



1 **STIPULATED PROTECTIVE ORDER**

2 1. **PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production  
4 of confidential, proprietary, or private information for which special protection from  
5 public disclosure and from use for any purpose other than prosecuting this litigation  
6 would be warranted. Accordingly, the parties hereby stipulate to and petition the court  
7 to enter the following Stipulated Protective Order. The parties acknowledge that this  
8 Order does not confer blanket protections on all disclosures or responses to discovery  
9 and that the protection it affords extends only to the limited information or items that  
10 are entitled under the applicable legal principles to treatment as confidential. The  
11 parties further acknowledge, as set forth in Section 10, below, that this Stipulated  
12 Protective Order creates no entitlement to file confidential information under seal;  
13 Civil Local Rules 79-5.1 through 79-5.3 set forth the procedures that must be followed  
14 and reflects the standards that will be applied when a party seeks permission from the  
15 court to file material under seal.

16 2. **DEFINITIONS**

17 2.1. **Party**: any party to this action, including all of its officers, directors,  
18 employees, consultants, retained experts, and outside counsel (and their support staff).

19 2.2. **Disclosure or Discovery Material**: all items or information, regardless of  
20 the medium or manner generated, stored, or maintained (including, among other  
21 things, testimony, transcripts, or tangible things) that are produced or generated in  
22 disclosures or responses to discovery in this matter.

23 2.3. **“Confidential” Information or Items**: information (regardless of how  
24 generated, stored or maintained) or tangible things that qualify for protection under  
25 standards developed under Fed. R. Civ. P. 26(c).

26 2.4. **“Highly Confidential – Attorneys’ Eyes Only” Information or Items**:  
27 extremely sensitive “Confidential Information or Items” whose disclosure to another  
28 Party or nonparty would create a substantial risk of serious injury that could not be

1 avoided by less restrictive means.

2 2.5. Receiving Party: a Party that receives Disclosure or Discovery Material  
3 from a Producing Party.

4 2.6. Producing Party: a Party or non-party that produces Disclosure or  
5 Discovery Material in this action.

6 2.7. Designating Party: a Party or non-party that designates information or  
7 items that it produces in disclosures or in responses to discovery as “Confidential” or  
8 “Highly Confidential— Attorneys’ Eyes Only.”

9 2.8. Protected Material: any Disclosure or Discovery Material that is  
10 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

11 2.9. Outside Counsel: attorneys who are not employees of a Party but who are  
12 retained to represent or advise a Party in this action.

13 2.10. House Counsel: attorneys who are employees of a Party.

14 2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well  
15 as their support staffs).

16 2.12. Expert: a person with specialized knowledge or experience in a matter  
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
18 expert witness or as a consultant in this action and who is not a past or current  
19 employee of the Party or of a competitor of an opposing Party and who, at the time of  
20 retention, is not anticipated to become an employee of Party or of a competitor of an  
21 opposing Party. This definition includes a professional jury or trial consultant retained  
22 in connection with this litigation.

23 2.13. Professional Vendors: persons or entities that provide litigation support  
24 services (e.g., photocopying; videotaping; translating; preparing exhibits or  
25 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and  
26 their employees and subcontractors.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only

1 Protected Material (as defined above), but also any information copied or extracted  
2 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus  
3 testimony, conversations, or presentations by parties or counsel to or in court or in  
4 other settings that might reveal Protected Material.

5 4. DURATION

6 Even after the termination of this litigation, the confidentiality obligations  
7 imposed by this Order shall remain in effect until a Designating Party agrees  
8 otherwise in writing or a court order otherwise directs.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

11 Each Party or non-party that designates information or items for protection under this  
12 Order must take care to limit any such designation to specific material that qualifies  
13 under the appropriate standards. A Designating Party must take care to designate for  
14 protection only those parts of material, documents, items, or oral or written  
15 communications that qualify – so that other portions of the material, documents,  
16 items, or communications for which protection is not warranted are not swept  
17 unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations  
19 that are shown to be clearly unjustified, or that have been made for an improper  
20 purpose (e.g., to unnecessarily encumber or retard the case development process, or to  
21 impose unnecessary expenses and burdens on other parties), expose the Designating  
22 Party to sanctions.

23 If it comes to a Party's or a non-party's attention that information or items that  
24 it designated for protection do not qualify for protection at all, or do not qualify for the  
25 level of protection initially asserted, that Party or non-party must promptly notify all  
26 other parties that it is withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in  
28 this Order (*see, e.g.,* second paragraph of section 5.2(a), below), or as otherwise

1 stipulated or ordered, material that qualifies for protection under this Order must be  
2 clearly so designated before the material is disclosed or produced, unless the  
3 Designating Party is not the Producing Party, in which case the Designating Party may  
4 designate the information by reproducing copies with appropriate legends as set forth  
5 below within a reasonable time (taking into account the volume of material to review)  
6 after receiving the information.

7 Designation in conformity with this Order requires:

8 5.2.a for information in documentary form (apart from transcripts of  
9 depositions or other pretrial or trial proceedings), that the Producing Party affix the  
10 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
11 ONLY” on each page that contains protected material. If only a portion or portions of  
12 the material on a page qualifies for protection, the Producing Party also must clearly  
13 identify the protected portion(s) (e.g., by making appropriate markings in the margins)  
14 and must specify, for each portion, the level of protection being asserted (either  
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY”).

17 5.2.b for testimony given in deposition or in other pretrial or trial  
18 proceedings, that the Party or non-party offering or sponsoring the testimony identify  
19 on the record, before the close of the deposition, hearing, or other proceeding, all  
20 protected testimony, and further specify any portions of the testimony that qualify as  
21 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Alternatively, the  
22 Party or non-party that sponsors, offers, or gives the testimony may, within 20 days of  
23 receiving the transcript of the testimony, identify the specific portions of the testimony  
24 as to which protection is sought and specify the level of protection being asserted  
25 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
26 ONLY”). Only those portions of the testimony that are appropriately designated for  
27 protection within the 20 days shall be covered by the provisions of this Stipulated  
28 Protective Order.

1 To the extent practicable, transcript pages containing Protected Material must  
2 be separately bound by the court reporter, who must affix on each such page the  
3 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
4 ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness or  
5 presenting the testimony.

6 5.2.c for information produced in some form other than documentary,  
7 and for any other tangible items, that the Producing Party affix in a prominent place  
8 on the exterior of the container or containers in which the information or item is stored  
9 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
10 EYES ONLY.” If only portions of the information or item warrant protection, the  
11 Producing Party, to the extent practicable, shall identify the protected portions,  
12 specifying whether they qualify as “Confidential” or as “Highly Confidential –  
13 Attorneys’ Eyes Only.”

14 5.3 Inadvertent Failures to Designate. If corrected within three Court days of  
15 discovering that a Party or non-party inadvertently failed to designate qualified  
16 information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes  
17 Only,” such failure does not, standing alone, waive the Designating Party’s right to  
18 secure protection under this Order for such material. If material is appropriately  
19 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after  
20 the material was initially produced, the Receiving Party, on timely notification of the  
21 designation, must make reasonable efforts to assure that the material is treated in  
22 accordance with the provisions of this Order. The Party or non-party making the  
23 correction shall, upon request of any Party, state in writing the date on which the  
24 inadvertent failure to designate was discovered.

## 25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Unless a prompt challenge to a Designating  
27 Party’s confidentiality designation is necessary to avoid foreseeable substantial  
28 unfairness, unnecessary economic burdens, or a later significant disruption or delay of

1 the litigation, a Party does not waive its right to challenge a confidentiality designation  
2 by electing not to mount a challenge promptly after the original designation is  
3 disclosed.

4       6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
5 Designating Party’s confidentiality designation must do so in good faith and must  
6 begin the process by conferring directly with counsel for the Designating Party. In  
7 conferring, the challenging Party must explain the basis for its belief that the  
8 confidentiality designation was not proper and must give the Designating Party an  
9 opportunity to review the designated material, to reconsider the circumstances, and, if  
10 no change in designation is offered, to explain the basis for the chosen designation. A  
11 challenging Party may proceed to the next stage of the challenge process only if it has  
12 engaged in this meet and confer process first.

13       6.3 Judicial Intervention. A Party that elects to press a challenge to a  
14 confidentiality designation after considering the justification offered by the  
15 Designating Party may file and serve a motion under Civil Local Rule 7 (and in  
16 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged  
17 material and sets forth in detail the basis for the challenge. Each such motion must be  
18 accompanied by a competent declaration that affirms that the movant has complied  
19 with the meet and confer requirements imposed in the preceding paragraph and that  
20 sets forth with specificity the justification for the confidentiality designation that was  
21 given by the Designating Party in the meet and confer dialogue.

22       The burden of persuasion in any such challenge proceeding shall be on the  
23 Designating Party. Until the court rules on the challenge, all parties shall continue to  
24 afford the material in question the level of protection to which it is entitled under the  
25 Producing Party’s designation.

26 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

27       7.1 Basic Principles. A Receiving Party may use Protected Material that is  
28 disclosed or produced by another Party or by a non-party in connection with this case

1 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
2 Material may be disclosed only to the categories of persons and under the conditions  
3 described in this Order. When the litigation has been terminated (including exhaustion  
4 of all appeals and petitions for discretionary review), a Receiving Party must comply  
5 with the provisions of section 11, below (FINAL DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a  
7 location and in a secure manner that ensures that access is limited to the persons  
8 authorized under this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
10 otherwise ordered by the court or permitted in writing by the Designating Party, a  
11 Receiving Party may disclose any information or item designated CONFIDENTIAL  
12 only to:

13 7.2.a the Receiving Party’s Outside Counsel of record in this action, as  
14 well as employees of said Counsel to whom it is reasonably necessary to disclose the  
15 information for this litigation;

16 7.2.b the Receiving Party’s House Counsel of record in this action;

17 7.2.c the officers, directors, and employees of the Receiving Party to  
18 whom disclosure is reasonably necessary for this litigation and who have signed the  
19 “Agreement to Be Bound by Protective Order” (Exhibit A);

20 7.2.d experts (as defined in this Order) of the Receiving Party to whom  
21 disclosure is reasonably necessary for this litigation and who have signed the  
22 “Agreement to Be Bound by Protective Order” (Exhibit A);

23 7.2.e the Court and its personnel;

24 7.2.f court reporters, their staffs, and professional vendors to whom  
25 disclosure is reasonably necessary for this litigation and who have signed the  
26 “Agreement to Be Bound by Protective Order” (Exhibit A);

27 7.2.g during or in preparation for their deposition or other testimony,  
28 witnesses in the action to whom disclosure is reasonably necessary. Such witnesses

1 shall not be permitted to retain copies unless they have signed the “Agreement to Be  
2 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or  
3 exhibits to depositions that reveal Protected Material must be separately bound by the  
4 court reporter and may not be disclosed to anyone except as permitted under this  
5 Stipulated Protective Order.

6 7.2.h the author of the document or the original source of the  
7 information.

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
9 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
10 writing by the Designating Party, a Receiving Party may disclose any information or  
11 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only  
12 to:

13 7.3.a the Receiving Party’s Outside Counsel of record in this action, as  
14 well as employees of said Counsel;

15 7.3.b House Counsel of record in this action;

16 7.3.c the Court and its personnel;

17 7.3.d court reporters, their staffs, and professional vendors to whom  
18 disclosure is reasonably necessary for this litigation and who have signed the  
19 “Agreement to Be Bound by Protective Order” (Exhibit A);

20 7.3.e during or in preparation for their deposition or other testimony,  
21 witnesses in the action to whom disclosure is reasonably necessary. Such witnesses  
22 shall not be permitted to retain copies unless they have signed the “Agreement to Be  
23 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or  
24 exhibits to depositions that reveal Protected Material must be separately bound by the  
25 court reporter and may not be disclosed to anyone except as permitted under this  
26 Stipulated Protective Order.; and

27 7.3.f the author of the document or the original source of the  
28 information.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2 OTHER LITIGATION.

3 If a Receiving Party is served with a subpoena or an order issued in other  
4 litigation that would compel disclosure of any information or items designated in this  
5 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
6 EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing  
7 (by mail, if possible) immediately and in no event more than three court days after  
8 receiving the subpoena or order. Such notification must include a copy of the  
9 subpoena or court order.

10 The Receiving Party also must immediately inform in writing the Party who  
11 caused the subpoena or order to issue in the other litigation that some or all the  
12 material covered by the subpoena or order is the subject of this Protective Order. In  
13 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order  
14 promptly to the Party in the other action that caused the subpoena or order to issue.

15 The purpose of imposing these duties is to alert the interested parties to the  
16 existence of this Protective Order and to afford the Designating Party in this case an  
17 opportunity to try to protect its confidentiality interests in the court from which the  
18 subpoena or order issued. The Designating Party shall bear the burdens and the  
19 expenses of seeking protection in that court of its confidential material – and nothing  
20 in these provisions should be construed as authorizing or encouraging a Receiving  
21 Party in this action to disobey a lawful directive from another court.

22 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
24 Protected Material to any person or in any circumstance not authorized under this  
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
26 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
27 to retrieve all copies of the Protected Material, (c) inform the person or persons to  
28 whom unauthorized disclosures were made of all the terms of this Order, and (d)

1 request such person or persons to execute the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A.

3 10. FILING PROTECTED MATERIAL.

4 Without written permission from the Designating Party or a court order secured  
5 after appropriate notice to all interested persons, a Party may not file in the public  
6 record in this action any Protected Material. A Party that seeks to file under seal any  
7 Protected Material must comply with Civil Local Rule 79-5.

8 11. FINAL DISPOSITION.

9 Unless otherwise ordered or agreed in writing by the Producing Party, within  
10 sixty days after the final termination of this action (including exhaustion of all appeals  
11 and petitions for discretionary review), each Receiving Party must return all Protected  
12 Material to the Producing Party. As used in this subdivision, “all Protected Material”  
13 includes all copies, abstracts, compilations, summaries or any other form of  
14 reproducing or capturing any of the Protected Material. With permission in writing  
15 from the Designating Party, the Receiving Party may destroy some or all of the  
16 Protected Material instead of returning it. Whether the Protected Material is returned  
17 or destroyed, the Receiving Party must submit a written certification to the Producing  
18 Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
19 deadline that identifies (by category, where appropriate) all the Protected Material that  
20 was returned or destroyed and that affirms that the Receiving Party has not retained  
21 any copies, abstracts, compilations, summaries or other forms of reproducing or  
22 capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
23 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal  
24 memoranda, correspondence or attorney work product, even if such materials contain  
25 Protected Material. Any such archival copies that contain or constitute Protected  
26 Material remain subject to this Protective Order as set forth in Section 4  
27 (DURATION), above. Further, nothing herein requires a Party to transmit its attorney  
28 work product or otherwise privileged documents or information to any Party or non-

1 party.

2 12. MISCELLANEOUS

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
4 person to seek its modification by the Court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
6 Protective Order no Party waives any right it otherwise would have to object to  
7 disclosing or producing any information or item on any ground not addressed in this  
8 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
9 ground to use in evidence of any of the material covered by this Protective Order.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: October 10, 2017

HINSHAW & CULBERTSON LLP

12  
13 By: /s/ Peter J. Felsenfeld

14 MISTY A. MURRAY  
15 PETER J. FELSENFELD  
16 DANIEL K. RYAN  
Attorneys for Defendant  
UNIMERICA INSURANCE  
COMPANY

17 DATED: October 10, 2017

KANTOR & KANTOR, LLP

18  
19 By: /s/ Corinne Chandler

20 CORINNE CHANDLER  
21 GLENN R. KANTOR  
Attorneys for Plaintiff  
22 PAUL BRESK

23 **FILER'S ATTESTATION**

24 I, Peter J. Felsenfeld, am the ECF user whose identification and password are  
25 being used to file this Stipulated Protective Order. In compliance with Local Rule 5-  
26 1(i)(3), I hereby attest that all party signatories hereto concur in this filing.

27 /s/ Peter J. Felsenfeld

28 PETER J. FELSENFELD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 10/11/17

/S/

\_\_\_\_\_  
The Hon. Suzanne H. Segal  
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order  
6 that was issued by the United States District Court for the Northern District of  
7 California on [date to be inserted] in the case of *Bresk v. Unimerica Insurance*  
8 *Company*, Case No. 16-08893-ODW(SSx).

9 I agree to comply with and to be bound by all the terms of this Stipulated  
10 Protective Order and I understand and acknowledge that failure to so comply could  
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
12 that I will not disclose in any manner any information or item that is subject to this  
13 Stipulated Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court  
16 for the Northern District of California for the purpose of enforcing the terms of this  
17 Stipulated Protective Order, even if such enforcement proceedings occur after  
18 termination of this action.

19 I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_  
20 [print or type full address and telephone number] as my California agent for service of  
21 process in connection with this action or any proceedings related to enforcement of  
22 this Stipulated Protective Order.

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25 Printed name: \_\_\_\_\_

26 [printed name]

27 Signature: \_\_\_\_\_

28 [signature]