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

AARON KAUFMAN,

Plaintiff,

v.

CHUBB LIMITED, et. al.

Defendants.

Case No. CV18-00844-ODW(MRWx)

STIPULATED PROTECTIVE ORDER

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

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

1 entitled to confidential treatment under the applicable legal principles. The parties further
2 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
3 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
4 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 1.2 GOOD CAUSE STATEMENT

7 Good cause exists to enter into this protective order, because of the following
8 reasons:

- 9 (1) In response to discovery requests from Federal Insurance Company
10 (“Federal”), plaintiff Aaron Kaufman (“Kaufman”) has identified
11 certain discovery, deposition, and written materials previously
12 identified by California Physicians Service dba Blue Shield of
13 California (“Blue Shield”) as “confidential” in the underlying action
14 of *Kaufman v. California Physicians’ Service dba Blue Shield of*
15 *California*, Los Angeles County Superior Court, Case No. BC577827
16 (“underlying action”), which remain subject to two protective orders
17 entered in that underlying action that does not permit Kaufman to
18 disclose “confidential” materials to his insurers in this case. The
19 parties are working with Blue Shield’s counsel to stipulate to
20 disclosure of these responsive discovery, depositions, and written
21 materials designated as “confidential” in the underlying action in this
22 action, subject to entry of a Stipulated Protective Order in this action.
- 23 (2) In response to Federal’s discovery responses in the instant action,
24 Kaufman has identified certain attorneys’ fees and costs he has
25 incurred in the underlying action, which are subject to the attorney-
26 client and attorney work product privileges in the underlying action,
27 which shall be the subject of a Stipulated Protective Order in this
28 action.

1 2. DEFINITIONS

2 2.1 Action: The pending federal lawsuit.

3 2.2 Challenging Party: A Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of how it
6 is generated, stored or maintained) or tangible things that qualify for protection under
7 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
8 Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
10 support staff).

11 2.5 Designating Party: A Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 2.6 Disclosure or Discovery Material: All items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among
15 other things, testimony, transcripts, and tangible things), that are produced or generated in
16 disclosures or responses to discovery in this matter.

17 2.7 Expert: A person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
19 expert witness or as a consultant in this Action.

20 2.8 House Counsel: Attorneys who are employees of a party to this Action.
21 House Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.9 Non-Party: Any natural person, partnership, corporation, association, or
23 other legal entity not named as a Party to this Action.

24 2.10 Outside Counsel of Record: Attorneys who are not employees of a Party to
25 this Action but are retained to represent or advise a party to this Action and have
26 appeared in this Action on behalf of that Party or are affiliated with a law firm that has
27 appeared on behalf of that Party, and includes support staff.

1 2.11 Party: Any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

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

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

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

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

14 3. SCOPE

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

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

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order will remain in effect until a Designating Party agrees otherwise in
25 writing or a court order otherwise directs. Final disposition will be deemed to be the later
26 of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and
27 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
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1 remands, trials, or reviews of this Action, including the time limits for filing any motions
2 or applications for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

16 If it comes to a Designating Party's attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must
18 promptly notify all other Parties that it is withdrawing the inapplicable designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this
20 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
21 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
22 must be clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
26 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
27 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
28 portion or portions of the material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
2 in the margins).

3 A Party or Non-Party that makes original documents available for inspection need
4 not designate them for protection until after the inspecting Party has indicated which
5 documents it would like copied and produced. During the inspection and before the
6 designation, all of the material made available for inspection will be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or portions
9 thereof, qualify for protection under this Order. Then, before producing the specified
10 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
11 that contains Protected Material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 (b) for testimony given in depositions that the Designating Party identify the
15 Disclosure or Discovery Material on the record, before the close of the deposition all
16 protected testimony.

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

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

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
3 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party will initiate the dispute resolution
5 process (and, if necessary, file a discovery motion) under Local Rule 37.1 et seq.

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

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

23 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
25 may disclose any information or item designated “CONFIDENTIAL” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to
28 disclose the information for this Action;

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

3 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
4 is reasonably necessary for this Action and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
9 to whom disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information;

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

22 (i) any mediator or settlement officer, and their supporting personnel, mutually
23 agreed upon by any of the parties engaged in settlement discussions; and

24 (j) Federal’s reinsurers and regulators, to the extent required by contract and
25 applicable law.

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

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification will
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or
10 order is subject to this Protective Order. Such notification will include a copy of this
11 Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected. If the Designating
14 Party timely seeks a protective order, the Party served with the subpoena or court order
15 will not produce any information designated in this action as “CONFIDENTIAL” before
16 a determination by the court from which the subpoena or order issued, unless the Party
17 has obtained the Designating Party’s permission. The Designating Party will bear the
18 burden and expense of seeking protection in that court of its confidential material and
19 nothing in these provisions should be construed as authorizing or encouraging a
20 Receiving Party in this Action to disobey a lawful directive from another court.

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
22 IN THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by a Non-
24 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
25 by Non-Parties in connection with this litigation is protected by the remedies and relief
26 provided by this Order. Nothing in these provisions should be construed as prohibiting a
27 Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce
2 a Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential information,
4 then the Party will:

5 (1) promptly notify in writing the Requesting Party and the Non-Party
6 that some or all of the information requested is subject to a confidentiality agreement
7 with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this Action, the relevant discovery request(s), and a reasonably
10 specific description of the information requested; and

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

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

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
25 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
26 all unauthorized copies of the Protected Material, (c) inform the person or persons to
27 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
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1 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
2 that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL

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

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order no Party waives any right it otherwise would have to object to disclosing
19 or producing any information or item on any ground not addressed in this Stipulated
20 Protective Order. Similarly, no Party waives any right to object on any ground to use in
21 evidence of any of the material covered by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
23 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
24 under seal pursuant to a court order authorizing the sealing of the specific Protected
25 Material at issue. If a Party's request to file Protected Material under seal is denied by the
26 court, then the Receiving Party may file the information in the public record unless
27 otherwise instructed by the court.

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1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within 60 days
3 of a written request by the Designating Party, each Receiving Party must return all
4 Protected Material to the Producing Party or destroy such material. As used in this
5 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected Material.
7 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
8 a written certification to the Producing Party (and, if not the same person or entity, to the
9 Designating Party) by the 60 day deadline that (1) identifies (by category, where
10 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
11 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
12 any other format reproducing or capturing any of the Protected Material. Notwithstanding
13 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
14 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and
16 expert work product, even if such materials contain Protected Material. In addition,
17 Federal may retain an archival copy of Protected Material or pleadings, motion papers,
18 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition
19 and trial exhibits, expert reports, attorney work product, and consultant and expert work
20 product in its possession, even if such materials contain Protected Material, to the extent
21 it is required to do so for regulatory reasons. Any such archival copies that contain or
22 constitute Protected Material remain subject to this Protective Order as set forth in
23 Section 4 (DURATION).

24 14. Any willful violation of this Order may be punished by civil or criminal contempt
25 proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or
26 other appropriate action at the discretion of the Court.

1 Pursuant to Local Rule 5-4.3.4(a)(2), I hereby certify that all of other signatories
2 listed, on whose behalf this filing is submitted, concur with the contents of this filing and
3 have authorized the filing.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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7 CWIKLO LAW FIRM
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9 DATED: October 1, 2018
10

/s/ David Peter Cwiklo
David Peter Cwiklo
Attorneys for Plaintiff Aaron
Kaufman
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13 LONDON FISCHER LLP
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15 DATED: October 1, 2018
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/s/ Elizabeth L. Musser
Richard S. Endres
Elizabeth L. Musser
Attorneys for Defendants Federal
Insurance Company and Chubb
National Insurance Company
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21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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23 DATED: 10/1/2018
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HON. MICHAEL R. WILNER
United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ **[full name]**, of _____ **[full**
4 **address]**, declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the
6 Central District of California on [date] in the case of *Kaufman v. Chubb Limited, et al.*,
7 Case No. 2:18-cv-844-ODW-MRW. I agree to comply with and to be bound by all the
8 terms of this Stipulated Protective Order and I understand and acknowledge that failure to
9 so comply could expose me to sanctions and punishment in the nature of contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is
11 subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order. I further agree to submit to the jurisdiction
13 of the United States District Court for the Central District of California for the purpose of
14 enforcing the terms of this Stipulated Protective Order, even if such enforcement
15 proceedings occur after termination of this action. I hereby appoint
16 _____ **[full name]** of _____
17 **[full address and telephone number]** as my California agent for service of process in
18 connection with this action or any proceedings related to enforcement of this Stipulated
19 Protective Order.

20 Date: _____

21 City and State where signed: _____

22
23 Printed name: _____

24 Signature: _____