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7 **UNITED STATES DISTRICT COURT**
 8 **FOR THE DISTRICT OF NEVADA**

9 SAFECO INSURANCE COMPANY OF
 10 AMERICA, a foreign corporation,

11 Plaintiff,

12 v.

13 RIP VAN 899, LLC, a Nevada limited
 liability company; ESTATE OF
 14 CHRISTOPHER ERIN BROWN, decedent
 and Nevada citizen; CHERI A. BROWN,
 15 individually and as Special Administrator of
 the ESTATE OF CHRISTOPHER ERIN
 16 BROWN, a Nevada citizen; and
 CHRISTOPHER DAVID KIRK BROWN, a
 17 minor and heir of the ESTATE OF
 CHRISTOPHER ERIN BROWN, a Nevada
 18 Citizen, by and through his paternal
 grandmother and legal guardian, CHERI A.
 19 BROWN, a Nevada Citizen.

20 Defendants.

21 RIP VAN 899, LLC, a Nevada limited
 liability company,

22 Counterclaimant,

23 vs.

24 SAFECO INSURANCE COMPANY OF
 AMERICA, a foreign corporation

25 Counterdefendant.
 26
 27
 28

Case No. 2:23-cv-01417-ART-NJK

~~PROPOSED~~ DISCOVERY PLAN
 AND SCHEDULING ORDER

**SPECIAL SCHEDULING REVIEW
 REQUESTED**

CLYDE & CO US LLP
 7251 West Lake Mead Boulevard, Suite 430
 Las Vegas, Nevada 89128

1 RIP VAN 899, LLC, a Nevada limited
2 liability company,
3 Third-Party Plaintiff,
4 vs.
5 MIKE PAYNE, an individual; LEGACY
6 INSURANCE GROUP, a Nevada Domestic
7 Corporation
8 Third-Party Defendants.

9 Plaintiff and Counterdefendant SAFECO INSURANCE COMPANY OF AMERICA
10 (“Safeco”), Defendant, Counterclaimant, and Third-Party Plaintiff RIP VAN 899, LLC (“Rip
11 Van”), Defendants the ESTATE OF CHRISTOPHER ERIN BROWN, CHERI A. BROWN, and
12 CHRISTOPHER DAVID KIRK BROWN (the “Brown Defendants”), and Third-Party Defendants
13 MIKE PAYNE and LEGACY INSURANCE GROUP (the “Legacy Third-Party Defendants”)
14 (collectively the “parties”), by and through their respective counsel of record pursuant to Federal
15 Rule of Civil Procedure 26(f) and Local Rule 26-1, hereby agree to the following Joint Discovery
16 Plan and Scheduling Order for the Court’s approval as follows:

17 **I. INTRODUCTION**

18 This is an action for a declaration as to whether an insurance policy issued by Safeco
19 provides coverage for claims made against Rip Van by the Brown Defendants in an underlying
20 Nevada State court action in the Eighth Judicial District entitled *Estate of Christopher Erin Brown,*
21 *et al. v. Compassionate Heart Services, LLC, et al*, Case No. A-22-855307-C . Safeco believes that
22 the claims alleged therein against Rip Van are not covered, whereas Rip Van and the Brown
23 Defendants believe that they are.

24 In responding to Safeco’s Complaint, Rip Van asserted a number of joint counterclaims and
25 third-party claims against Safeco and the Legacy Third-Party Defendants. Rip Van also asserted
26 an additional individual counterclaim against Safeco. These Counterclaims and Third-Party Claims
27 arise out of Rip Van’s belief that the Landlord Protection Insurance Policy Safeco and/or the Legacy
28 Defendants issued to Dooley Tu was supposed to have insured Rip Van, rather than or in addition
to Dooley Tu (Rip Van’s sole member).

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1 **II. POSITION OF THE LEGACY THIRD-PARTY DEFENDANTS.**

2 On February 28, 2024, the Legacy Third-Party Defendants filed a Motion to Dismiss Rip
3 Van’s Third-Party Complaint. The Legacy Third-Party Defendants believe Rip Van’s third-party
4 claims against them are wholly premature and unripe, since the Nevada state court action is still
5 pending and no judgment of liability has been entered against RIP Van, and Safeco’s declaratory
6 relief claim in the present action has not yet been adjudicated by this Court. As a result, the Legacy
7 Third-Party Defendants do not believe they are appropriate parties in the present action at this time
8 for all purposes, including discovery.¹ Hence, the Legacy Third-Party Defendants do not believe
9 they should have to incur the costs of discovery to adjudicate professional liability claims, which
10 will include written discovery, depositions, and costly expert witnesses, where such claims are
11 premature and unripe, and such claims may never ripen depending on the outcome of the Nevada
12 state court action and Safeco’s declaratory relief claim in this Court.

13 **III. ADDITIONAL TIME REQUESTED BY THE PARTIES.**

14 Additional time is being requested by the parties due to the amount of motion practice
15 already undertaken, as well as the fact that the final parties, the Legacy Third-Party Defendants,
16 only just appeared, filing a Motion to Dismiss the Third-Party Claims. Counsel for the Legacy
17 Third-Party Defendants and counsel for Rip Van communicated by phone on March 6, 2024
18 concerning the Legacy Third-Party Defendants’ position noted above and have reached an
19 agreement to have the Legacy Third-Party Defendants dismissed without prejudice from the present
20 action. They are now in the process of working out a written agreement among themselves and
21 plan to submit dismissal paperwork to the Court. As a result of their agreement, they believe it
22 makes sense to allow for the Court to allow for additional time for discovery to allow Rip Van to
23 first resolve issues with the Legacy Third-Party Defendants.

24 Rip Van and the Legacy Third-Party Defendants are targeting to complete their written
25 agreement and then to submit dismissal paperwork to this Court by March 20, 2024. As such, the
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28 ¹ Nothing herein serves as a waiver of any party’s rights to seek discovery from the “Legacy Third-Party Defendants” as a non-party pursuant to the Federal Rules of Civil Procedure.

1 parties believe that it makes most sense to impose the standard amount of time for discovery, but
2 that the time begin on March 20, 2024, to account for the issues noted above.

3 **IV. PROPOSED DISCOVERY PLAN**

4 **A. Fed. R. Civ. P. 26(f) Conferences**

5 On Tuesday, March 5, 2024, the parties held the conference to discuss issues required by
6 Federal Rule of Civil Procedure 26(f) and Local Rule 26-1. Lee Gorlin, Esq. of the law firm Clyde
7 & Co US LLP appeared for Safeco. Ngoc Phan, Esq. of the law firm Lin Law Group, P.C. appeared
8 for Rip Van. James Trummell, Esq. of the law firm Valiente Mott, Ltd. appeared for the Brown
9 Defendants. Marc Cwik, Esq. of the law firm Lewis Brisbois Bisgaard & Smith LLP appeared for
10 the Legacy Defendants.

11 **B. Statement of Reasons Why Longer Time Periods Should Apply to This Case:**

12 At the FRCP 26(a)(1) conference, the parties agreed that good cause existed for the
13 calculation of deadlines to begin from the date briefing is set to close on the Legacy Defendants'
14 Motion to Dismiss Third Party Claims, which is March 20, 2024. The parties believe the calculation
15 of deadlines from the date the first defendant answered or otherwise appeared, as prescribed by LR
16 26(e)(1), is unworkable due to the fact that the parties have only all appeared as of February 28,
17 2024. Accordingly, the parties request all deadlines be entered as further detailed below.

18 **C. Discovery Plan:**

19 The parties propose to the Court the following discovery plan:

20 **1. Initial Disclosures:** The Parties will make their disclosures on or before
21 **April 3, 2024**, fourteen (14) days following the opening of discovery and the closing of the briefing
22 on the Legacy Defendants' Motion to Dismiss.

23 **2. Discovery Cut-Off Date:** The discovery cut-off will be **Monday,**
24 **September 16, 2024**. This date is one hundred and eighty days from the day that discovery opens
25 and the closing of the briefing on the Legacy Defendants' Motion to Dismiss. This longer time is
26 requested to ensure that the parties who intend to file briefs related to the Legacy Defendants'
27 Motion can focus their efforts there before beginning discovery in full once the briefing is closed.

28

1 3. **Amending the Pleadings and Adding Parties**: All motions to amend the
2 pleadings or to add parties shall be filed not later than **Tuesday, June 18, 2024**, which is ninety
3 (90) days prior to the discovery cut-off date.

4 4. **Fed. R. Civ. P. 26(a)(2) Disclosures (Experts)**: The parties shall disclose
5 expert witness(es) ninety (90) days prior to the discovery cut-off date, **Tuesday, June 18, 2024**.
6 The parties further agree that disclosure of their respective rebuttal experts will be no later than
7 **Thursday, July 18, 2024**, which is thirty (30) days after the initial disclosure of their experts.

8 5. **Dispositive Motions**: Dispositive motions shall be filed not later than thirty
9 (30) days after the discovery cut-off date, or **Wednesday, October 16, 2024**.

10 6. **Pre-Trial Order**: The joint pretrial order shall be filed not later than thirty
11 (30) days after the dispositive motion deadline, which is **Friday, November 15, 2024**. In the event
12 dispositive motions are filed, the date for filing the joint pretrial order shall be suspended until thirty
13 (30) days after decision of the dispositive motion or further order of the Court.

14 7. **Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures**: These disclosures and any
15 objections to them shall be made in the joint pretrial order. Unless the court orders otherwise, these
16 disclosures must be made at least thirty (30) days before trial.

17 8. **Alternative Dispute Resolution**: The parties certify that they met and
18 conferred about the possibility of using alternative dispute resolution processes and agree that
19 mediation or other early dispute resolution is not appropriate in this case at this time. However, the
20 parties remain open to further consider mediation or other early dispute resolution after some
21 further discovery into the allegations and defenses in this matter.

22 9. **Alternative Form of Case Disposition**: The parties certify that they
23 considered consent to trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73
24 and use of the Short Trial Program (General Order 2013-01). The parties are unable to consent to
25 either at this time and will proceed with the standard trial program as governed by the Federal Rules
26 of Civil Procedure and the Local Rules of the Court.

27 10. **Electronic Evidence**: The parties anticipate that electronic evidence may be
28 used in this case and presented to a jury should the case proceed to trial. The parties have not

1 identified any issues regarding the disclosure, discovery, or use of electronically stored information
2 (“ESI”) at a jury trial. The parties have agreed that electronic discovery should be produced in
3 electronic format searchable by all parties. As this matter progresses towards trial, the parties will
4 consult with appropriate court staff to ensure the seamless ability to present electronic evidence.

5 **D. Stipulations Regarding Limitations or Conditions or Additional Discovery:**

6 **1. Changes or Limitations:** The parties will proceed to engage in discovery
7 as permitted under the Federal Rules of Civil Procedure and the Local Court Rules, including
8 deposition, interrogatories, requests for production of documents, and requests for admission, with
9 no anticipated changes or limitations identified at this time.

10 **2. Other Order Under 26(c) or 16(b) or (c):** None at this time, but the parties
11 reserve the right to submit a stipulated protective order in the event that confidential information
12 becomes subject to a discovery request.

13 **E. Extensions or Modifications of the Discovery Plan and Scheduling Order:**

14 Local Rule 26-3 governs modifications or extension of this Discovery Plan and Scheduling
15 Order. Any stipulation or motion to extend a deadline set forth herein must be made not later than
16 twenty-one (21) days before the expiration of the subject deadline, otherwise any such request made
17 within twenty-one (21) days of the expiration of the subject deadline will be supported by good
18 cause.

19 **F. Claw Back Agreement:**

20 In the event any party (the “Discloser”) produces material or documents without intending
21 to waive a claim of privilege or confidentiality, the Discloser does not waive any claim of privilege
22 or confidentiality if, within a reasonable amount of time after the Discloser actually discovers that
23 such material or documents were produced, the Discloser notifies all other parties (the
24 “Recipients”) of the inadvertent disclosure of privileged or confidential items, identifying the
25 material or documents produced and stating the privilege or confidentiality provision asserted.
26 Mere failure to diligently screen documents before producing them does not waive a claim of
27 privilege or confidentiality.
28

1 If the Discloser asserts that it inadvertently produced a privileged or confidential item in
2 accordance with this Claw Back Agreement, the Recipient(s) must return the specified material or
3 documents and any copies within ten days of the notification. Alternatively, the Recipient(s) must
4 attest that they have permanently destroyed any electronic copies of such specified material or
5 documents and affirm in writing to counsel for the Discloser of such destruction.

6 In the event that the Recipient(s) contends the documents are not subject to privilege or
7 confidentiality as asserted by the Discloser in accordance with the Claw Back Agreement, the
8 Recipient(s) may, following the return and/or destruction described in Paragraph 2 of this Claw
9 Back Agreement, challenge the privilege claim through a Motion to Compel or other pleading with
10 the Court in which the litigation is currently pending. The parties agree that any review of items by
11 the judge shall be an *in camera* review.

12 Should the Recipient(s) not challenge the Discloser's claim of privilege or confidentiality
13 or should the presiding judge determine that the documents are in fact subject to privilege or
14 confidentiality, the documents, or information contained therein or derived therefrom, may not be
15 used in the Litigation or against Discloser in any future litigation or arbitration brought by the
16 Recipient(s). Nothing contained within this Claw Back Agreement shall be deemed to waive any
17 objection that any Party may wish to assert under applicable state or federal law.

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Dismissal papers for the Legacy Third-Party Defendants must be filed by
March 20, 2024. The case management deadlines proposed are adopted as
the scheduling order. IT IS SO ORDERED.

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Dated: March 7, 2024

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Nancy J. Koppe
United States Magistrate Judge

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1 Dated: March 6, 2024

2 CLYDE & CO US LLP

LIN LAW GROUP

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By: /s/ **Michael M. Lin**

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