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Company

8
 9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA, SOUTHERN DIVISION**

11 ***

12 MELISSA SUE ALLEN-GLEASON, an
 individual,

13 Plaintiff,

14 vs.

15 STATE FARM MUTUAL AUTOMOBILE
 INSURANCE COMPANY; DOES I through
 16 X; and ROE BUSINESS ENTITIES I through
 X, inclusive,

17 Defendants.
 18

CASE NO. 2:19-cv-2131-RFB-BNW

**STIPULATED CONFIDENTIALITY
 AGREEMENT AND PROTECTIVE
 ORDER**

19 It appearing to the Court that Plaintiff MELISSA SUE ALLEN-GLEASON (“Plaintiff”)
 20 and Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (“State
 21 Farm”) (collectively, the “Parties”), through their undersigned counsel, hereby submit this
 22 Stipulated Confidentiality Agreement and Protective Order (“Protective Order”) and state as
 23 follows:

24 1. State Farm possesses certain information and documents that contain confidential,
 25 proprietary, or trade secret information that may be subject to discovery in this action, but that
 26 should not be made publicly available.

27 2. The parties therefore request that the Court enter this Protective Order to properly
 28 balance the discovery rights of the Plaintiff with State Farm’s rights to protect its private,

1 confidential, proprietary, or trade secret information.

2 3. All production and disclosure of information designated as CONFIDENTIAL,
3 TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER, by State Farm during this litigation
4 shall be governed by this Order, including, but not limited to, information contained in or derived
5 from documents, deposition testimony, deposition exhibits, trial testimony, computer memory or
6 archives, other written, recorded or graphic matter, and all copies, excerpts, or summaries thereof
7 (collectively, “information”).

8 4. Information subject to this Protective Order shall be designated CONFIDENTIAL,
9 TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER by State Farm by stamping
10 “CONFIDENTIAL,” “TRADE SECRET,” or otherwise indicating confidentiality, trade secret or
11 produced subject to this Protective Order, as appropriate, on the face of a single-page document,
12 on at least the initial page of a multi-page document, and in a prominent location on the exterior of
13 any tangible object. Any electronically stored information may be designated as
14 CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER through a
15 correspondence providing the media and a hard copy or printout shall be treated as protected
16 material of the same designation. Designation may only be made after a good faith review by
17 counsel of record and counsel making a designation shall comply with the standards set forth in
18 Fed. Civ. R. P. 26(g) when designating information as CONFIDENTIAL, TRADE SECRET or
19 SUBJECT TO PROTECTIVE ORDER.

20 5. With respect to deposition testimony and deposition exhibits, State Farm may,
21 either on the record at the deposition or by written notice to counsel for Plaintiff no later than
22 forty-five (45) days after receipt of the transcript of said deposition, designate portions of
23 testimony and/or exhibits from the deposition as CONFIDENTIAL, TRADE SECRET, or
24 SUBJECT TO PROTECTIVE ORDER. All testimony or exhibits, regardless of whether
25 designated as CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER on
26 the record, shall be treated as CONFIDENTIAL, TRADE SECRET, or SUBJECT TO
27 PROTECTIVE ORDER until forty-five (45) days after receipt of the transcript of said deposition
28 by all parties. Certain depositions may, in their entirety, be designated CONFIDENTIAL,

1 TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER prior to being taken because of the
2 anticipated testimony. **Furthermore, any document designated as CONFIDENTIAL, TRADE**
3 **SECRET, or SUBJECT TO PROTECTIVE ORDER shall maintain that designation and the**
4 **protections afforded thereto if introduced or discussed during a deposition.**

5 6. The inadvertent or unintentional disclosure by State Farm of information
6 considered to be CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER
7 shall not be deemed a waiver in whole or in part of State Farm's claim of protection pursuant to
8 this Protective Order, either as to the specific information disclosed or as to any other information
9 relating thereto. Any such inadvertently or unintentionally disclosed information shall be
10 designated as CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER as
11 soon as reasonably practicable after State Farm becomes aware of the erroneous disclosure and
12 shall thereafter be treated as such by all receiving persons absent re-designation pursuant to Court
13 order. Upon receipt of the properly designated documents, the recipient must return or destroy the
14 non-designated set within three (3) days. If the recipient destroys the documents, then the
15 recipient must provide written certification of the destruction to the producer of the information
16 within three (3) days of receipt of the properly designated documents.

17 In addition, the production or disclosure by State Farm or Plaintiff Melissa Sue Allen-
18 Gleason of any attorney-client privileged, attorney work product, or other protected document or
19 information, whether inadvertent or otherwise, shall not be deemed a waiver of the privilege, work
20 product, or other protection or immunity from discovery by State Farm in this or any subsequent
21 state or federal proceeding pursuant to Federal Rule of Evidence 502 regardless of the
22 circumstances of disclosure. If any party becomes aware of the production or disclosure of such
23 protected information by State Farm or Plaintiff Melissa Sue Allen-Gleason, that party shall
24 provide written notice of such production or disclosure within three (3) days after it becomes
25 aware that protected information has been disclosed or produced.

26 7. When information which is CONFIDENTIAL, TRADE SECRET, or SUBJECT
27 TO PROTECTIVE ORDER is presented, quoted or referenced in any deposition, hearing, trial or
28 other proceeding, counsel for the offering party shall make arrangements or, when appropriate,

1 request the Court to make arrangements, to ensure that only persons entitled to such information
2 pursuant to Paragraph 10 are present during such presentation, quotation or reference.

3 8. Subject to the requirements of Paragraph 12 of this Agreement, no person receiving
4 information designated as CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE
5 ORDER shall disclose it or its contents to any person other than those described in Paragraph 10
6 below; no such disclosure shall be made for any purposes other than those specified in that
7 paragraph; and in no event shall such person make any other use of such information. Counsel
8 shall be responsible for obtaining prior written agreement to be bound to the terms of this
9 Agreement from all persons to whom any information so designated is disclosed, and shall be
10 responsible for maintaining a list of all persons to whom any information so designated is
11 disclosed and, for good cause shown, such list shall be available for inspection by counsel for
12 State Farm upon order of the Court; provided, however, that the requirements of this sentence
13 shall not apply to disclosures made pursuant to Paragraphs 10(h) and/or 12 of this Protective
14 Order.

15 9. Except as agreed by State Farm or as otherwise provided herein, including in
16 Paragraphs 10(h) and 12 of this Protective Order, information designated as CONFIDENTIAL,
17 TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER shall (1) only be used in the
18 preparation for trial and/or any appeal of this Action and (2) be maintained in confidence by the
19 party(ies) to whom it is produced and not disclosed by such party(ies) except to persons entitled
20 to access thereto pursuant to Paragraph 10 below. Except as provided in Paragraphs 10(h), (g),
21 (k), and 12 of this Protective Order, information which is CONFIDENTIAL, TRADE SECRET, or
22 SUBJECT TO PROTECTIVE ORDER may not be used by any person receiving such material for
23 any business or competitive purpose or for use in matters other than this lawsuit, including other
24 matters involving State Farm.

25 10. Information designated as CONFIDENTIAL, TRADE SECRET, or SUBJECT TO
26 PROTECTIVE ORDER by State Farm shall be disclosed only to the following persons:

- 27 (a) attorneys actively working on or supervising the work on this case;
- 28 (b) persons regularly employed or associated with the attorneys actively

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- working on this case whose assistance is required by said attorneys in the preparation for trial, at trial, or at other proceedings in this case;
- (c) the parties, including designated representatives and counsel for the entity defendant;
 - (d) expert witnesses and consultants retained in connection with this proceeding, to the extent such disclosure is necessary for preparation, trial or other proceedings in this case and the expert or consultant has signed a written acknowledgement attached as **Exhibit A**;
 - (e) the Court and its employees (“Court Personnel”);
 - (f) stenographic and video reporters who are engaged in proceedings necessarily incident to the conduct of this action;
 - (g) deponents, witnesses, or potential witnesses, who have first-hand knowledge of the document and have signed a written acknowledgment attached as **Exhibit A**;
 - (h) the Nevada Division of Insurance, Nevada Attorney General, law enforcement officers, and/or other government agencies, as permitted or required by applicable state and federal law, including, but not limited to, NRS 686A.283 to NRS 686A.289, inclusively;
 - (i) a jury involved in litigation concerning the claims and any defenses to any claims in this lawsuit;
 - (j) anyone as otherwise required by law;
 - (k) as authorized by State Farm in writing; and
 - (l) other persons by written agreement of the parties when the person has signed a written acknowledgement attached as **Exhibit A**.

11. Subject to Paragraph 12 of this Protective Order, the recipient of any information designated CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER pursuant to this Agreement shall maintain information in a secure and safe area and shall exercise due and proper care with respect to the storage, custody and use of all such information.

1 12. Nothing in this Protective Order disallows State Farm’s maintenance or use of
2 information and documents in or pursuant to: its electronic claim system; the privacy requirements
3 of the Nevada Division of Insurance and other applicable state and federal laws; the records
4 retention requirements of the Nevada Division of Insurance, the Nevada Rules of Professional
5 Conduct, or other applicable state and federal laws; the records retention practices of State Farm;
6 and any written Court Order. Further, nothing in this Protective Order disallows reporting of
7 information by State Farm as permitted and/or required by applicable state and federal law,
8 including NRS 686A.283 to NRS 686A.289, inclusively, or reporting to the Insurance Services
9 Office, Inc.

10 13. Plaintiff may at any time request from State Farm, in writing, the release of
11 information designated as CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE
12 ORDER from the requirements of the terms and provisions of this Protective Order. Upon receipt
13 of such request, counsel for State Farm and counsel for Plaintiff shall attempt to meet and confer.
14 If the parties are unable to agree as to whether the information at issue is properly designated
15 CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER, State Farm may
16 raise the issue of such designation with the Court pursuant to Fed. R. Civ. P. 26. Any information
17 submitted to the Court for review shall be submitted under seal and for in camera review. Pending
18 a ruling from the Court, State Farm’s designation shall control.

19 14. Nothing in this Protective Order shall preclude any party from responding to a
20 validly issued subpoena, provided, however, that the party responding to the subpoena shall
21 provide written notice of such subpoena to the attorney of the party that originally produced the
22 documents within three (3) days of receipt of a subpoena, which seeks production or disclosure of
23 the information which is designated CONFIDENTIAL, TRADE SECRET, or SUBJECT TO
24 PROTECTIVE ORDER. Production or disclosure of information which is designated
25 CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER may not occur
26 until the deadline set forth in a validly issued subpoena, absent agreement of the parties.

27 15. Nothing in this Protective Order shall be construed as a limitation on the use of
28 evidence in a submission to the Court or at trial, subject to such confidentiality provisions as may

1 be ordered by the Court. However, prior to utilizing or filing a document which is designated
2 CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER, the party
3 intending to utilize the document shall comply with LR IA 10-5(b) and *Kamakana v. City and*
4 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), or must provide notice to Counsel for State
5 Farm within a reasonable time, but in any event not fewer than 10 judicial days, to file a motion
6 pursuant to LR IA 10-5(b) and *Kamakana* to show particularized good cause or particularized
7 compelling reasons to file those documents under seal.

8 LR IA 10-5(a) provides:

9 Unless otherwise permitted by statute, rule or prior court order,
10 papers filed with the court under seal must be accompanied by a
11 motion for leave to file those documents under seal. If papers are
12 filed under seal under prior court order, the papers must state on the
13 first page, directly under the case number: “FILED UNDER SEAL
UNDER TO COURT ORDER (ECF No.____.” All papers filed
under seal will remain sealed until the court either denies the motion
to seal or enters an order unsealing them.

14 Pursuant to *Kamakana* and LR IA 10-5(a), any documents designated as
15 “CONFIDENTIAL” and attached to a non-dispositive motion shall be accompanied by a motion
16 showing a particularized good cause for leave to file those documents under seal. Furthermore,
17 any documents designated as “CONFIDENTIAL” and attached to a dispositive motion shall be
18 accompanied by a motion showing a particularized compelling reason for leave to file those
19 documents under seal.

20 16. The obligations of this Protective Order shall survive the termination of this action
21 and continue to bind the parties and their counsel. The Court will have continuing jurisdiction to
22 enforce this Protective Order irrespective of the manner in which this action is terminated.

23 17. Within thirty-five (35) days of the final determination of this action, each person or
24 party who has received information designated CONFIDENTIAL, TRADE SECRET, or
25 SUBJECT TO PROTECTIVE ORDER shall return all documents and information subject to this
26 Protective Order, including any copies or extracts or summaries thereof, or to destroy such
27 information and certify that it has been destroyed, except that the recipient need not destroy or
28 return transcripts of depositions and materials filed with the Court, and any party may retain one

1 archival copy of all pleadings in the action, regardless of whether such pleadings (including
2 appendices) contain or refer to information designated CONFIDENTIAL, TRADE SECRET, or
3 SUBJECT TO PROTECTIVE ORDER; provided, however, that the requirements of this
4 Paragraph are subject to the requirements of Paragraphs 10(h) and 12 of this Protective Order and
5 to the routine business practices of State Farm, and also subject to the regular business practices
6 for maintenance and destruction of client files by the parties' counsel. Within seven (7) days of
7 the final determination of this action, counsel of record who has provided information designated
8 CONFIDENTIAL, TRADE SECRET, or SUBJECT TO PROTECTIVE ORDER to other
9 individuals must inform those individuals that the matter has reached final determination and
10 remind them of the return or destruction obligation. To the extent that this Protective Order
11 requires the destruction or return of documents at the conclusion of this case, this requirement is
12 not intended to require State Farm or its counsel to return or destroy any documents that they are
13 otherwise required by law to maintain.

14 18. This Protective Order may be modified by the Court at any time for good cause
15 shown following notice to all parties and an opportunity for them to be heard. The Court shall
16 retain jurisdiction to modify the terms of this Protective Order.

17 19. Nothing in this Protective Order shall prohibit any party from filing a motion
18 seeking further or different protection from the Court, or from filing a motion with respect to the
19 manner in which the information designated CONFIDENTIAL, TRADE SECRET, or SUBJECT
20 TO PROTECTIVE ORDER shall be treated at trial.

21 20. Subject to the requirements of Paragraph 16 of this Protective Order, State Farm or
22 any party wishing to use any CONFIDENTIAL, TRADE SECRET, or SUBJECT TO
23 PROTECTIVE ORDER information or document in any brief, memorandum, motion, affidavit, or
24 other paper filed with the Court shall file a motion to restrict access pursuant to LR IC 1-1(i) and
25 referencing this Protective Order, and shall request access restriction to limit access to the parties
26 and the court in ECF/PACER.

27 21. This Protective Order may be executed in counterparts, each of which shall
28 constitute one and the same agreement.

1 Dated this 1st day of December, 2020.

Dated this 1st day of December, 2020.

2 LEWIS BRISBOIS BISGAARD & SMITH LLP

PRINCE LAW GROUP

3

4 /s/ Cheryl A. Grames

/s/ Kevin T. Strong

5 Robert W. Freeman, Esq.

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12 *Attorney for Defendant State Farm Mutual*

Attorney for Plaintiff

13 *Automobile Insurance Company*

Melissa Sue Allen-Gleason

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ORDER

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IT IS SO ORDERED

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DATED: 12:59 pm, December 04, 2020

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BRENDA WEKSLER

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UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

**ACKNOWLEDGMENT OF RECEIPT AND
AGREEMENT TO COMPLY WITH
STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER**

The undersigned, _____, hereby acknowledges that he/she has been provided with a copy of the Parties' **Stipulated Confidentiality Agreement and Protective Order** entered in the case no. 2:19-cv-2131-RFB-BNW, captioned *MELISSA SUE ALLEN-GLEASON v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY*, in the United States District Court for the District of Nevada. The undersigned has reviewed said Stipulated Confidentiality Agreement and Protective Order and hereby agrees to be bound by the terms thereof.

DATED this ____ day of _____, 20__.

By: _____
Litigation Participant - Signature

Name (Printed)

Street Address

City State Zip

Occupation / Business