judgment. See Se. Hous. Found. v. Smith, 380 S.C. 621, 637, 670 S.E.2d 680, 688–89 (Ct. App. 2008). For reasons explained, movants had ample time to raise these issues prior to entry of Judgment.

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Plaintiffs argue the judgment is not "void" as contemplated by Rule 60(b)(4), because the rule is limited to circumstances where it is necessary to grant relief because the afflicted party has not been afforded due process or the court lacked jurisdiction. The Court agrees. See Linda Mc Co. v. Shore, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010). While CertusBank claims a due process violation, the Court declines to find one here as CertusBank has not pointed to any such defect in the arbitration proceeding or proceedings before this Court concerning entry of Judgment.

Having considered all grounds for relief under Rule 60, the Court finds CertusBank and FDIC's claims for relief are factually and legally unsupported and thus denies both motions seeking to vacate or modify the Judgment.

III. Determination letters and enforceability of the Judgment.

The Court denies FDIC's request to issue an order finding that CertusBank's obligation to make the proposed severance payments is unenforceable on account of the FDIC determination letters because that issue is not before the Court. As explained, the Judgment is valid and all motions to vacate or modify have been denied. The Court has authorized FDIC intervention to participate in supplemental proceedings where they may raise arguments that payment of severance to Plaintiffs is prohibited and cannot be made based on the FDIC determination letters. The money being held by the Clerk of Court in escrow shall remain in escrow pending final resolution of this action.

With respect to the determination letters, FDIC characterizes them not as "evidence" but rather "a ruling of the FDIC," that justifies modifying the Judgment. This concession appears to reinforce the Court's finding that the letters are not newly discovered "evidence" that justifies vacating the Judgment. To the extent the letters constitute a ruling by FDIC, the Court notes that they do not appear to be signed by the Deputy Director of FDIC who purportedly has authority to

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issue such a determination. Nevertheless, these issues, along with any other arguments in support of or opposition to recognizing the determination letters, do not, and cannot undermine the Judgment.

In short, both FDIC and CertusBank argue payment of monies by CBSUB in satisfaction of the Judgment is prohibited, but the Court has not made a determination of validity, binding effect, or enforceability of the FDIC determination letters. The issue is not properly before the Court, therefore, the relief requested is **DENIED** without prejudice. The money being held by the Clerk of Court in escrow shall remain in escrow until any supplemental proceedings or appeals have been resolved.

CONCLUSION

In summary, FDIC's motion to intervene is **GRANTED**, CertusBank and FDIC's motions to vacate and modify the March 29, 2017 Judgment is **DENIED**, and all motions seeking to give effect to FDIC's determination letters are **DENIED** without prejudice.

IT IS SO ORDERED.

_____
Perry H. Gravely
Circuit Court Judge, Greeneville County

January ____, 2018
Greenville, South Carolina.

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Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Set Aside Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-01-10 14:35:12 page 8 of 8

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Recipients

William Freeman - Notification transmitted on 01-11-2018 12:49:11 PM.

Charles McDonald - Notification transmitted on 01-11-2018 12:49:11 PM.

Richard Harpootlian - Notification transmitted on 01-11-2018 12:49:11 PM.

L. Geddie - Notification transmitted on 01-11-2018 12:49:11 PM.

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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP2305554

Official File Stamp:	01-11-2018 12:48:58 AM
Court:	CIRCUIT COURT
	Common Pleas
	Greenville
Case Caption:	Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al
Document(s) Submitted:	Order/Set Aside Judgment-Intervent Granted; Set Aside Denied Order/Set Aside Judgment
Filed by or on behalf of:	Perry H. Gravely

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

William S.F. Freeman for Federal Deposit Insurance Corporation

Richard A. Harpootlian for Milton Jones, Jr, Walter Davis, Angela Webb

L. Gray Geddie, Jr. for CertusBank NA, CertusHoldings Inc

Charles Edgar McDonald, III for CertusBank NA, CertusHoldings Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CBSub Inc

Erik Brendon Boyd

Case Party Info Protected

ELECTRONICALLY FILED - 2018 Jan 29 10:45 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

IN THE STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB, Plaintiffs, v. CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC., Defendants. AND FEDERAL DEPOSIT INSURANCE CORPORATION, Prospective Defendant Intervenor.	civil action number: 2015-CP-23-05554 **CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2017 I served upon all parties in the above-styled action the following:

1. File-Stamped copy of the Motion and Order Information Form and Coversheet;
2. File-Stamped copy of the Notice of Appearance; and
3. File-Stamped copy of the Federal Deposit Insurance Corporation's Notice of Motions and Motions to: (1) Intervene; (2) Modify the March 29 Judgment to Conform it with the Terms of the Arbitrator's Award or in the Alternative to Set Aside the March 29 Judgment; and (3) Render Unenforceable Any Obligation to Make Payment of the Proposed Severance Payments.

by delivering the same via hand-delivery to the following attorneys:

Charles E. McDonald, III, Esq.
Attorneys for Defendants CertusBank, N.A. and CertusHoldings, Inc.

Richard A. Harpootlian, Esq.
Attorneys for Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb

[SIGNATURE ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2018 Jan 29 10:45 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

This 26th day of May, 2017.

William S.F. Freeman
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Greenville, South Carolina

ELECTRONICALLY FILED - 2018 Jan 29 10:46 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
MILTON JONES, JR., WALTER DAVIS, AND ANGELA WEBB,	)	civil action number: 2015-CP-23-05554
	)	
Plaintiffs,	)	
v.	)	
	)	
CERTUSBANK, N.A. AND CERTUSHOLDINGS, INC.,	)	
	)	
Defendants.	)	**CERTIFICATE OF SERVICE**
	)	
AND	)	
	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
	)	
Prospective Defendant Intervenor.	)	
	)	

I hereby certify that on August 9, 2017 I served upon all parties in the above-styled action the following:

1. File-Stamped copy of the Motion and Order Information Form and Coversheet;
2. File-Stamped copy of Federal Deposit Insurance Corporation's Motion for Admission *Pro Hac Vice* for Erik Brendon Bond, Esq.;
3. Copy of the Proposed Order Granting Federal Deposit Insurance Corporation's Motion for Admission *Pro Hac Vice* for Erik Brendon Bond, Esq.; and
4. Copy of this Certificate of Service for same.

by delivering the same via email and U.S. Mail to the following:

Charles E. McDonald, III, Esq.
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Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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gray.geddie@ogletreedeakins.com
Attorneys for Defendants CertusBank, N.A. and CertusHoldings, Inc.

Richard A. Harpootlian, Esq.
Christopher P. Kenney, Esq.
Richard A. Harpootlian, PA
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rah@harpootlianlaw.com
cpk@harpootlianlaw.com
Attorneys for Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb

[SIGNATURE ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2018 Jan 29 10:46 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

This 9th day of August, 2017.

Lyndsay McNeely
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Greenville, South Carolina

ELECTRONICALLY FILED - 2018 Jan 29 11:36 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

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Recipients

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Charles McDonald - Notification transmitted on 01-29-2018 10:46:09 AM.

Richard Harpootlian - Notification transmitted on 01-29-2018 10:46:09 AM.

L. Geddie - Notification transmitted on 01-29-2018 10:46:09 AM.

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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP2305554

Official File Stamp:	01-29-2018 10:45:42 AM
Court:	CIRCUIT COURT
	Common Pleas
	Greenville
Case Caption:	Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al
Document(s) Submitted:	Service/Certificate Of Service
Filed by or on behalf of:	William S.F. Freeman

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

William S.F. Freeman for Federal Deposit Insurance Corporation

Richard A. Harpootlian for Milton Jones, Jr., Walter Davis, Angela Webb

L. Gray Geddie, Jr. for CertusBank NA, CertusHoldings Inc

Charles Edgar McDonald, III for CertusBank NA, CertusHoldings Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CBSub Inc

Erik Brendon Boyd

Case Party Info Protected

ELECTRONICALLY FILED - 2018 Jan 29 11:36 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Certificate of Electronic Notification

Recipients

William Freeman - Notification transmitted on 01-29-2018 10:46:58 AM.

Charles McDonald - Notification transmitted on 01-29-2018 10:46:58 AM.

Richard Harpootlian - Notification transmitted on 01-29-2018 10:46:58 AM.

L. Geddie - Notification transmitted on 01-29-2018 10:46:58 AM.

ELECTRONICALLY FILED - 2018 Jan 29 11:36 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING (NEF)

A filing has been submitted to the court RE: 2015CP2305554

Official File Stamp:	01-29-2018 10:46:29 AM
Court:	CIRCUIT COURT
	Common Pleas
	Greenville
Case Caption:	Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al
Document(s) Submitted:	Service/Certificate Of Service
Filed by or on behalf of:	William S.F. Freeman

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

William S.F. Freeman for Federal Deposit Insurance Corporation

Richard A. Harpootlian for Milton Jones, Jr, Walter Davis, Angela Webb

L. Gray Geddie, Jr. for CertusBank NA, CertusHoldings Inc

Charles Edgar McDonald, III for CertusBank NA, CertusHoldings Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CBSub Inc

Erik Brendon Boyd

Case Party Info Protected

ELECTRONICALLY FILED - 2018 Feb 09 12:25 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis and Angela Webb, Plaintiffs, v. CertusBank, N.A. and CertusHoldings, Inc., Defendants	C/A NO: 2015-CP-23-05554

NOTICE OF SUPPLEMENTAL PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Defendants, CertusBank, N.A. and CertusHoldings, Inc. (collectively "CertusBank"), file this Notice of Supplemental Proceedings in the United States District Court for the District of South Carolina, showing as follows:

1. On January 11, 2018, the Court entered an Order denying the Motions of CertusBank and the FDIC to vacate the judgment in this Action (which confirmed the arbitrator's ruling that CertusBank is contractually obligated to pay severance to the plaintiffs in the collective amount of $965,000, which the Clerk of Court is currently holding in escrow).

2. However, the Court's January 11, 2018 Order acknowledged that the Court "ha[d] not made a determination of validity, binding effect, or enforceability of the FDIC determination letters." Accordingly, the Court made clear that "[t]he money being held by the Clerk of Court in escrow shall remain in escrow until any supplemental proceedings or appeals have been resolved."

3. On February 9, 2018, CertusBank has filed a Complaint in the United States District Court for the District of South Carolina to commence supplemental proceedings to determine the "validity, binding effect, or enforceability of the FDIC determination letters,"

ELECTRONICALLY FILED - 2018 Feb 09 12:25 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

which prohibit CertusBank from making the severance payments under the FDIC's golden parachute regulations.

4. CertusBank has commenced supplemental proceedings in Federal Court under the Administrative Procedure Act because (a) the supplemental proceedings require judicial review of the FDIC's final agency actions (the determination letters), (b) the Administrative Procedure Act "sets forth the full extent of judicial authority to review executive agency action for procedural correctness," *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009), and (c) the FDIC is a necessary party defendant in the supplemental proceedings and is not subject to suit in this Court.

5. Pursuant to the Court's January 11, 2018 Order, the $965,000 being held by the Clerk of Court in escrow shall remain in escrow until the resolution of (a) the supplemental proceedings that CertusBank has commenced in Federal Court, and (b) the appeal of this Action.

6. CertusBank will notify the Court upon resolution of the supplemental proceedings in Federal Court.

Dated this 9th day of February, 2018.

Respectfully submitted,

s/Charles E. McDonald, III
Charles E. McDonald III (SC Bar No. 9612)
E. Gray Geddie (SC Bar No. 2397)
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
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864.242.0037
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Attorneys for Defendants

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Recipients	
William Freeman	- Notification transmitted on 02-09-2018 12:25:21 PM.
Charles McDonald	- Notification transmitted on 02-09-2018 12:25:21 PM.
Richard Harpootlian	- Notification transmitted on 02-09-2018 12:25:21 PM.
L. Geddie	- Notification transmitted on 02-09-2018 12:25:21 PM.

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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP2305554

Official File Stamp:	02-09-2018 12:25:09 PM
Court:	CIRCUIT COURT Common Pleas Greenville
Case Caption:	Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al
Document(s) Submitted:	Notice/Other
Filed by or on behalf of:	Charles Edgar McDonald, III

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

William S.F. Freeman for Federal Deposit Insurance Corporation

Richard A. Harpootlian for Milton Jones, Jr, Walter Davis, Angela Webb

L. Gray Geddie, Jr. for CertusBank NA, CertusHoldings Inc

Charles Edgar McDonald, III for CertusBank NA, CertusHoldings Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CBSub Inc

Erik Brendon Boyd

Case Party Info Protected

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Charles McDonald - Notification transmitted on 02-09-2018 02:21:44 PM.

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L. Geddie - Notification transmitted on 02-09-2018 02:21:44 PM.

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NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP2305554

Official File Stamp:	02-09-2018 02:21:19 PM
Court:	CIRCUIT COURT
	Common Pleas
	Greenville
Case Caption:	Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al
Document(s) Submitted:	Appeal/Notice of Appeal to Court of Appeals
Filed by or on behalf of:	Charles Edgar McDonald, III

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The following people were served electronically:

William S.F. Freeman for Federal Deposit Insurance Corporation

Richard A. Harpootlian for Milton Jones, Jr, Walter Davis, Angela Webb

L. Gray Geddie, Jr. for CertusBank NA, CertusHoldings Inc

Charles Edgar McDonald, III for CertusBank NA, CertusHoldings Inc

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Erik Brendon Boyd

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb,..... Respondent,

v.

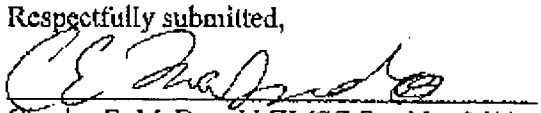
CertusBank, N.A. and CertusHoldings, Inc., ... Appellants.

NOTICE OF APPEAL

CertusBank, N.A. and CertusHoldings, Inc. appeal the Opinion and Order of the Honorable Perry H. Gravely dated January 11, 2018 denying Appellants' Motion to Vacate Judgment entered on March 29, 2017 and the Execution of Judgment entered on June 19, 2017. Appellants received written notice of the entry of this Opinion and Order on January 11, 2018.

February 9, 2018.

Respectfully submitted,



Charles E. McDonald III (SC Bar No. 9612)
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Attorneys for Appellants

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Other Counsel of Record:

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Richard A. Harpootlian, PA
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Columbia, South Carolina 29202

Attorney for Respondents

Michael S. Thomerson
William S. F. Freeman
Thomerson Freeman & Rogers, P.C.
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Greenville, SC 29601

Attorneys for Proposed Defendant Intervenor Federal Deposit Insurance Corporation

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb,..... Respondent,

v.

CertusBank, N.A. and CertusHoldings, Inc., ... Appellants.

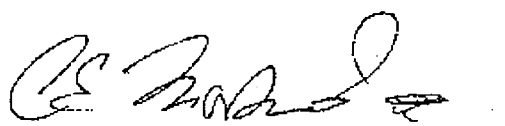
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the following counsel of record by sending a copy of the same via first class mail, properly addressed, postage prepaid at the following address:

Richard A. Harpootlian
Richard A. Harpootlian, PA
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202

Michael S. Thomerson
William S. F. Freeman
Thomerson Freeman & Rogers, P.C.
607 Pendleton Street, Suite 202
Greenville, SC 29601

February 9, 2018.



Charles E. McDonald III

32257339.1

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ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **OPINION AND ORDER**

This matter comes before the Court on the motions of Defendants CertusBank, N.A. and CertusHoldings, Inc., now doing business through the successor corporation CBSUB, Inc. (hereafter, "CertusBank"), and Prospective Defendant-Intervenor Federal Deposit Insurance Corporation (FDIC). CertusBank moved the Court to vacate a judgment entered March 29, 2017 (hereafter, the "Judgment"), claiming the Judgment (1) was mistakenly entered by the Court, (2) should be vacated on account of newly discovered evidence, and (3) that the judgment is unenforceable. FDIC's motion seeks (1) leave to intervene, (2) to modify the Judgment and hold it unenforceable pursuant to FDIC determination letters concluding payment of the Judgment is barred by federal law. Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb (collectively, "Plaintiffs") oppose both motions and all relief sought.

Having considered the memoranda submitted by the litigants and the arguments presented during the August 7, 2017 hearing, the Court **GRANTS** the motion of FDIC to intervene and **DENIES** the motions of CertusBank and the FDIC to vacate or modify the Judgment. The Court also finds the issue of unenforceability of the Judgment not properly before it, and therefore **DENIES** the relief requested.

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
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RELEVANT PROCEDURAL HISTORY

On March 17, 2017, Thomas W. Traxler, Esquire, as Arbitrator, held that CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc. were liable to Plaintiffs under the terms of certain employment agreements. Plaintiffs thereafter moved to enroll the arbitration award. On March 29, 2017, the Court granted that motion and entered an Order/Judgment and Form 4 against the Defendants and CBSUB, Inc. The Clerk of Court caused the denominated March 29 Judgment to be entered against the Defendants and CBSUB, Inc. for $965,000.00. CertusBank did not move the Court to alter or amend the Judgment, nor did it notice an appeal.

Instead, on April 13, 2017, CertusBank moved for a protective order to allow it to file FDIC determination letters, which it claimed prohibited it from making the payment of monies to Plaintiffs. On May 24, 2017, the Honorable William H. Seals, Jr., Circuit Court Judge, heard argument from the parties. By Order dated May 26, 2017, Judge Seals denied CertusBank's motion for a protective order, explaining:

> While Defendants would offer the FDIC determination letter to challenge that [arbitration] award, they did not ask Judge Gravely to reconsider his March 29 Order, nor have they notice[d] appeal. Thus, there is no reason for the Court to grant a protective order to allow the FDIC letters to be filed.

Order Den. Mot. Prot., 2.

On May 23, 2017, the FDIC moved to intervene and asked the Court to modify the Judgment and render it unenforceable. On May 30, 2017, CertusBank moved to vacate the Judgment. On June 28, 2017, the Court granted a joint motion by Plaintiffs and CertusBank requesting the Clerk of Court hold funds in escrow for the satisfaction of the Judgment pending a ruling on the motion to vacate. Pursuant to this Court's Order, CBSUB paid $965,000.00 in escrow to the Clerk of Court on or before July 19, 2017.

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having carefully considered the submissions of the litigants and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

I. FDIC intervention.

A non-party can seek to intervene either as a matter of right or with permission from the court. See Rule 24, SCRCP. Upon timely application, permissive intervention is appropriate under two circumstances: "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b), SCRCP. The rule also explains that permissive intervention can be appropriate where a claim turns on a federal agency determination. See id. Thus, the Court finds that permissive intervention under Rule 24(b) is appropriate and FDIC's motion to intervene is granted.

Plaintiffs challenge FDIC's right to intervene under any theory. The Court has considered those arguments, including Plaintiffs' claim that FDIC's motion is untimely, but nevertheless finds permissive intervention appropriate. "In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b), SCRCP. The Court has weighed these considerations here and finds no prejudice in considering FDIC's arguments in support of vacating the Judgment alongside CertusBank's motion. As explained below, the Court rejects FDIC's arguments in support of vacating the Judgment, but allows permissive intervention for anticipated supplemental proceedings.

II. Rule 60 Relief.

CertusBank and FDIC ask the Court to vacate or modify the Judgment. Rule 60(a) authorizes relief from a judgment or order to correct clerical mistakes or oversights. Rule 60(a), SCRCP. Rule 60(b) authorizes a court to relieve a party from a final judgment or order, in relevant

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
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part, because of mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence; or where the judgment is void. Rule 60(b)(1), (2) & (4), SCRCP. The decision to grant relief under Rule 60(b) is a matter of discretion not to be disturbed unless the circuit court's decision turns on an error of law or factual finding without evidentiary support. Ware v. Ware, 404 S.C. 1, 10–11, 743 S.E.2d 817, 822 (2013). The Court declines to grant relief from the Judgment to either CertusBank or FDIC because neither movant meets the requirements for relief under Rule 60.

Citing subsections (a) and (b)(1), movants claim the Judgment is the product of a clerical mistake or the result of mistake, inadvertence, surprise, or excusable neglect. CertusBank also cites subsections (b)(2) and (b)(4), which authorize relief on account of newly discovered evidence or a void judgment. None of these arguments warrant vacating or modifying the Judgment because movants' theories turn on the same claim: that determination letters filed by FDIC undermine its finality and efficacy. As Judge Seals explained in his Order of May 26, 2017, authorizing CertusBank to file the determination letters would be a futile act because the Judgment became final after it was enrolled on March 29, 2017 and CertusBank failed to move the Court to reconsider its order or notice an appeal.

The same reasoning applies here. Based on movants' submissions, CertusBank "filed its applications with the FDIC on or about April 21, 2016 seeking a determination of whether the severance payments owed to Plaintiffs … constitute prohibited golden parachute payments under applicable federal banking law." Defs.' Mot. Prot. Order, 1. FDIC's determination letters issued on April 7, 2017. See FDIC Mot. at Exs. 2–4. Thus, FDIC had almost a year to make a determination or seek intervention before the Judgment became final. Likewise, CertusBank had sufficient time to move the Court to reconsider its Order entering Judgment or take appeal of that decision. The Judgment became final upon expiration of time in which to take either action.

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CertusBank and FDIC argue that the March 29 Order does not reflect the decision reached by the Arbitrator and pursuant to Rule 60 should be vacated or modified to reflect the Arbitrator's determination. CertusBank and FDIC assert that the Arbitrator only determined that CertusBank contractually owed the severance payments to Plaintiffs pursuant to their Employment Agreements but made no determination on whether CertusBank could lawfully pay the severance under the FDIC golden parachute rules as that question was not before the Arbitrator. Plaintiffs argue the various Rule 60 subsections cited by the movants are not applicable here. The Court agrees. The Court finds that subsections (a) and (b)(1), concerning clerical error or mistake do not apply as the Judgment is not the product of error or a mistake. Generally, an arbitration award is conclusive and courts will refuse to review the merits save for very limited circumstances. C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). Absent a statutory exception, a circuit court is required to confirm an arbitration award and reduce it to judgment. See S.C. Code Ann. § 15-48-120; see also id. §§ 15-48-130 & -140 (defining grounds to challenge an award). Here, CertusBank and FDIC did not allege, much less show, any statutory exception warranting a departure from the Court's mandate to confirm the arbitration award and the Court enrolled the Judgment pursuant to its statutory duty under § 15-48-120. Accordingly, the Court finds there has been no clerical error or mistake concerning entry of the Judgment.

Plaintiffs also argue Rule 60(b)(2)'s newly discovered evidence provision is inapplicable here. The Court agrees. Evidence is not "newly discovered" if it is known at trial or can be resolved within 10 days of judgment. See Se. Hous. Found. v. Smith, 380 S.C. 621, 637, 670 S.E.2d 680, 688–89 (Ct. App. 2008). For reasons explained, movants had ample time to raise these issues prior to entry of Judgment.

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Plaintiffs argue the judgment is not "void" as contemplated by Rule 60(b)(4), because the rule is limited to circumstances where it is necessary to grant relief because the afflicted party has not been afforded due process or the court lacked jurisdiction. The Court agrees. See Linda Mc Co. v. Shore, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010). While CertusBank claims a due process violation, the Court declines to find one here as CertusBank has not pointed to any such defect in the arbitration proceeding or proceedings before this Court concerning entry of Judgment.

Having considered all grounds for relief under Rule 60, the Court finds CertusBank and FDIC's claims for relief are factually and legally unsupported and thus denies both motions seeking to vacate or modify the Judgment.

III. Determination letters and enforceability of the Judgment.

The Court denies FDIC's request to issue an order finding that CertusBank's obligation to make the proposed severance payments is unenforceable on account of the FDIC determination letters because that issue is not before the Court. As explained, the Judgment is valid and all motions to vacate or modify have been denied. The Court has authorized FDIC intervention to participate in supplemental proceedings where they may raise arguments that payment of severance to Plaintiffs is prohibited and cannot be made based on the FDIC determination letters. The money being held by the Clerk of Court in escrow shall remain in escrow pending final resolution of this action.

With respect to the determination letters, FDIC characterizes them not as "evidence" but rather "a ruling of the FDIC," that justifies modifying the Judgment. This concession appears to reinforce the Court's finding that the letters are not newly discovered "evidence" that justifies vacating the Judgment. To the extent the letters constitute a ruling by FDIC, the Court notes that they do not appear to be signed by the Deputy Director of FDIC who purportedly has authority to

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issue such a determination. Nevertheless, these issues, along with any other arguments in support of or opposition to recognizing the determination letters, do not, and cannot undermine the Judgment.

In short, both FDIC and CertusBank argue payment of monies by CBSUB in satisfaction of the Judgment is prohibited, but the Court has not made a determination of validity, binding effect, or enforceability of the FDIC determination letters. The issue is not properly before the Court, therefore, the relief requested is **DENIED** without prejudice. The money being held by the Clerk of Court in escrow shall remain in escrow until any supplemental proceedings or appeals have been resolved.

CONCLUSION

In summary, FDIC's motion to intervene is **GRANTED**, CertusBank and FDIC's motions to vacate and modify the March 29, 2017 Judgment is **DENIED**, and all motions seeking to give effect to FDIC's determination letters are **DENIED** without prejudice.

IT IS SO ORDERED.

_____
Perry H. Gravely
Circuit Court Judge, Greeneville County

January ____, 2018
Greenville, South Carolina.

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Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Set Aside Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-01-10 14:35:12 page 8 of 8

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **EXECUTION OF JUDGMENT**

TO: THE HONORABLE WILL LEWIS, GREENVILLE COUNTY SHERIFF

PLEASE TAKE NOTICE that pursuant to South Carolina Code §§ 15-39-10 et seq., a judgment enrolled in the Greenville County Court of Common Pleas is to be executed against Judgment Creditors CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc. through the seizure of assets sufficient to satisfy the judgment.

Pursuant to South Carolina Code § 15-39-80, as amended, the judgement in this matter is a Form 4 Judgment in a Civil Case (attached to this execution as **Exhibit A**) in favor of and against the following parties in the amounts as follows:

Judgment in Favor of	Judgment Against	Judgment Amount
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

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Property sufficient to satisfy this judgment is being held by CertusBank, N.A. and CertusHoldings, Inc.'s successor corporation: CBSub, Inc. The location of CBSub assets were identified during the January 26, 2016 deposition of a corporate representative of CertusBank, N.A. and CertusHoldings, Inc. The location of CBSUB assets for execution are as follows:

No.	Property Subject to Execution	Location
1.	CBSUB bank account with assets, as of December 31, 2015, exceeding the judgment here.	SunTrust Bank 300 East McBee Avenue Greenville, South Carolina 864-255-7140
2.	Physical assets, i.e., art, collectables, etc., of CBSub.	Hilldrup Moving and Storage 750 Berry Shoals Road Duncan, South Carolina 844-381-8624

Judgement creditors Jones, Davis, and Webb respectfully demand attachment and levy of all assets identified above, along with all other assets of the judgment debtors necessary to fully satisfy the judgments. Please note you are required to memorialize the property, date, and time levied during this execution and to file an appropriate return with the Clerk of Court. See S.C. Code Ann. §§ 15-39-120 & -130. You are also required to give notice of any money received during execution. See id. § 15-39-150.

[signature page follows]

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ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Respectfully Submitted,

s/Richard A. Harpootlian
Richard A. Harpootlian (SC Bar No. 2725)
Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
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Telephone: (803) 252-4848
Facsimile: (803) 252-4810
rah@harpootlianlaw.com
cpk@harpootlianlaw.com
ATTORNEYS FOR PLAINTIFFS

June 19, 2017
Columbia, South Carolina.

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
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ATTESTATION OF THE CLERK

Pursuant to South Carolina Code § 15-39-80, I, _____, of the Greenville County Clerk of Court's Office attest that this Execution has been filed with the Greenville County Court of Common Pleas.

_____
Signature

Sworn to and Subscribed before me
This _____ day of June 2017.

_____
Magistrate or Notary Public for South Carolina

My Commission expires _____.

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Jones v. CertusBank, N.A.
C/A No.: 2015CP2305554
Execution of Judgment

EXHIBIT A

(Form 4 Judgment)

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Mar 29 5:05 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb
PLAINTIFF(S)

CertusBank, NA and CertusHoldings, Inc.
DEFENDANT(S)

Submitted by: Richard A. Harpootlian

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Arbitrator Award Issued

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Mar 29 8:03 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Jun 19 2:16 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Execution/Issued

Attest To:

Paul B Wickensimer, Clerk Of Court Greenville County

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **ORDER GRANTING PLAINTIFFS' MOTION FOR AN ORDER ENTERING JUDGMENT OF THE ARBITRATION AWARDS**

THIS MATTER comes before the Court on Plaintiffs' Motion and pursuant to South Carolina Code § 15-48-120 for an order confirming an arbitration award issued by arbitrator Thomas W. Traxler, Esq. on March 17, 2017 and entry of judgment in Plaintiffs' favor. The arbitration award has been issued and enrolled in this matter,

IT IS THEREFORE ORDERED that the award is confirmed and judgment is hereby entered in favor of the Plaintiffs as follows:

1. Judgment in favor of Plaintiff Milton Jones in the amount of three hundred and forty thousand and 00/100 ($340,000.00) dollars;
2. Judgment in favor of Plaintiff Walter Davis in the amount of Three hundred and twenty-five thousand and 00/100 ($325,000.00) dollars; and
3. Judgment in favor of Plaintiff Angela Webb in the amount of three hundred thousand ($300,000.00) dollars.

The judgments shall be against the named Defendants and CBSub, Inc. as successor corporation to CertusBank, N.A.

[signature page follows]

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

AND IT IS SO ORDERED.

_____
Presiding Circuit Court Judge

_____, 2017

_____, South Carolina.

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb
PLAINTIFF(S)

CertusBank, NA and CertusHoldings, Inc.
DEFENDANT(S)

Submitted by: Richard A. Harpootlian	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Arbitrator Award Issued

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (format order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP230554
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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2018 Feb 09 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554
ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Judgment and Form 4

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

85827

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-05554

RECEIVED
FEB 12 2018
SC Court of Appeals

Milton Jones, Jr., Walter Davis and Angela Webb,..... Respondent,

v.

CertusBank, N.A. and CertusHoldings, Inc., ... Appellants.

NOTICE OF APPEAL

CertusBank, N.A. and CertusHoldings, Inc. appeal the Opinion and Order of the Honorable Perry H. Gravely dated January 11, 2018 denying Appellants' Motion to Vacate Judgment entered on March 29, 2017 and the Execution of Judgment entered on June 19, 2017. Appellants received written notice of the entry of this Opinion and Order on January 11, 2018.

February 9, 2018.

Respectfully submitted,

Charles E. McDonald III (SC Bar No. 9612)
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
The Ogletree Building
300 North Main Street, Suite 500
Greenville, SC 29601
864.271.1300
864.242.0037
charles.mcdonald@ogletreedeakins.com

Attorneys for Appellants

Other Counsel of Record:

Richard A. Harpootlian
Richard A. Harpootlian, PA
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202

Attorney for Respondents

Michael S. Thomerson
William S. F. Freeman
Thomerson Freeman & Rogers, P.C.
607 Pendleton Street, Suite 202
Greenville, SC 29601

Attorneys for Proposed Defendant Intervenor
Federal Deposit Insurance Corporation

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
FEB 12 2018
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No. 2015-CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb,..... Respondent,

v.

CertusBank, N.A. and CertusHoldings, Inc., ... Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the following counsel of record by sending a copy of the same via first class mail, properly addressed, postage prepaid at the following address:

Richard A. Harpootlian
Richard A. Harpootlian, PA
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202

Michael S. Thomerson
William S. F. Freeman
Thomerson Freeman & Rogers, P.C.
607 Pendleton Street, Suite 202
Greenville, SC 29601

February 9, 2018.

Charles E. McDonald III

32257339.1

Ogletree Deakins

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Attorneys at Law
The Ogletree Building
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Facsimile: 864.235.4754
www.ogletreedeakins.com

February 9, 2018

RECEIVED
FEB 12 2018
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court for Court Of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: ***Respondents: Milton Jones Jr., Walter Davis and Angela Webb***
Appellants: CertusBank, N.A. and CertusHoldings, Inc.
Case No.: 2015-CP-23-05554
NOTICE OF APPEAL

Dear Ms. Kitchings:

Enclosed for filing are the original and one (1) copy of the Respondent's Notice of Appeal in the above-referenced matter. Also enclosed is a check in the amount of $100.00 for the filing fee. Please return a stamped "*Filed*" copy to us in the enclosed self-addressed prepaid envelope.

If you have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Charles E. McDonald, III

CEM, III/smc
Enclosures

cc: Richard A. Harpootlian, Esq. w/Enc.
Michael S. Thomerson, Esq. w/Enc.
William S. F. Freeman, Esq. w/Enc.

31327802.1

ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **EXECUTION OF JUDGMENT**

TO: THE HONORABLE WILL LEWIS, GREENVILLE COUNTY SHERIFF

PLEASE TAKE NOTICE that pursuant to South Carolina Code §§ 15-39-10 et seq., a judgment enrolled in the Greenville County Court of Common Pleas is to be executed against Judgment Creditors CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc. through the seizure of assets sufficient to satisfy the judgment.

Pursuant to South Carolina Code § 15-39-80, as amended, the judgement in this matter is a Form 4 Judgment in a Civil Case (attached to this execution as **Exhibit A**) in favor of and against the following parties in the amounts as follows:

Judgment in Favor of	Judgment Against	Judgment Amount
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

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Property sufficient to satisfy this judgment is being held by CertusBank, N.A. and CertusHoldings, Inc.'s successor corporation: CBSub, Inc. The location of CBSub assets were identified during the January 26, 2016 deposition of a corporate representative of CertusBank, N.A. and CertusHoldings, Inc. The location of CBSUB assets for execution are as follows:

No.	Property Subject to Execution	Location
1.	CBSUB bank account with assets, as of December 31, 2015, exceeding the judgment here.	SunTrust Bank 300 East McBee Avenue Greenville, South Carolina 864-255-7140
2.	Physical assets, i.e., art, collectables, etc., of CBSub.	Hilldrup Moving and Storage 750 Berry Shoals Road Duncan, South Carolina 844-381-8624

Judgement creditors Jones, Davis, and Webb respectfully demand attachment and levy of all assets identified above, along with all other assets of the judgment debtors necessary to fully satisfy the judgments. Please note you are required to memorialize the property, date, and time levied during this execution and to file an appropriate return with the Clerk of Court. See S.C. Code Ann. §§ 15-39-120 & -130. You are also required to give notice of any money received during execution. See id. § 15-39-150.

[signature page follows]

ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Respectfully Submitted,

s/Richard A. Harpootlian
Richard A. Harpootlian (SC Bar No. 2725)
Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, SC 29202
Telephone: (803) 252-4848
Facsimile: (803) 252-4810
rah@harpootlianlaw.com
cpk@harpootlianlaw.com
ATTORNEYS FOR PLAINTIFFS

June 19, 2017
Columbia, South Carolina.

ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

ATTESTATION OF THE CLERK

Pursuant to South Carolina Code § 15-39-80, I, _____, of the Greenville County Clerk of Court's Office attest that this Execution has been filed with the Greenville County Court of Common Pleas.

_____
Signature

Sworn to and Subscribed before me
This _____ day of June 2017.

_____
Magistrate or Notary Public for South Carolina

My Commission expires _____.

ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Jones v. CertusBank, N.A.
C/A No.: 2015CP2305554
Execution of Judgment

EXHIBIT A

(Form 4 Judgment)

ELECTRONICALLY FILED - 2017 Mar 29 3:05 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb
PLAINTIFF(S)

CertusBank, NA and CertusHoldings, Inc.
DEFENDANT(S)

Submitted by: Richard A. Harpootlian	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Arbitrator Award Issued

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2017 Mar 29 2:09 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2017 Jun 19 2:15 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Execution/Issued

Attest To:

Paul B Wickensimer, Clerk Of Court Greenville County

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015- CP-23-05554

Milton Jones, Jr., Walter Davis and Angela Webb
PLAINTIFF(S)

CertusBank, NA and CertusHoldings, Inc.
DEFENDANT(S)

Submitted by: Richard A. Harpootlian	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Arbitrator Award Issued

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Milton Jones	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$340,000.00
Walter Davis	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$325,000.00
Angela Webb	CertusBank, N.A., CertusHoldings, Inc., and CBSub, Inc.	$300,000.00

If applicable, describe the property, including tax map information and address, referenced in the order:

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ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **ORDER GRANTING PLAINTIFFS' MOTION FOR AN ORDER ENTERING JUDGMENT OF THE ARBITRATION AWARDS**

THIS MATTER comes before the Court on Plaintiffs' Motion and pursuant to South Carolina Code § 15-48-120 for an order confirming an arbitration award issued by arbitrator Thomas W. Traxler, Esq. on March 17, 2017 and entry of judgment in Plaintiffs' favor. The arbitration award has been issued and enrolled in this matter,

IT IS THEREFORE ORDERED that the award is confirmed and judgment is hereby entered in favor of the Plaintiffs as follows:

1. Judgment in favor of Plaintiff Milton Jones in the amount of three hundred and forty thousand and 00/100 ($340,000.00) dollars;
2. Judgment in favor of Plaintiff Walter Davis in the amount of Three hundred and twenty-five thousand and 00/100 ($325,000.00) dollars; and
3. Judgment in favor of Plaintiff Angela Webb in the amount of three hundred thousand ($300,000.00) dollars.

The judgments shall be against the named Defendants and CBSub, Inc. as successor corporation to CertusBank, N.A.

[signature page follows]

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FEB 12 2018
SC Court of Appeals

AND IT IS SO ORDERED.

_____
Presiding Circuit Court Judge

_____, 2017

_____, South Carolina.

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

ELECTRONICALLY FILED - 2017 Mar 29 5:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Judgment and Form 4

Motion/Order Granted

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2017-03-28 16:46:40 page 5 of 5

⑥

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Milton Jones, Jr., Walter Davis, and Angela Webb, Plaintiffs, v. CertusBank N.A. and CertusHoldings, Inc., Defendants.	C/A NO.: 2015-CP-23-05554 **OPINION AND ORDER**

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FEB 12 2018
SC Court of Appeals

ELECTRONICALLY FILED - 2018 Feb 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

This matter comes before the Court on the motions of Defendants CertusBank, N.A. and CertusHoldings, Inc., now doing business through the successor corporation CBSUB, Inc. (hereafter, "CertusBank"), and Prospective Defendant-Intervenor Federal Deposit Insurance Corporation (FDIC). CertusBank moved the Court to vacate a judgment entered March 29, 2017 (hereafter, the "Judgment"), claiming the Judgment (1) was mistakenly entered by the Court, (2) should be vacated on account of newly discovered evidence, and (3) that the judgment is unenforceable. FDIC's motion seeks (1) leave to intervene, (2) to modify the Judgment and hold it unenforceable pursuant to FDIC determination letters concluding payment of the Judgment is barred by federal law. Plaintiffs Milton Jones, Jr., Walter Davis, and Angela Webb (collectively, "Plaintiffs") oppose both motions and all relief sought.

Having considered the memoranda submitted by the litigants and the arguments presented during the August 7, 2017 hearing, the Court **GRANTS** the motion of FDIC to intervene and **DENIES** the motions of CertusBank and the FDIC to vacate or modify the Judgment. The Court also finds the issue of unenforceability of the Judgment not properly before it, and therefore **DENIES** the relief requested.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

RELEVANT PROCEDURAL HISTORY

On March 17, 2017, Thomas W. Traxler, Esquire, as Arbitrator, held that CertusBank, N.A., CertusHoldings, Inc., and CBSUB, Inc. were liable to Plaintiffs under the terms of certain employment agreements. Plaintiffs thereafter moved to enroll the arbitration award. On March 29, 2017, the Court granted that motion and entered an Order/Judgment and Form 4 against the Defendants and CBSUB, Inc. The Clerk of Court caused the denominated March 29 Judgment to be entered against the Defendants and CBSUB, Inc. for $965,000.00. CertusBank did not move the Court to alter or amend the Judgment, nor did it notice an appeal.

Instead, on April 13, 2017, CertusBank moved for a protective order to allow it to file FDIC determination letters, which it claimed prohibited it from making the payment of monies to Plaintiffs. On May 24, 2017, the Honorable William H. Seals, Jr., Circuit Court Judge, heard argument from the parties. By Order dated May 26, 2017, Judge Seals denied CertusBank's motion for a protective order, explaining:

> While Defendants would offer the FDIC determination letter to challenge that [arbitration] award, they did not ask Judge Gravely to reconsider his March 29 Order, nor have they notice[d] appeal. Thus, there is no reason for the Court to grant a protective order to allow the FDIC letters to be filed.

Order Den. Mot. Prot., 2.

On May 23, 2017, the FDIC moved to intervene and asked the Court to modify the Judgment and render it unenforceable. On May 30, 2017, CertusBank moved to vacate the Judgment. On June 28, 2017, the Court granted a joint motion by Plaintiffs and CertusBank requesting the Clerk of Court hold funds in escrow for the satisfaction of the Judgment pending a ruling on the motion to vacate. Pursuant to this Court's Order, CBSUB paid $965,000.00 in escrow to the Clerk of Court on or before July 19, 2017.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having carefully considered the submissions of the litigants and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

I. FDIC intervention.

A non-party can seek to intervene either as a matter of right or with permission from the court. See Rule 24, SCRCP. Upon timely application, permissive intervention is appropriate under two circumstances: "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b), SCRCP. The rule also explains that permissive intervention can be appropriate where a claim turns on a federal agency determination. See id. Thus, the Court finds that permissive intervention under Rule 24(b) is appropriate and FDIC's motion to intervene is granted.

Plaintiffs challenge FDIC's right to intervene under any theory. The Court has considered those arguments, including Plaintiffs' claim that FDIC's motion is untimely, but nevertheless finds permissive intervention appropriate. "In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b), SCRCP. The Court has weighed these considerations here and finds no prejudice in considering FDIC's arguments in support of vacating the Judgment alongside CertusBank's motion. As explained below, the Court rejects FDIC's arguments in support of vacating the Judgment, but allows permissive intervention for anticipated supplemental proceedings.

II. Rule 60 Relief.

CertusBank and FDIC ask the Court to vacate or modify the Judgment. Rule 60(a) authorizes relief from a judgment or order to correct clerical mistakes or oversights. Rule 60(a), SCRCP. Rule 60(b) authorizes a court to relieve a party from a final judgment or order, in relevant

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

part, because of mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence; or where the judgment is void. Rule 60(b)(1), (2) & (4), SCRCP. The decision to grant relief under Rule 60(b) is a matter of discretion not to be disturbed unless the circuit court's decision turns on an error of law or factual finding without evidentiary support. Ware v. Ware, 404 S.C. 1, 10–11, 743 S.E.2d 817, 822 (2013). The Court declines to grant relief from the Judgment to either CertusBank or FDIC because neither movant meets the requirements for relief under Rule 60.

Citing subsections (a) and (b)(1), movants claim the Judgment is the product of a clerical mistake or the result of mistake, inadvertence, surprise, or excusable neglect. CertusBank also cites subsections (b)(2) and (b)(4), which authorize relief on account of newly discovered evidence or a void judgment. None of these arguments warrant vacating or modifying the Judgment because movants' theories turn on the same claim: that determination letters filed by FDIC undermine its finality and efficacy. As Judge Seals explained in his Order of May 26, 2017, authorizing CertusBank to file the determination letters would be a futile act because the Judgment became final after it was enrolled on March 29, 2017 and CertusBank failed to move the Court to reconsider its order or notice an appeal.

The same reasoning applies here. Based on movants' submissions, CertusBank "filed its applications with the FDIC on or about April 21, 2016 seeking a determination of whether the severance payments owed to Plaintiffs ... constitute prohibited golden parachute payments under applicable federal banking law." Defs.' Mot. Prot. Order, 1. FDIC's determination letters issued on April 7, 2017. See FDIC Mot. at Exs. 2–4. Thus, FDIC had almost a year to make a determination or seek intervention before the Judgment became final. Likewise, CertusBank had sufficient time to move the Court to reconsider its Order entering Judgment or take appeal of that decision. The Judgment became final upon expiration of time in which to take either action.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

CertusBank and FDIC argue that the March 29 Order does not reflect the decision reached by the Arbitrator and pursuant to Rule 60 should be vacated or modified to reflect the Arbitrator's determination. CertusBank and FDIC assert that the Arbitrator only determined that CertusBank contractually owed the severance payments to Plaintiffs pursuant to their Employment Agreements but made no determination on whether CertusBank could lawfully pay the severance under the FDIC golden parachute rules as that question was not before the Arbitrator. Plaintiffs argue the various Rule 60 subsections cited by the movants are not applicable here. The Court agrees. The Court finds that subsections (a) and (b)(1), concerning clerical error or mistake do not apply as the Judgment is not the product of error or a mistake. Generally, an arbitration award is conclusive and courts will refuse to review the merits save for very limited circumstances. C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). Absent a statutory exception, a circuit court is required to confirm an arbitration award and reduce it to judgment. See S.C. Code Ann. § 15-48-120; see also id. §§ 15-48-130 & -140 (defining grounds to challenge an award). Here, CertusBank and FDIC did not allege, much less show, any statutory exception warranting a departure from the Court's mandate to confirm the arbitration award and the Court enrolled the Judgment pursuant to its statutory duty under § 15-48-120. Accordingly, the Court finds there has been no clerical error or mistake concerning entry of the Judgment.

Plaintiffs also argue Rule 60(b)(2)'s newly discovered evidence provision is inapplicable here. The Court agrees. Evidence is not "newly discovered" if it is known at trial or can be resolved within 10 days of judgment. See Se. Hous. Found. v. Smith, 380 S.C. 621, 637, 670 S.E.2d 680, 688–89 (Ct. App. 2008). For reasons explained, movants had ample time to raise these issues prior to entry of Judgment.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Plaintiffs argue the judgment is not "void" as contemplated by Rule 60(b)(4), because the rule is limited to circumstances where it is necessary to grant relief because the afflicted party has not been afforded due process or the court lacked jurisdiction. The Court agrees. See Linda Mc Co. v. Shore, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010). While CertusBank claims a due process violation, the Court declines to find one here as CertusBank has not pointed to any such defect in the arbitration proceeding or proceedings before this Court concerning entry of Judgment.

Having considered all grounds for relief under Rule 60, the Court finds CertusBank and FDIC's claims for relief are factually and legally unsupported and thus denies both motions seeking to vacate or modify the Judgment.

III. Determination letters and enforceability of the Judgment.

The Court denies FDIC's request to issue an order finding that CertusBank's obligation to make the proposed severance payments is unenforceable on account of the FDIC determination letters because that issue is not before the Court. As explained, the Judgment is valid and all motions to vacate or modify have been denied. The Court has authorized FDIC intervention to participate in supplemental proceedings where they may raise arguments that payment of severance to Plaintiffs is prohibited and cannot be made based on the FDIC determination letters. The money being held by the Clerk of Court in escrow shall remain in escrow pending final resolution of this action.

With respect to the determination letters, FDIC characterizes them not as "evidence" but rather "a ruling of the FDIC," that justifies modifying the Judgment. This concession appears to reinforce the Court's finding that the letters are not newly discovered "evidence" that justifies vacating the Judgment. To the extent the letters constitute a ruling by FDIC, the Court notes that they do not appear to be signed by the Deputy Director of FDIC who purportedly has authority to

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

issue such a determination. Nevertheless, these issues, along with any other arguments in support of or opposition to recognizing the determination letters, do not, and cannot undermine the Judgment.

In short, both FDIC and CertusBank argue payment of monies by CBSUB in satisfaction of the Judgment is prohibited, but the Court has not made a determination of validity, binding effect, or enforceability of the FDIC determination letters. The issue is not properly before the Court, therefore, the relief requested is **DENIED** without prejudice. The money being held by the Clerk of Court in escrow shall remain in escrow until any supplemental proceedings or appeals have been resolved.

CONCLUSION

In summary, FDIC's motion to intervene is **GRANTED**, CertusBank and FDIC's motions to vacate and modify the March 29, 2017 Judgment is **DENIED**, and all motions seeking to give effect to FDIC's determination letters are **DENIED** without prejudice.

IT IS SO ORDERED.

_____
Perry H. Gravely
Circuit Court Judge, Greeneville County

January ____, 2018
Greenville, South Carolina.

ELECTRONICALLY FILED - 2018 Jan 11 12:48 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2305554

Greenville Common Pleas

Case Caption: Milton Jones Jr , plaintiff, et al vs. CertusBank NA , defendant, et al

Case Number: 2015CP2305554

Type: Order/Set Aside Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-01-10 14:35:12 page 8 of 8

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 16, 2018

Mr. Charles Edgar McDonald, III, Esquire
PO Box 2757
Greenville SC 29602

Re: Milton Jones v. CertusBank, N.A.
Appellate Case No. 2018-000212

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Milton Jones, Jr., Walter Davis and Angela Webb, Respondents,

v.

CertusBank, N.A. and CertusHoldings, Inc., Appellants. Ex parte: Federal Deposit Insurance Corporation, Intervenor

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Richard A. Harpootlian, Esquire
Michael J. Thomerson, Esquire
William S.F. Freeman, Esquire

Ogletree Deakins

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Attorneys at Law
The Ogletree Building
300 North Main Street, Suite 500
Greenville, SC 29601
Telephone: 864.271.1300
Facsimile: 864.235.8806
www.ogletree.com

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FEB 23 2018
SC Court of Appeals

Charles E. McDonald III
Chuck.McDonald@ogletreedeakins.com

February 16, 2018

Vivian H. Cross
Post Office Box 704
Belton, SC 29627

RE: Milton Jones, Jr., Walter Davis and Angela Webb v. CertusBank, N.A. and CertusHoldings, Inc.
C. A. No.: 2015-CP-23-05554
Request for Transcript

Dear Ms. Cross

We have filed a Notice of Appeal on behalf of the Defendants in the above reference matter. In that regard, we request a copy of the transcript of the non-jury motion hearing held in this matter on August 7, 2017, at 10:30 a.m., before the Honorable Perry H. Gravely in the Greenville County Court of Common Pleas. Please advise as to any particulars regarding remittance of payment for the transcript, and we will promptly comply.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charles E. McDonald III

CEM:sme.
cc: Richard A. Harpootlian, Esq.
Michael S. Thomerson, Esq.
Williams S. F. Freeman, Esq.

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Ogletree Deakins

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February 20, 2018

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Milton Jones, Jr., Walter Davis and Angela Webb v. CertusBank, N.A. and CertusHoldings, Inc.
C. A. No.: 2015-CP-23-05554
Request for Transcript

Dear Ms. Kitchings:

Enclosed please find a copy of correspondence dated February 16, 2018, to the court reporter requesting a copy of the transcript from the hearing held August 7, 2017, at 10:30 a.m., before the Honorable Perry H. Gravely in the Greenville County Court of Common Pleas, in regard to the appeal filed in the above referenced matter. A copy of the enclosed was sent to all counsel of record, and is being provided to the Office of Court administration by copy of this letter.

Sincerely,

Charles E. McDonald III

CEM:snic
cc: Office of Court Administration (w/Enc.)
Richard A. Harpootlian, Esq. (w/Enc.)
Michael S. Thomerson, Esq. (w/Enc.)
Williams S. F. Freeman, Esq. (Enc.)

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Ogletree Deakins

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SMOAK & STEWART, P.C.

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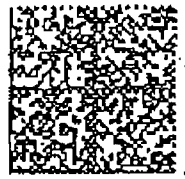
Greenville, SC 29601



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6:18-cv-00849-DCC Date Filed 03/28/18 Entry Number 6 Page 30 of 32

Ogletree Deakins

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Charles E. McDonald III
Chuck.McDonald@ogletreedeakins.com

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MAR 26 2018
SC Court of Appeals

March 23, 2018

Teresa B. Johnson
Post Office Box 2812
Greenville, SC 29602

RE: Milton Jones, Jr., Walter Davis and Angela Webb v. CertusBank, N.A. and CertusHoldings, Inc.
C. A. No.: 2015-CP-23-05554
Request for Transcript

Dear Ms. Johnson:

We have filed a Notice of Appeal on behalf of the Defendants in the above reference matter. In that regard, we request a copy of the transcript of the non-jury motion hearing held in this matter on August 10, 2017, at 9:30 a.m. before the Honorable Perry H. Gravely in the Greenville County Court of Common Pleas. This request was initially sent in error to another court reporter, Vivian Cross, who also worked with Judge Gravely that week. Please advise as to any particulars regarding remittance of payment for the transcript, and we will promptly comply.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Charles E. McDonald III

CEM:smc
cc: Richard A. Harpootlian, Esq.
Michael S. Thomerson, Esq.
Williams S. F. Freeman, Esq.
Jenny Abbott Kitchings, Clerk Of Court
Office of Court Administration

33440764.1

Ogletree Deakins

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6:18-cv-00849-DCC Date Filed 03/28/18 Entry Number 6 Page 32 of 32

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

RECEIVED
APR 02 2018
SC Court of Appeals

Case No. 2018-000212

Milton Jones, Jr., Walter Davis and Angela Webb,
Respondents,

v.

CertusBank, N.A. and CertusHoldings, Inc,
Appellants,

Ex parte:
Federal Deposit Insurance Corporation,
Intervenor.

ACKNOWLEDGMENT OF REMOVAL

I, the undersigned Clerk of Court for the South Carolina Court of Appeals, acknowledge receipt of the Defendant Federal Deposit Insurance Corporation's Notice of Removal (Federal Civil Action Number: 6:18-cv-00849-DCC, pending in the Greenville Division of the United States District Court for the District of South Carolina) in the above-captioned case.

_____
Clerk of Court for the South Carolina Court of Appeals

Dated: _____

26327

THOMERSON FREEMAN & ROGERS P.C.

ATTORNEYS AT LAW

March 29, 2018

RECEIVED
APR 02 2018
SC Court of Appeals

VIA U.S. MAIL

Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Milton Jones, Jr., Walter Davis, and Angela Webb *Respondents* v. CertusBank, N.A. and CertusHoldings, Inc. *Appellants* and *Ex Parte:* Federal Deposit Insurance Corporation, *Intervenor*, appellate case number 2018-000212

Milton Jones, Jr., Walter Davis, and Angela Webb *Plaintiffs* v. CertusBank, N.A. and CertusHoldings, Inc. *Defendants* and Federal Deposit Insurance Corporation, *Intervenor*, case number 6:18-cv-00849-DCC

Dear Clerk of Court:

I hope this finds you doing well. Please find enclosed the following: (1) two filed copies of the Federal Deposit Insurance Corporation's Notice of Removal to the United States District Court for the District of South Carolina; (2) two draft acknowledgements; and (3) a check in the amount of $25.00.

Because the Notice of Removal was filed electronically via the District of South Carolina's website, there is no "original" document.

As I discussed with the Clerk today, in light of the size of the Notice of Removal, I have printed the enclosed Notice of Removal double sided and I have enclosed only one copy of the Notice of Removal for filing (not the original plus six). We discussed that if the Clerk would like additional copies, the Clerk will contact me. Finally, we discussed that the second enclosed Notice of Removal will be file-stamped and returned to me in the oversized enclosed envelope provided for that purpose.

Finally, I would appreciate your returning a signed and file-stamped copy of the acknowledgment to me after you have reviewed same. I have enclosed a second self-addressed stamped envelope for that purpose.

By copy of this letter I hereby serve all counsel with same.

P.O. Box 473 | Greenville, South Carolina 29602 | Telephone: (864) 991-8329 | Facsimile: (864) 991-8330

Thank you for your assistance and attention. If you wish to discuss this or any other matter, please do not hesitate to contact me.

With kind regards,

William S. F. Freeman

Enclosures

cc: via email and U.S. Mail with enclosures

Charles E. McDonald, III, Esq.
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