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First American Title Insurance Company

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITY SERVICE FEDERAL
CREDIT UNION,

Plaintiffs,

v.

FIRST AMERICAN TITLE COMPANY,
a California Corporation;
RINDLESBACH FAMILY, LLC, a Utah
Limited Liability Company,

Defendants.

**CASE NO. CV10-04824 SJO (VBKX)
(Before the Hon. S. James Otero)**

AMENDED PROTECTIVE ORDER

Action Filed: June 29, 2010
Trial Date: October 12, 2011

PROTECTIVE ORDER

Pursuant to the Stipulation between plaintiff Security Service Federal Credit Union (“Plaintiff”) and defendant First American Title Company (“Defendant”), and good cause existing for the issuance of a protective order under Fed. R. Civ. P. 26(c), as Plaintiff and Defendant seek discovery of private, privileged, proprietary and confidential information from each other and from third parties, including, without limitation, escrow and loans files which contain private and confidential third party information.

IT IS ORDERED that the following protections be adopted for purposes of discovery in this action:

1 1. The term “Discovery Materials” all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2. The term “Confidential Materials” means all Discovery Materials which
6 a Producing Party reasonably believes are eligible for protection under Fed. R. Civ. P.
7 26(c). All confidential Materials shall be marked or otherwise designated as
8 “CONFIDENTIAL” prior to their production by a Producing Party.

9 3. The term “Highly Confidential Materials” means all discovery materials
10 which a Producing Party reasonably believes are eligible for additional protection
11 beyond Confidential Materials. Highly Confidential Materials are documents,
12 materials and information, the disclosure of which to another Party or Non-Party
13 would create a substantial risk of serious harm to the Producing Party that could not
14 be avoided by less restrictive means. All Highly Confidential Materials shall be
15 marked or otherwise designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’
16 EYES ONLY” prior to their production by a Producing Party.

17 4. The term “Protected Materials” means materials designated as
18 Confidential Materials or Highly Confidential Materials.

19 5. The term “Producing Party” means the parties to this Stipulation who
20 produce any Confidential Materials or Highly Confidential Materials in this action and
21 any third parties who agree to be bound by the term of this Stipulation. The term
22 "Producing Party" does not include third parties to this lawsuit who have not agreed to
23 be bound by this Stipulation.

24 6. The terms “Qualified Person” includes those parties, attorneys, legal
25 assistants, clerical and secretarial personnel, consultants, expert witnesses,
26 shareholders, and present or former employees of any Receiving Person whose
27 employment assignments entail, in whole or in part, responsibility for this action and
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1 those court personnel and court reporters directly involved in this action (“Court
2 Personnel”) and any outside independent reproduction firm rendering reproduction
3 services in this action.

4 7. The term “Receiving Person” means any person or entity who receives
5 any Confidential Materials or Highly Confidential Materials in connection with this
6 action.

7 8. Confidential Materials are to be disclosed by the Receiving Person only
8 to Qualified Persons. Confidential Materials shall include not only materials
9 designated “CONFIDENTIAL” but also (1) any information copied or extracted from
10 Confidential Materials; (2) any descriptions, oral or written, of the contents of the
11 Confidential Materials; (3) all copies, excerpts, summaries, or compilations of
12 Confidential Materials; and (4) any testimony, conversations, or presentations by
13 Parties or their Counsel that might reveal Confidential Materials. Any use of
14 Confidential Materials at trial shall be governed by a separate agreement or order.
15 Confidential Materials shall be maintained in a manner reasonably designed to avoid
16 any disclosure which is contrary to this Protective Order, and shall not be disclosed to
17 any individuals other than Qualified Persons, except as permitted by this Protective
18 Order or further order of the Court.

19 9. (a) Highly Confidential Materials are to be disclosed only to the
20 Receiving Party’s outside counsel of record in this action, as well as employees of
21 said outside counsel of record to whom it is reasonably necessary to disclose the
22 information for this litigation and who have agreed in writing to be bound by the
23 terms of this Protective Order and to Court Personnel. Except as set forth below, the
24 information in Highly Confidential Material shall not be disclosed in any manner to
25 any other party to the action or any non-party. Highly Confidential Materials shall
26 include not only materials designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY” but also (1) any information copied or extracted from Highly
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1 Confidential Materials; (2) any descriptions, oral or written, of the contents of Highly
2 Confidential Materials; (3) all copies, excerpts, summaries, or compilations of Highly
3 Confidential Materials; and (4) any testimony, conversations, or presentations by
4 Parties or their Counsel that might reveal Highly Confidential Materials. Any use of
5 Highly Confidential Materials at trial shall be governed by a separate agreement or
6 order. Highly Confidential Materials shall be diligently maintained by the person
7 receiving them in a manner to avoid disclosure to any other person, except as
8 permitted by this Protective Order or by further order of the Court.

9 (b) Unless otherwise ordered by the court or agreed to in advance in writing by
10 the Producing Party, Highly Confidential Materials may only be disclosed to house
11 counsel for the Receiving Party where such counsel (1) has no involvement in
12 competitive decision-making, (2) disclosure is reasonably necessary for this litigation,
13 (3) has agreed in writing to be bound by this Protective Order, and (4) as to whom the
14 following procedures have been followed:

15 Prior to any disclosure to house counsel, the Receiving Party must make a
16 written request to the Producing Party that (a) identifies the Highly Confidential
17 Materials that the Receiving Party seeks permission to disclose to the house counsel,
18 (b) sets forth the full name of the person to whom it intends to disclose the materials
19 and the city and state of his or her residence and (c) describes the house
20 counsel's current and reasonably foreseeable future primary job duties and
21 responsibilities in sufficient detail to determine if house counsel is involved, or may
22 become involved, in any competitive decision-making.

23 (c) Unless otherwise ordered by the court or agreed to in writing by the
24 Producing Party, Highly Confidential Materials may only be disclosed to experts for
25 the Receiving Party where (1) the disclosure is reasonably necessary for purposes of
26 this litigation, (2) the expert has agreed in writing to be bound by this Protective
27 Order, and (3) the following procedures have been followed:
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1 Prior to the disclosure to an expert, the Receiving Party must make a written
2 request to the Producing Party that (a) identifies the Highly Confidential Materials that
3 the Receiving Party seeks permission to disclose to the expert, (b) sets forth the full
4 name of the expert and the city and state of his or her primary residence, (c) attaches a
5 copy of the expert's current resume, (d) identifies the expert's current employer(s), (e)
6 identifies each person or entity from whom the expert has received compensation or
7 funding for work in his or her areas of expertise or to whom the expert has provided
8 professional services, including in connection with a litigation, at any time during the
9 preceding five years, and (f) identifies (by name and number of the case, filing date,
10 and location of court) any litigation in connection with which the expert has offered
11 expert testimony, including through a declaration, report, or testimony at a deposition
12 or trial, during the preceding five years.

13 (d) A Receiving Party that makes a request and provides the information
14 specified in the preceding respective paragraphs to the Producing Party must not
15 disclose the subject Highly Confidential Materials to the identified house counsel or
16 expert for at least fourteen (14) days after the delivery of the request. If in that
17 fourteen (14) day period, the Producing Party sends a written objection to the
18 requested disclosure to the Receiving Party, then the Highly Confidential Materials
19 shall not be disclosed to the identified house counsel or expert. Said objection shall
20 set forth in detail the grounds on which it is based.

21 (e) A Receiving Party that receives a timely written objection must meet and
22 confer with the Producing Party (through direct voice to voice dialogue) to try to
23 resolve the matter by agreement within seven days of the written objection. If no
24 agreement is reached, the Receiving Party seeking to make the disclosure to house
25 counsel or the expert may file a motion as provided in Civil Local Rule 7 (and in
26 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the
27 Court to so disclose. Any such motion must describe the circumstances with
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1 specificity, set forth in detail the reasons why disclosure to house counsel or the expert
2 is reasonably necessary, assess the risk of harm that the disclosure would entail, and
3 suggest any additional means that could be used to reduce that risk. In addition, any
4 such motion must be accompanied by a competent declaration describing the parties’
5 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet
6 and confer discussions) and setting forth the reasons advanced by the Producing Party
7 for its refusal to approve the disclosure. The burden of persuasion in any such motion
8 shall be on the Producing Party.

9 (f) The parties agree that the document entitled “Purchase and Assumption
10 Agreement” shall be treated as follows:

11 (i) The redacted version of the Purchase and Assumption Agreement,
12 Bates stamped PLTF 00001-00036, which First American has reviewed, is designated
13 “CONFIDENTIAL” as defined in paragraphs 2 and 8 of this Stipulation.

14 (ii) Security Service opposes the production of the unredacted version of
15 the Purchase and Assumption Agreement on the grounds that it is commercially and
16 competitively sensitive, and that the redacted portions of that document are not
17 “relevant to any party's claim or defense” in this litigation or relevant to the subject
18 matter of this litigation. However, if the unredacted version of the Purchase and
19 Assumption Agreement is produced in this litigation, pursuant to court order
20 stipulation of the parties or otherwise it shall be designated as “HIGHLY
21 CONFIDENTIAL – ATTORNEY EYES ONLY.” it shall be limited to “Attorney’s
22 eyes only” review. In the case of the Purchase and Assumption Agreement this means
23 that information in or concerning the unredacted version of the Purchase and
24 Assumption Agreement shall be disclosed only to the Receiving Party’s outside
25 counsel of record in this action, as well as employees of said outside counsel of record
26 to whom it is reasonably necessary to disclose the information for this litigation and
27 who have agreed in writing to be bound by the terms of this Protective Order and to
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1 Court Personnel.

2 (iii) Any filing of the redacted and unredacted Purchase and Assumption
3 Agreement with the Court shall be subject to paragraph 13, below.

4 (iv) Any use of the redacted and unredacted Purchase and Assumption
5 Agreement at deposition shall be subject to paragraphs 14 and 15, below, except that,
6 with respect to paragraph 14, the unredacted version of the Purchase and Assumption
7 Agreement may only be used at the depositions of the authors and recipients of that
8 document, and may not be used at any other depositions.

9 10. Each Producing Party that designates documents, information or
10 materials as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY” must take care to limit any such designation to specific materials that
12 qualify under the appropriate standards. The Producing Party must designate for
13 protection only those parts of material, documents, items, or oral or written
14 communications that qualify – so that other portions of the material, documents,
15 items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of the Protective Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (e.g., to unnecessarily encumber or retard the case development process or to
20 impose unnecessary expenses and burdens on other parties) expose the Producing
21 Party to sanctions, including monetary sanctions for reasonable attorneys fees and
22 costs incurred by a party bringing a motion as a result of a designation that is clearly
23 unjustified.

24 If it comes to a Producing Party’s attention that information or items that it
25 designated for protection do not qualify for protection, that Producing Party must
26 promptly notify all other Parties that it is withdrawing the mistaken designation.

27 11. Protected Materials may not be used for any purpose other than this
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1 action. Protected Materials may not be used for purposes of any other action or for
2 any business or other purposes. Receiving Persons shall not make copies of Protected
3 Materials, except for purposes of this action.

4 12. Qualified Person(s) not a party to this action shall not receive or use
5 Confidential Materials unless and until each such individual, except for Court
6 Personnel, has agreed in writing to be bound by this Order. Each Receiving Person is
7 responsible for obtaining and maintaining the signed agreements from each Qualified
8 Person who receives or uses any of the Confidential Materials.

9 13. Without the advance written permission from the Producing Party or a
10 Court order granting permission, a Party may not file in the public record in this
11 action any Protected Materials. A Party that seeks to file under seal any Protected
12 Materials must comply with Civil Local Rule 79-5. Protected Materials may only be
13 filed under seal pursuant to a Court order authorizing the sealing of the specific
14 Protected Material at issue. If a Receiving Party's request to file Protected Materials
15 under seal pursuant to Civil Local Rule 79-5 is denied by the Court, then the
16 Receiving Party may file the information in the public record, unless otherwise
17 instructed by the Court. In the case of Highly Confidential Materials, a party must
18 give fourteen (14) days advance notice of its intent to apply to the Court to file any
19 Highly Confidential Materials under seal. Failure to give such notice may be a basis
20 for denial of the application to file such materials under seal.

21 14. The parties may use Confidential Materials at depositions in this action.
22 If the deponent or the attorney for the deponent is not subject to this Order, the
23 deponent and/or his/her/its attorney shall be provided a copy of this Order and shall be
24 requested to agree in writing to be bound by the Order. Absent Court order or the
25 advance written consent of the Producing Party, Highly Confidential Materials may
26 NOT be used at depositions in this action, except at the depositions of (a) any person
27 expressly identified in the Highly Confidential Materials, and (b) a person who
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1 authored, sent or received the Highly Confidential Materials, who is deposed in this
2 action or called as a witness at trial in this action.

3 15. In the event that Protected Materials are used in a deposition, the party
4 asserting such confidentiality shall indicate the confidential nature of the particular
5 information comprising the Protected Materials at the time of the deposition or within
6 10 days after the transcript is prepared. The court reporter shall make reasonable
7 efforts to segregate and bind separately any such confidential portions of transcript or
8 exhibits which portion shall bear the following notation on the face of the envelope
9 only:

10 RESTRICTED

11 THIS DEPOSITION TRANSCRIPT CONTAINS CONFIDENTIAL
12 INFORMATION SUBJECT TO A PROTECTIVE ORDER IN
13 SECURITY SERVICE FEDERAL CREDIT UNION V. FIRST AMERICAN
14 TITLE INSURANCE COMPANY, ET AL., CIVIL ACTION NO. CV10-04824 SJO
15 (VBKX)

16 “CONFIDENTIAL” LABELED PORTIONS OF THIS
17 TRANSCRIPT AND ANY ATTACHED DOCUMENTS MARKED
18 “CONFIDENTIAL” MAY NOT BE DISCLOSED TO ANY PERSON
19 OTHER THAN QUALIFIED PERSONS, AS SET FORTH IN
20 THE PROTECTIVE ORDER.

21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” LABELED
22 PORTIONS OF THIS TRANSCRIPT AND ANY ATTACHED
23 DOCUMENTS MARKED “CONFIDENTIAL” MAY NOT BE DISCLOSED
24 TO ANY PERSON OTHER THAN
25 ATTORNEYS OF RECORD IN THIS ACTION WHO HAVE STIPULATED
26 TO THE PROTECTIVE ORDER, OR AS
27 OTHERWISE SET FORTH IN THE PROTECTIVE ORDER.
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1 16. This Protective Order shall not apply to any documents, information or
2 materials which are available through the public domain. Documents, information
3 and materials available through the public domain include those documents or
4 materials which may be obtained through the media, unrestricted government records,
5 or other public records or files. This Order shall not apply to any documents,
6 information or materials known to or possessed by the Receiving Party prior to the
7 disclosure or obtained from some source other than the Producing Party.

8 17. Any party may apply to this Court for relief from the terms of the Order
9 with respect to any particular documents or information. Nothing in this Order
10 prevents any parties in applying to the Court for a change or modification of any or all
11 parts of this Order.

12 18. If a Receiving Party learns that, by inadvertence or otherwise, it has
13 disclosed Protected Material to any person or in any circumstance not authorized
14 under the Protective Order, the Receiving Party must immediately (a) notify in writing
15 the Producing Party of the unauthorized disclosures, (b) use its best efforts to retrieve
16 all unauthorized copies of the Protected Material, (c) inform the person or persons to
17 whom unauthorized disclosures were made of all the terms of this Order, and (d)
18 request such person or persons to agree in writing to the terms of the Protective Order.

19 19. After the final disposition of this action, including any appeals and writs,
20 counsel of record for the parties shall keep (or destroy) any Protected Materials in a
21 matter consistent with this Order. All Receiving Persons who are experts, consultants,
22 witnesses, or other persons or entities other than counsel of record for the parties in
23 this action shall, at the option of the Producing Party, return all Protected Materials to
24 such Producing Party or destroy such Protected Materials and confirm such
25 destruction to the Producing Party provided any Protected Materials bearing notations
26 or other marginalia of a Receiving Person may be destroyed and not returned at the
27 option of the Receiving Person. Whether the Protected Materials are returned or
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1 destroyed, the Receiving Party must submit a written certification to the Producing
2 Party, within 60 days of the final disposition of this action, that (1) identifies all the
3 Protected Materials that were returned or destroyed and (2) affirms that the Receiving
4 Party has not retained any copies, abstracts, compilations, summaries or any other
5 format reproducing or capturing any of the Protected Materials. Notwithstanding this
6 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
7 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and
9 expert work product, even if such materials contain Protected Materials. Any such
10 archival copies that contain or constitute Protected Materials remain subject to this
11 Protective Order

12 20. This Order is entered for the purpose of facilitating the exchange of
13 information among the parties and non-parties to this litigation. Nothing in this Order
14 shall be construed to alter the confidentiality or nonconfidentiality of any Discovery
15 Materials.

16 21. By stipulating to the entry of the Protective Order no Party waives any
17 right it otherwise would have to object to disclosing or producing any information or
18 item on any ground not addressed in the Protective Order. Similarly, no Party waives
19 any right to object on any ground to use in evidence of any of the material covered by
20 this Protective Order.

21 22. Any party who disputes the designation of any Discovery Materials as
22 Protected Material may dispute that designation at any time, by notifying all other
23 parties hereto in writing that the designation is disputed. The Producing Party and
24 party disputing the designation shall meet and confer regarding the designation within
25 seven (7) days after the date that the disputing party's notice is sent, and if the
26 Producing Party still refuses to withdraw the designation from the disputed Discovery
27 Materials, the disputing party may move the Court to remove the designation from the
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1 disputed Discovery Materials. The burden of persuasion in any such motion shall be
2 on the Producing Party.

3 23. This Protective Order shall survive the termination of this action and the
4 Court shall retain jurisdiction to enforce or modify its terms.

5 GOOD CAUSE APPEARING, IT IS SO ORDERED.

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7 Dated: March 23, 2011

8 _____/s/_____
9 Hon. Victor B. Kenton
10 United States Magistrate Judge
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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 11, 2011.

/s/ Melissa M. Vasquez
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MANUAL NOTICE LIST

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