

1 David Littman, Esq.
Admitted Pro Hac Vice
2 Texas Bar No. 24013049
David.Littman@fnf.com

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4 Bridget M. Moss
California Bar No. 123652
FIDELITY NATIONAL LAW GROUP
5 915 Wilshire Blvd., Suite 2100
Los Angeles, CA 90017
6 (213)-438-7200; FAX (213) 438-4417
Bridget.Moss@fnf.com
7 Attorney for Fidelity National Title Insurance Company

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

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12 SAN JOSE PACIFICA REAL ESTATE DE RL) Case No. 2:16-cv-07235-SVW-JEM
DE CV and REAL ESTATE PACIFICA RT, S.)
13 DE. R.L. DE. C.V.)
14 Plaintiffs,)
15 vs.)
16 FIDELITY NATIONAL TITLE INSURANCE) **[proposed]**
COMPANY,) **PROTECTIVE ORDER**
17 Defendant.)
18)
19)

20 **STEPHEN V. WILSON, U.S.D.J.:**

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22 **WHEREAS**, this Court, by request of the parties, issues a
23 protective order pursuant to Federal Rule of Civil Procedure 26(c) to protect
24 the confidentiality of nonpublic and competitively sensitive information that
25 they may need to disclose in connection with discovery in this action;

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27 **WHEREAS**, the Parties, through counsel, agree to the following
28 terms; and

1 WHEREAS, this Court finds good cause exists for issuance of an
2 appropriately tailored confidentiality order governing the pretrial phase of this
3 action,
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5 IT IS HEREBY ORDERED that any person subject to this
6 Order- including without limitation the Parties to this action (including their
7 respective corporate parents, successors, and assigns), their representatives,
8 agents, experts and consultants, all third parties providing discovery in this
9 action, and all other interested persons with actual or constructive notice of
10 this Order- will adhere to the following terms, upon pain of contempt:
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12 1. With respect to "Discovery Material" (i.e., information of
13 any kind produced or disclosed in the course of discovery in this action) that
14 a person has designated as "Confidential" pursuant to this Order, no person
15 subject to this Order may disclose such Confidential Discovery Material to
16 anyone else except as this Order expressly permits:
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19 2. The Party or person producing or disclosing Discovery
20 Material ("Producing Party") may designate as Confidential only the
21 portion of such material that it reasonably and in good faith believes
22 consists of:
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24 (a) previously non-disclosed financial information (including
25 without limitation profitability reports or estimates,
26 percentage fees, design fees, royalty rates, minimum
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guarantee payments, sales reports, and sale margins);

- (b) previously non-disclosed material relating to ownership or control of any non-public company;
- (c) previously non-disclosed business plans, product-development information, or marketing plans;
- (d) any information of a personal or intimate nature regarding any individual; or
- (e) any other category of information this Court subsequently affords confidential status.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the Producing Party or its counsel may designate such portion as "Confidential" by: (a) stamping or otherwise clearly marking as "Confidential" the protected portion in a manner that will not interfere with legibility or audibility; and (b) producing for future public use another copy of said Discovery Material with the confidential information redacted.

4. A Producing Party or its counsel may designate deposition exhibits or portions of deposition transcripts as Confidential Discovery Material either by: (a) indicating on the record during the deposition that a question calls for Confidential information, in which case the reporter will bind the transcript of the designated testimony in a separate volume and mark

1 it as "Confidential Information Governed by Protective Order;" or (b)
2 notifying the reporter and all counsel of record, in writing, within 30 days after
3 a deposition has concluded, of the specific pages and lines of the transcript that
4 are to be designated "Confidential," in which case all counsel receiving the
5 transcript will be responsible for marking the copies of the designated
6 transcript in their possession or under their control as directed by the
7 Producing Party or that person's counsel. During the 30-day period following
8 a deposition, all Parties will treat the entire deposition transcript as if it had
9 been designated Confidential.
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13 5. If at any time before the trial of this action a Producing
14 Party realizes that it should have designated as Confidential some portion(s)
15 of Discovery Material that it previously produced without limitation, the
16 Producing Party may so designate such material by so apprising all prior
17 recipients in writing. This section is applicable to any documents that were
18 produced prior to the execution of this protective order. Thereafter, this Court
19 and all persons subject to this Order will treat such designated portion(s) of
20 the Discovery Material as Confidential.
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24 6. Nothing contained in this Order will be construed as: (a) a
25 waiver by a Party or person of its right to object to any discovery request; (b) a
26 waiver of any privilege or protection; or (c) a ruling regarding the admissibility
27 at trial of any document, testimony, or other evidence.
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7. Where a Producing Party has designated Discovery Material as Confidential, other persons subject to this Order may disclose such information only to the following persons:

- (a) the Parties to this action, their insurers, and counsel to their insurers;
- (b) counsel retained specifically for this action, including any paralegal, clerical, or other assistant that such outside counsel employs and assigns to this matter;
- (c) outside vendors or service providers (such as copy-service providers and document-management consultants) that counsel hire and assign to this matter;
- (d) any mediator or arbitrator that the Parties engage in this matter or that this Court appoints, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (e) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (f) any witness who counsel for a Party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in

1 the form annexed as an Exhibit hereto;

2 (g) any person a Party retains to serve as an expert witness or
3 otherwise provide specialized advice to counsel in connection
4 with this action, provided such person has first executed a
5 Non-Disclosure Agreement in the form annexed as an Exhibit
6 hereto;
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8 (h) stenographers engaged to transcribe depositions the Parties
9 conduct in this action; and
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11 (i) this Court, including any appellate court, its support
12 personnel, and court reporters.
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14 8. Before disclosing any Confidential Discovery Material to any
15 person referred to in subparagraphs 7(d), 7(f), or 7(g) above, counsel must
16 provide a copy of this Order to such person, who must sign a Non-Disclosure
17 Agreement in the form annexed as an Exhibit hereto stating that he or she has
18 read this Order and agrees to be bound by its terms. Said counsel must retain
19 each signed Non-Disclosure Agreement, hold it in escrow, and produce it to
20 opposing counsel either before such person is permitted to testify (at deposition
21 or trial) or at the conclusion of the case, whichever comes first.
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23 9. Any party filing documents under seal must
24 simultaneously file with the Court a letter brief and supporting declaration
25 justifying- on a particularized basis- the continued sealing of such
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1 documents. The parties should be aware that the Court will unseal documents
2 if it is unable to make "specific, on the record findings ... demonstrating that
3 closure is essential to preserve higher values and is narrowly tailored to serve
4 that interest." Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 120 (2d
5 Cir. 2006).
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8 10. The Court also retains discretion whether to afford
9 confidential treatment to any Discovery Material designated as Confidential
10 and submitted to the Court in connection with any motion, application, or
11 proceeding that may result in an order and/or decision by the Court. All
12 persons are hereby placed on notice that the Court is unlikely to seal or
13 otherwise afford confidential treatment to any Discovery Material introduced
14 in evidence at trial, even if such material has previously been sealed or
15 designated as Confidential.
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19 11. In filing Confidential Discovery Material with this Court,
20 or filing portions of any pleadings, motions, or other papers that disclose
21 such Confidential Discovery Material ("Confidential Court Submission"),
22 the Parties shall publicly file a redacted copy of the Confidential Court
23 Submission via the Electronic Case Filing System. The Parties shall file an
24 unredacted copy of the Confidential Court Submission under seal with the
25 Clerk of this Court, and the Parties shall serve this Court and opposing
26 counsel with unredacted courtesy copies of the Confidential Court
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1 Submission.

2 12. Any Party who objects to any designation of confidentiality
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4 may at any time before the trial of this action serve upon counsel for the
5 Producing Party a written notice stating with particularity the grounds of the
6 objection. If the Parties cannot reach agreement promptly, counsel for all
7 affected Parties will address their dispute to this Court.
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9 13. Any Party who requests additional limits on disclosure
10 (such as "attorneys' eyes only" in extraordinary circumstances), may at any
11 time before the trial of this action serve upon counsel for the recipient Parties
12 a written notice stating with particularity the grounds of the request. If the
13 Parties cannot reach agreement promptly, counsel for all affected Parties will
14 address their dispute to this Court.
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17 14. Recipients of Confidential Discovery Material under this
18 Order may use such material solely for the prosecution and defense of this
19 action and any appeals thereto, and not for any business, commercial, or
20 competitive purpose or in any other litigation proceeding. Nothing contained in
21 this Order, however, will affect or restrict the rights of any Party with respect to
22 its own documents or information produced in this action.
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25 15. Nothing in this Order will prevent any Party from
26 producing any Confidential Discovery Material in its possession in response
27 to a lawful subpoena or other compulsory process, or if required to produce
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1 by law or by any government agency having jurisdiction, provided that such
2 Party gives written notice to the Producing Party as soon as reasonably
3 possible, and if permitted by the time allowed under the request, at least 10
4 days before any disclosure. Upon receiving such notice, the Producing Party
5 will bear the burden to oppose compliance with the subpoena, other
6 compulsory process, or other legal notice if the Producing Party deems it
7 appropriate to do so.
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11 16. Each person who has access to Discovery Material designated
12 as Confidential pursuant to this Order must take all due precautions to prevent
13 the unauthorized or inadvertent disclosure of such material.
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15 17. Within 60 days of the final disposition of this action-
16 including all appeals —upon written request all recipients of Confidential
17 Discovery Material must either return it- including all copies thereof- to the
18 Producing Party, or, upon permission of the Producing Party, destroy such
19 material- including all copies thereof. Notwithstanding this provision, the
20 attorneys that the Parties have specifically retained for this action may retain an
21 archival copy of all pleadings, motion papers, transcripts, expert reports, legal
22 memoranda, correspondence, or attorney work product, even if such materials
23 contain Confidential Discovery Material. Any such archival copies that contain
24 or constitute Confidential Discovery Material remain subject to this Order.
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18. This Order will survive the termination of the litigation and

1 will continue to be binding upon all persons to whom Confidential Discovery
2 Material is produced or disclosed.

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19. This Court will retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

IT IS SO ORDERED.

Dated: 12/21/2016

/s/John E. McDermott
John E. McDermott
United States Magistrate Judge

Presented by:

Bridget M. Moss
California Bar No. 123652
FIDELITY NATIONAL LAW GROUP
915 Wilshire Blvd., Suite 2100
Los Angeles, CA 90017

/s/ Bridget M. Moss
Bridget M. Moss

Attorney for Defendant
FIDELITY NATIONAL LAW GROUP