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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PGP INVESTORS, LLC, a Delaware
limited liability company, PGP
ADVISORS, LLC, a Delaware limited
liability company, and M. BRENT
STEVENS, an individual,

Plaintiffs,

v.

LIBERTY INSURANCE
UNDERWRITERS INC., an Illinois
corporation,

Defendant.

CASE NO. 2:17-CV-5296 DSF (RAOx)

**STIPULATED PROTECTIVE
ORDER¹**

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Rozella A. Oliver's Procedures.

1 **A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential, proprietary or
3 private information for which special protection from public disclosure and from use for any
4 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
5 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses
7 to discovery and that the protection it affords from public disclosure and use extends only to the
8 limited information or items that are entitled to confidential treatment under the applicable legal
9 principles.

10 **B. GOOD CAUSE STATEMENT**

11 This action is likely to involve trade secrets, customer and pricing lists and other valuable
12 research, development, commercial, financial, technical and/or proprietary information for which
13 special protection from public disclosure and from use for any purpose other than prosecution of
14 this action is warranted. Such confidential and proprietary materials and information consist of,
15 among other things, confidential business or financial information, information regarding
16 confidential business practices, or other confidential research, development, or commercial
17 information (including information implicating privacy rights of third parties), information
18 otherwise generally unavailable to the public, or which may be privileged or otherwise protected
19 from disclosure under state or federal statutes, court rules, case decisions, or common law.
20 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes
21 over confidentiality of discovery materials, to adequately protect information the parties are
22 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of
23 such material in preparation for and in the conduct of trial, to address their handling at the end of
24 the litigation, and serve the ends of justice, a protective order for such information is justified in
25 this matter. It is the intent of the parties that information will not be designated as confidential
26 for tactical reasons and that nothing be so designated without a good faith belief that it has been
27 maintained in a confidential, non-public manner, and there is good cause why it should not be
28 part of the public record of this case.

1 **C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING UNDER SEAL**

2 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
3 Protective Order does not entitle them to file confidential information under seal; Local Civil
4 Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied
5 when a party seeks permission from the Court to file material under seal.

6 There is a strong presumption that the public has a right of access to judicial proceedings
7 and records in civil cases. In connection with non-dispositive motions, good cause must be
8 shown to support a filing under seal. See *Kamakana v. City and County of Honolulu*, 447 F.3d
9 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir.
10 2002), *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
11 stipulated protective orders require good cause showing), and a specific showing of good cause
12 or compelling reasons with proper evidentiary support and legal justification, must be made with
13 respect to Protected Material that a party seeks to file under seal. The parties' mere designation
14 of Disclosure or Discovery Material as CONFIDENTIAL does not – without the submission of
15 competent evidence by declaration, establishing that the material sought to be filed under seal
16 qualifies as confidential, privileged, or otherwise protectable – constitute good cause.

17 Further, if a party requests sealing related to a dispositive motion or trial, then compelling
18 reasons, not only good cause, for sealing must be shown, and the relief sought shall be narrowly
19 tailored to serve the specific interest to be protected. See *Pintos v. Pacific Creditors Ass'n*, 605
20 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing
21 sought to be filed or introduced under seal in connection with a dispositive motion or trial, the
22 party seeking protection must articulate compelling reasons, supported by specific facts and legal
23 justification, for the requested sealing order. Again, competent evidence supporting the
24 application to file documents under seal must be provided by declaration.

25 Any document that is not confidential, privileged, or otherwise protectable in its entirety
26 will not be filed under seal if the confidential portions can be redacted. If documents can be
27 redacted, then a redacted version for public viewing, omitting only the confidential, privileged,
28 or otherwise protectable portions of the document, shall be filed. Any application that seeks to

1 file documents under seal in their entirety should include an explanation of why redaction is not
2 feasible.

3 2. DEFINITIONS

4 2.1 Action: *PGP Investors, LLC, et al. v. Liberty Insurance Underwriters Inc.*, Case
5 No. 2:17-cv-5296 DSF (RAOx).

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
10 of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

11 2.4 Counsel: Outside Counsel or Record and House Counsel (as well as their support
12 staff).

13 2.5 Designating Party: a Party or Non-Party that designates information or items that
14 it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

15 2.6 Disclosure or Discovery Material: all items or information, regardless of the
16 medium or manner in which it is generated, stored or maintained (including, among other things,
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
18 responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
20 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
21 a consultant in this Action.

22 2.8 House Counsel: attorneys who are employees of a party to this Action. House
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association or other legal
25 entity not named as a party to this Action.

26 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
27 Action but are retained to represent or advise a party to this Action and have appeared in this
28 Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that

1 party, and includes support staff.

2 2.11 Party: any party to this Action, including all of its officers, directors, employees,
3 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation support services
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
8 organizing, storing, or retrieving data in any form or medium and their employees and
9 subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 **3. SCOPE**

15 The protections conferred by this Stipulation and Order cover not only Protected Material
16 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
17 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

19 Any use of Protected Material at trial shall be governed by the orders of the trial judge.
20 This Order does not govern the use of Protected Material at trial.

21 **4. DURATION**

22 Once a case proceeds to trial, information that was designated as CONFIDENTIAL or
23 maintained pursuant to this protective order used or introduced as an exhibit at trial becomes
24 public and will be presumptively available to all members of the public, including the press,
25 unless compelling reasons supported by specific factual findings to proceed otherwise are made
26 to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
27 “good cause” showing for sealing documents in discovery from “compelling reasons” standard
28 when merits-related documents are part of the court record). Accordingly, the terms of this

1 protective order do not extend beyond the commencement of the trial.

2 **5. DESIGNATING PROTECTED MATERIAL**

3 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
4 or Non-Party that designates information or items for protection under this Order must take care
5 to limit any such designation to specific material that qualifies under the appropriate standards.
6 The Designating Party must designate for protection only those parts of material, documents,
7 items or oral or written communications that qualify so that other portions of the material,
8 documents, items or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

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

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
15 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
16 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
17 designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) For information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
21 Producing Party affix at a minimum, the legal "CONFIDENTIAL" (hereinafter
22 "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion of
23 the material on a page qualifies for protection, the Producing Party also must clearly identify the
24 protected portions(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents available for inspection need
26 not designate them for protection until after the inspecting Party has indicated which documents
27 it would like copied and produced. During the inspection and before designation, all of the
28 material made available for inspection shall be deemed "CONFIDENTIAL." After the

1 inspecting Party has identified the documents it wants copied and produced, the Producing Party
2 must determine which documents, or portions thereof, qualify for protection under this Order.
3 Then, before producing the specified documents, the Producing Party must affix the
4 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion of
5 the material on a page qualifies for protection, the Producing Party also must clearly identify the
6 protected portions(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in depositions that the Designating Party identifies the
8 Disclosure or Discovery Material on the record, before the close of the deposition all protected
9 testimony. Additionally, any Party may, no later than fifteen (15) business days after receipt of a
10 deposition transcript, designate by page and line all or any portion thereof as confidential under
11 the terms of this Order by providing notice in writing to the other Parties. During the first fifteen
12 (15) business days after delivery by the court reporter of a deposition transcript, it shall be
13 deemed CONFIDENTIAL. All copies of deposition transcripts that contain CONFIDENTIAL
14 Material shall be prominently marked “CONFIDENTIAL” on the cover thereof.

15 (c) For information produced in some form other than documentary and for
16 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
17 the container or containers in which the information is store the legend “CONFIDENTIAL.” If
18 only a portion or portions of the information warrants protection, the Producing Party, to the
19 extent practicable, shall identify the protected portions(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the Designating Party’s
22 right to secure protection under this Order for such material. Upon timely correction of a
23 designation, the Receiving Party must make reasonable efforts to assure that the material is
24 treated in accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time that is consistent with the Court’s Scheduling Order.

28 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution

1 process under Local Rule 37.1 et seq.

2 6.3 The burden of persuasion in any such challenge proceeding shall be on the
3 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
4 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
5 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
6 designation, all parties shall continue to afford the material in question the level of protection to
7 which it is entitled under the Producing Party's designation until the Court rules on the
8 challenge.

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

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
11 or produced by another Party or by a Non-Party in connection with this Action only for
12 prosecuting, defending or attempting to settle this Action. Such Protected Material may be
13 disclosed only to the categories of persons and under the conditions described in this Order.
14 When the Action has been terminated, a Receiving Party must comply with the provisions of
15 section 13 below (FINAL DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
20 disclose any information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
23 information for this Action;

24 (b) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary for this Action;

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
27 is reasonably necessary for this Action and who have signed the "Acknowledgment and
28 Agreement to Be Bound" (Exhibit A);

1 (d) auditors, reinsurers, and regulators of the Parties who have a need to access
2 CONFIDENTIAL Information;

3 (e) the court and its personnel;

4 (f) court reporters and their staff;

5 (g) professional jury or trial consultants, mock jurors, and Professional Vendors
6 to whom disclosure is reasonably necessary for this Action and who have signed the
7 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (h) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information;

10 (i) during their depositions, witnesses, and attorneys for witnesses, in the Action
11 to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the
12 witness sign the "Acknowledgment and Agreement to be Bound" (Exhibit A); and (2) the
13 witness will not be permitted to keep any confidential information unless they sign Exhibit A,
14 except as otherwise agreed by the Designating Party or ordered by the court. Pages of
15 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be
16 separately bound by the court reporter and may not be disclosed to anyone except as permitted
17 under this Stipulated Protective Order; and

18 (i) any mediator or settlement officer, and their supporting personnel, mutually
19 agreed upon by any of the parties engaged in settlement discussions.

20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
21 **OTHER LITIGATION**

22 If a Party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this Action as "CONFIDENTIAL," that
24 Party must:

25 (a) Promptly notify in writing the Designating Party. Such notification shall
26 include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena or order is

1 subject to this Protective Order. Such notification shall include a copy of this Stipulated
2 Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued
4 by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the
6 subpoena or court order shall not produce any information designated in this action as
7 "CONFIDENTIAL" before a determination by the court from which the subpoena or order
8 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
9 shall bear the burden and expense of seeking protection in that court of its confidential material
10 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
11 Party in this Action to disobey a lawful directive from another court.

12 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
13 **THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by a Non-
15 Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-
16 Parties in connection with this litigation is protected by the remedies and relief provided by this
17 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
18 additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party's confidential information in its possession, and the Party is subject to an
21 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
22 Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-
24 Party's confidential information in its possession, and the Party is subject to an agreement with
25 the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

26 (2) promptly provide the Non-Party with a copy of the Stipulated
27 Protective Order in this Action, the relevant discover request(s), and a reasonably specific
28 description of the information requested; and

1 (3) make the information requested available for inspection by the
2 Non-Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this court within 14
4 days of receiving the notice and accompanying information, the Receiving Party may produce
5 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
6 timely seeks a protective order, the Receiving Party shall not produce any information in its
7 possession or control that is subject to the confidentiality agreement with the Non-Party before a
8 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
9 burden and expense of seeking protection in this court of its Protected Material.

10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
12 Material to any person or in any circumstance not authorized under this Stipulated Protective
13 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
14 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
15 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
16 made of all the terms of this Order, and (d) request such person or persons to execute the
17 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL.**

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently
21 produced material is subject to a claim of privilege or other protection, the obligations of the
22 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
23 provision is not intended to modify whatever procedure may be established in an e-discovery
24 order that provides for production without prior privilege review. Pursuant to Federal Rule of
25 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
26 communication or information covered by the attorney-client privilege or work product
27 protection, the parties may incorporate their agreement in the stipulated protective order
28 submitted to the court.

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order, no Party waives any right it otherwise would have to object to disclosing or producing
6 any information or item on any ground not addressed in this Stipulated Protective Order.
7 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
8 material covered by this Protective Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
10 Material must comply with Local Civil Rule 79-5. Protected Material may only be filed under
11 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
12 If a Party's request to file Protected Material under seal is denied by the court, then the
13 Receiving Party may file the information in the public record unless otherwise instructed by the
14 court.

15 **13. FINAL DISPOSITION**

16 The obligations of the Parties under this Order shall survive the resolution of this Action
17 such that the Parties agree to maintain all Protected Material as "CONFIDENTIAL" during the
18 pendency of and after the conclusion of this action. As used in this subdivision, "all Protected
19 Material" includes all copies, abstracts, compilations, summaries, and any other format
20 reproducing or capturing any of the Protected Material.

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1 **14. VIOLATION**

2 Any violation of this Order may be punished by appropriate measures including, without
3 limitation, contempt proceedings and/or monetary sanctions.
4

5 Dated: _____, 2017

LATHAM & WATKINS LLP
G. Andrew Lundberg
Wayne S. Flick
Faraz R. Mohammadi

8 BROWN NERI SMITH & KHAN LLP
9 Ethan J. Brown
Jill R. Glennon

11 By _____
12 Jill R. Glennon

13 Attorneys for Plaintiffs PGP Investors,
14 LLC, PGP Advisors, LLC, and M. Brent
15 Stevens

16 Dated: _____, 2017

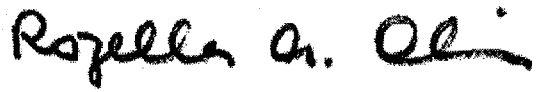
COZEN O'CONNOR
Valerie D. Rojas
Patricia Michelena Parisi

19 BAILEY CAVALIERI LLC
Sabrina Haurin

21 By _____
22 Valerie D. Rojas
23 Attorneys for Defendant Liberty
Insurance Underwriters Inc.

24 FOR GOOD CAUSE SHOWN IT IS SO ORDERED.

26 DATED: 11/2/2017

27 
28 HON. ROZELLA A. OLIVER
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under
6 penalty of perjury that I have read in its entirety and understand the Stipulated
7 Protective Order that was issued by the United States District Court for the Central
8 District of California on [date] in the case of *PGP Investors, Inc., et al. v. Liberty*
9 *Insurance Underwriters Inc.*, Case No. 2:17-cv-5296 DSF (RAOx). I agree to
10 comply with and to be bound by all the terms of this Stipulated Protective Order
11 and I understand and acknowledge that failure to so comply could expose me to
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will
13 not disclose in any manner any information or item that is subject to this Stipulated
14 Protective Order to any person or entity except in strict compliance with the
15 provisions of this Order. I further agree to submit to the jurisdiction of the United
16 States District Court for the Central District of California for enforcing the terms of
17 this Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____, [print or
19 type full name] of _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

28