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

16
 17 **JEFFREY GUNCHICK,**
 18 **Plaintiff,**
 19 **vs.**
 20 **FEDERAL INSURANCE COMPANY;**
and DOES 1 through 20, inclusive,
 21
 22 **Defendants.**

Case No. CV14-01162 RSWL (PJWx)
 Assigned to Hon. Ronald S.W. Lew

STIPULATED PROTECTIVE ORDER

[Concurrently filed with [Proposed] Order Granting Joint Stipulation]

Removal Filed: February 14, 2014
 Trial Date: April 21, 2015

1 **IT IS HEREBY STIPULATED**, by and between Plaintiff Jeffrey Gunchick
2 (hereinafter referred to as "Plaintiff") and Defendant Federal Insurance Company
3 (hereinafter referred to as "Defendant"), through their respective attorneys of record,
4 that this Court enter a Protective Order as follows:

5 This Stipulation and Protective Order shall be applicable to and shall apply to
6 the production and exchange of all document requests and documents, interrogatories
7 and answers to interrogatories, depositions, request for admissions, and responses to
8 requests for admissions, exhibits, and pleadings and all other information exchanged
9 and furnished in this Action by the Parties that the parties customarily treat as
10 confidential, proprietary, and/or a trade secret.

11 **1. SCOPE**

12 (a) The parties acknowledge that discovery may require disclosure of
13 information that is private and personal or confidential and proprietary, specifically
14 personnel records, personnel policies, employment offers, competitive analyses,
15 income statements, employee, client, or customer personal information (including,
16 but not limited to medical, age, and contact information), medical records, and
17 financial records and statements, along with other trade secret information. As a
18 result, the parties agree to enter into a Protective Order on the following terms to
19 ensure the continuing confidentiality of such information. The parties further
20 acknowledge that this Order does not confer blanket protections on all disclosures or
21 responses to discovery and that the protection it affords extends only to the limited
22 information or items that are entitled under the applicable legal principles to
23 treatment as confidential.

24 (b) This Protective Order shall limit the use or disclosure of documents,
25 deposition testimony, and related information which are or which embody or
26 disclose any information falling within the scope of Paragraph (1)(a) and designated
27 hereunder as "Confidential," and shall apply to:

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1 (i) All such documents, including those produced by third parties,
2 designated as "Confidential" in accordance with the terms of this Protective Order
3 and the applicable legal standards;

4 (ii) Portions of deposition testimony and transcripts and exhibits
5 thereto which include, refer or relate to any Confidential Information;

6 (iii) All information, copies, extracts and complete or partial
7 summaries prepared or derived from Confidential Information; and

8 (iv) Portions of briefs, memoranda or any writing filed with or
9 otherwise supplied to the Court, which include or refer to any such Confidential
10 Information.

11 (c) It is the obligation of each party to designate documents, testimony, or
12 other information as "Confidential" hereunder and assert that he or she believes in
13 good faith that such material is Confidential Information which falls within the scope
14 of Section (1)(a) and is not otherwise available to the public generally. Each party or
15 non-party that designates information or items for protection under this Order must
16 take care to limit any such designation to specific material that qualifies under the
17 appropriate standards. A Designating Party must take care to designate for
18 protection only those parts of material, documents, items, or oral or written
19 communications that qualify so that other portions of the material, documents, items,
20 or communications for which protection is not warranted are not swept unjustifiably
21 within the ambit of this Order.

22 2. DESIGNATION OF DOCUMENTS AND DEPOSITIONS

23 (a) Designation of a document as "Confidential" shall be made by stamping
24 or writing CONFIDENTIAL on the document(s). Alternatively, the parties may
25 designate documents as "Confidential" by producing the documents with a letter
26 designating the documents by Bates number as "Confidential." The parties shall
27 make all reasonable effort to designate as "Confidential" only those documents that
28 they reasonably believe constitute personnel records, personnel policies, employment

1 offers, competitive analyses, income statements, employee, client or customer
2 personal information, medical records, financial records and statements, and trade
3 secret information. The failure to designate documents as "Confidential" at the time
4 of production shall not constitute a waiver of the protection of this Order and any
5 party may, at any time up to 30 days before the actual trial date in this action,
6 designate any documents or information produced as "Confidential" that have not as
7 yet been so designated. Stamping the legend "Confidential" on the cover of any
8 multi-page document shall designate all pages of the document as confidential,
9 unless otherwise indicated by the Designating Party, but only if the entire document
10 is produced in a bound or otherwise intact manner.

11 (b) Designation of a deposition or other pretrial testimony, or portions
12 thereof, as "Confidential" shall be made by a statement on the record by counsel for
13 the party or other person making the claim of confidentiality at the time of such
14 testimony. The portions of depositions so designated as "Confidential" shall be
15 taken only in the presence of persons qualified to receive such information pursuant
16 to the terms of this Protective Order: the parties and their attorneys and staff, the
17 court reporter, videographer, the deponent, and the deponent's attorney. Failure of
18 any other person to comply with a request to leave the deposition room will
19 constitute sufficient justification for the witness to refuse to answer any question
20 calling for disclosure of Confidential Information so long as persons are in
21 attendance who are not entitled by this Protective Order to have access to such
22 information. The parties may, but need not in order to designate material as
23 Confidential Information, instruct the court reporter to segregate such portions of the
24 deposition in a separate transcript designated as "Confidential." Portions of such
25 deposition transcripts shall be clearly marked as "Confidential" on the cover or on
26 each page, as appropriate.

27 (c) Any party may designate documents produced or portions of
28 depositions taken as containing Confidential Information even if not initially marked

1 as "Confidential" in accordance with the terms of this Protective Order by so
2 advising counsel for each other party in writing and by reproducing said documents
3 with the required confidential designation. Thereafter, each such document or
4 transcript shall be treated in accordance with the terms of this Protective Order;
5 provided, however, that there shall be no liability for any disclosure or use of such
6 documents or transcripts, or the Confidential Information contained therein, which
7 occurred prior to actual receipt of such written notice. Any person who receives
8 actual notice of any such designation of previously produced documents or
9 deposition transcripts as containing Confidential Information shall thereafter treat
10 such information as if it had been designated as "Confidential" at the time he, she, or
11 it first received it in connection with this matter.

12 (d) Inadvertent failure to designate Confidential Information shall not be
13 construed as a waiver, in whole or in part, and may be corrected by the producing
14 party by designating documents produced or portions of depositions taken as
15 containing Confidential Information, even if not initially marked as "Confidential,"
16 in accordance with the terms of this Protective Order and, specifically, Paragraph
17 2(c) above.

18 **3. LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL**
19 **INFORMATION**

20 (a) No Confidential Information shall be disclosed by anyone receiving
21 such information to anyone other than those persons designated herein. In no event
22 shall Confidential Information be used, either directly or indirectly, by anyone
23 receiving such information for any business, commercial or competitive purpose or
24 for any purpose whatsoever other than the direct furtherance of the litigation of this
25 action in accordance with the provisions of this Protective Order.

26 (b) Confidential Information shall not be disclosed by any person who has
27 received such information through discovery in this action to any other person,
28 except to:

- 1 (i) The parties;
- 2 (ii) Attorneys of record for the parties and their firms' associates,
3 clerks and other employees involved in the conduct of this litigation, and any court
4 reporters, videographers, or interpreters engaged to assist the parties in discovery;
- 5 (iii) Federal Insurance Company's subsidiaries or its in-house
6 counsel;
- 7 (iv) Non-party experts and consultants engaged by counsel for the
8 purpose of preparing or assisting in this litigation, and those experts' respective
9 clerks and employees involved in assisting them in this litigation, to the extent
10 deemed necessary by counsel;
- 11 (v) The Court, its officers, Court reporters and similar personnel,
12 provided further that Confidential Information lodged with the Court under seal is
13 subject to further evaluation by the Court;
- 14 (vi) Any person as to which it is apparent from the face of a document
15 was either an author, recipient, had knowledge of the contents therein, or was
16 otherwise entitled to view the Confidential Information prior to the intended
17 disclosure in this action; and
- 18 (vii) Any other potential witnesses whose testimony may be used in
19 connection with the present case who has complied with Paragraph 3(c) immediately
20 below.
- 21 (c) Before any person described in Paragraphs 3(b)(iv) and (vii) receives or
22 is shown any document or information which has been designated as Confidential,
23 such person shall be given a copy of this Protective Order and shall agree in writing,
24 in the form of the Acknowledgment and Agreement attached hereto as Exhibit A, to
25 be bound by the terms hereof. The original of each such Acknowledgment and
26 Agreement shall be maintained by counsel and, if a witness appears at deposition or
27 at trial and represents that he or she previously executed an Acknowledgment, it
28 shall be produced for inspection by opposing counsel upon request. Any counsel

1 may require the other counsel to provide a copy of the Acknowledgment and
2 Agreement signed by a witness at a deposition before the witness is deposed with
3 regard to any Confidential Information.

4 (d) Nothing in this Protective Order shall be construed to require execution
5 of the written Acknowledgment and Agreement referred to in Paragraph 3(c) above,
6 or to prevent disclosure of Confidential Information, by the party producing and
7 designating such Confidential Information, or by any employee of such party.

8 (e) The substance or content of Confidential Information, as well as all
9 notes and memoranda relating thereto, shall not be disclosed to anyone other than as
10 set forth in Paragraphs 3(b)(i)-(vii) above.

11 **4. FILING DOCUMENTS UNDER SEAL**

12 (a) If a Party wishes to submit a document to the Court which the other
13 Party has designated as Confidential or which contains Confidential Information and
14 which has not been successfully challenged under Paragraph 5 below, the submitting
15 Party shall notify the Designating Party of the exact material which the Party intends
16 to submit to the Court at least 30 days prior to the date on which the Party intends to
17 make the submission, so as to provide the Designating Party sufficient time to
18 determine whether it needs to bring a motion ordering that the material be filed under
19 seal. Any such motion must comply with the procedures set forth in Local Rule 79-5
20 and must also comply with Federal Rule of Civil Procedure 26(c)(1). The written
21 application and proposed order shall be presented to the judge along with the
22 document intended to be submitted for filing under seal. The original and judge's
23 copy of the document shall be sealed in separate envelopes with a copy of the title
24 page attached to the front of each envelope. If only a portion of the document is
25 sealable, then both the copy lodged with the Clerk and the judge's copy shall have
26 the sealable portions identified by notation or highlighting of the text.

27 The Application and Order to Seal, along with the material to be placed under
28 seal, shall not be electronically filed but shall be filed manually in the manner

1 prescribed by Local Rule 79-5. A Notice of Manual Filing shall also be
2 electronically filed, identifying all materials being manually filed.

3 (b) Any party requesting that a record be filed under seal must comply with
4 Local Rule 79-5. The Parties agree and recognize that Confidential Information or
5 any paper containing Confidential Information cannot be filed under seal based
6 solely upon this stipulated Protective Order.

7 **5. CHALLENGE TO CONFIDENTIALITY DESIGNATION**

8 Any party that wishes to challenge the designation of a document or other
9 information as "Confidential" must identify the documents or information for which
10 it is challenging the designation no later than 30 days prior to trial. The Designating
11 Party may, for good cause shown, bring a motion before the Court requesting that the
12 Court confirm the designation of any document or information as "Confidential."
13 The party asserting the designation as "Confidential" shall have the burden of
14 establishing good cause for the designation. However, the Court shall be authorized
15 to award the moving party attorneys' fees as a sanction if the challenge to the
16 "Confidential" designation was made in bad faith or was frivolous, as determined
17 solely by the Court. The interested parties or other persons shall attempt to resolve
18 such disagreements before submitting them to the Court pursuant to Local Rule 37-1.
19 Pending resolution of any dispute concerning such designation, all parties and
20 persons governed by this Protective Order shall treat all documents and information
21 previously designated as "Confidential" as protected from further disclosure by this
22 Protective Order.

23 **6. SURVIVAL OF ORDER - RETURN OF DOCUMENTS**

24 (a) The provisions of this Order shall continue in effect until otherwise
25 ordered by the Court, or after notice and an opportunity to be heard is afforded to the
26 parties to this action. The final determination or settlement of this action shall not
27 relieve any person who has received Confidential Information or agreed to be bound
28 by the terms of this Protective Order of his, her, or its obligations under this

1 stipulation and Order. The Court shall retain jurisdiction after such final
2 determination or settlement to enforce the provisions of this Order. Upon
3 completion of the litigation, all documents (including copies of documents)
4 containing Confidential Information shall be destroyed or returned to counsel for the
5 producing party, except that (a) documents on which any person has made notations
6 may be destroyed and not returned, and (b) the parties' respective attorneys of record
7 may retain one copy of each such document for use in connection with any disputes
8 which may arise under the Court's retention of jurisdiction as provided for herein.
9 Within sixty days (60) of the conclusion of this litigation, the attorneys for the
10 receiving party shall provide the attorneys for the producing party confirmation
11 representing that such return or destruction was made.

12 (b) Except as provided in Paragraphs 4 or 6 hereof, documents or things
13 containing the other party's Confidential Information shall at all times be in the
14 physical possession of those persons qualifying under Paragraph 3 hereunder, or kept
15 by counsel of record at the premises regularly maintained by such counsel of record
16 as and for their respective law offices.

17 **7. USE OF DOCUMENTS AT TRIAL**

18 This Stipulation and Protective Order, except as provided in Paragraph 4, shall
19 not apply to information designated or marked Confidential hereunder which is used
20 at any hearing or trial in this action. The parties hereby reserve their rights to use, or
21 seek to limit the disclosure of, confidential information at any such hearing or trial.

22 **8. USE OF OWN DOCUMENTS BY PRODUCING PARTY**

23 Nothing in this Protective Order shall limit the use by any party, person or
24 entity of his, her, or its own document or information for legitimate business
25 purposes unrelated to this litigation, even if such documents or information have
26 been designated as "Confidential."

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1 **9. APPLICATIONS TO COURT**

2 (a) This Protective Order shall not preclude or limit any party's right to
3 oppose or object to discovery on any ground, which would be otherwise available.
4 This Protective Order shall not preclude or limit any party's right to seek *in camera*
5 review or to seek further and additional protection against or limitation upon
6 production or dissemination of information produced in response to discovery,
7 including documents and their contents.

8 (b) Any person to or by whom disclosure or inspection is made in violation
9 of this Protective Order, and who has knowledge of this Protective Order, shall be
10 bound by the terms hereof.

11 (c) The parties hereto, and all other persons who receive Confidential
12 Information pursuant hereto, agree that any party or other person injured by a
13 violation of this Order does not have an adequate remedy at law and that an
14 injunction against such violation is an appropriate remedy. In the event any person
15 shall violate or threaten to violate any terms of this Order, the parties agree that the
16 aggrieved party may immediately apply to obtain injunctive relief against any such
17 person. In the event the aggrieved party shall do so, the responding person subject to
18 the provisions of this Order shall not employ as a defense thereto the claim that the
19 aggrieved party has an adequate remedy at law. Any persons subject to the terms of
20 this Order agree that the Court shall retain jurisdiction over it and them for the
21 purposes of enforcing this Order, including but not limited to issuing an injunction.
22 In addition to injunctive relief, as specified herein, the Court may impose monetary
23 and/or issue sanctions, as well as other relief deemed appropriate under the
24 circumstances for a violation of this Protective Order.

25 (d) If any deponent required under the terms of this Protective Order to
26 execute the written Acknowledgment and Agreement described in Paragraph 3(c)
27 above refuses to do so, the parties may complete the deposition on other matters
28 and/or adjourn it and move the Court for any appropriate relief, including (without

1 limitation) relief from this Protective Order as to that deponent, or an order that the
2 deponent shall execute the written agreement described in Paragraph 3(c) above, or
3 an order that deponent shall be bound by the terms of this Protective Order. Any
4 non-party whose Confidential Information is the subject of such a motion shall be
5 given notice thereof.

6 **10. AGREEMENT TO COOPERATE**

7 The parties hereto and their respective attorneys of record agree that, when one
8 party's attorney requests a deponent to sign the written Acknowledgment and
9 Agreement described in Paragraph 3(c) above, the other party's attorney will join in
10 such request, unless that attorney has a good faith basis for refusing to join in such a
11 request; provided, however, that this requirement shall not apply with respect to any
12 deponent who is represented at his or her deposition by an attorney of record for any
13 party hereto (including any member or associate of their respective law firms). An
14 attorney's request to sign such Acknowledgment pursuant to this Paragraph shall not
15 be construed to constitute legal advice to the deponent, but shall and may be stated to
16 be simply a request to facilitate discovery in this action.

17 **11. NO ADMISSIONS**

18 Neither entering into this Stipulation for Protective Order, nor receiving any
19 documents or other information designated as "Confidential" shall be construed as an
20 agreement or admission: (1) that any document or information designated as
21 "Confidential" is in fact Confidential Information; (2) as to the correctness or truth of
22 any allegation made or position taken relative to any matter designated as
23 "Confidential"; or (3) as to the authenticity, competency, relevancy or materiality of
24 any information or document designated as "Confidential."

25 **12. NO WAIVER OF PRIVILEGES OR OBJECTIONS TO**
26 **ADMISSIBILITY**

27 Nothing in this Protective Order shall be construed as requiring disclosure of
28 Confidential Information, including, but not limited to, materials subject to

1 protection under the attorney-client privilege and/or attorney work product doctrine,
2 the trade secrets privilege, or under any other applicable privileges or rights of
3 privacy, or requiring disclosure of Confidential Information that is otherwise beyond
4 the scope of permissible discovery. Further, nothing in this Protective Order shall be
5 construed as a waiver by a party of any objections that might be raised as to the
6 admissibility at trial of any evidentiary materials.

7 **13. DISCLOSURE IN VIOLATION OF ORDER**

8 If any Confidential Information is disclosed to any person other than in the
9 manner authorized by this Protective Order, the party responsible for the disclosure
10 must immediately, in writing, notify the opposing party and the Designating Party of
11 all pertinent facts relating to such disclosure, and without prejudice to the rights and
12 remedies of the Designating Party, make every effort to prevent further unauthorized
13 disclosure.

14 **14. MODIFICATION – FURTHER AGREEMENTS**

15 Nothing contained herein shall preclude any party from seeking from a Court
16 modification of this Stipulated Protective Order upon proper notice, nor shall
17 anything contained herein be construed as to preclude the parties from entering into
18 other written agreements designed to protect Confidential Information.

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15. COUNTERPARTS

This Stipulation for Protective Order may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument.

DATED: June 24, 2014

Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.

By: /s/Richard Y. Chen
Vince M. Verde
Richard Y. Chen

Attorneys for Defendant Federal Insurance
Company

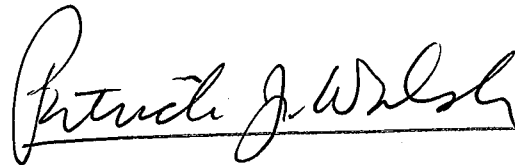
DATED: June 24, 2014

Freiman Law

By: /s/ Lawrence W. Freiman
Lawrence W. Freiman, Esq.
Michael J. Freiman, Esq.

Attorneys for Plaintiff Jeffrey Gunchick

*IT IS SO ORDERED.
June 25, 2014*



PATRICK J. WALSH
U.S. MAGISTRATE JUDGE

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EXHIBIT A
ACKNOWLEDGMENT OF RECEIPT OF PROTECTIVE ORDER
REGARDING CONFIDENTIAL INFORMATION
AND AGREEMENT TO BE BOUND THEREBY

I hereby acknowledge receipt of and that I have read a copy of the Stipulation for Protective Order and Order (the "Order"), which I understand was made on _____, 20____, in the action entitled *Jeffrey Gunchick v. Federal Insurance Company*, Case No. CV14-01162 RSWL (PJWx), United States District Court, Central District of California. I agree that I will be bound by the provisions of the Order with respect to any Confidential Information provided to me under the terms thereof. I agree that, if I receive any Confidential Information, I will not make any copies thereof nor disclose such Confidential Information except as permitted by the Order. I further understand that if I fail to comply with the terms of the Order, I may be subject to sanctions by the Court, and I hereby consent to personal jurisdiction in the State of California with respect to any matter relating to or arising out of the Order.

Executed this _____ day of _____, 2014 at _____

Name: _____

Affiliation: _____

Address: _____

Telephone Number: _____