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8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 WHITTAKER CORPORATION

11 Plaintiff,

12 v.

13 PACIFIC INDEMNITY COMPANY and
14 INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA

15 Defendants

Civil Case No.: CV 18-01828-GW
(ASx)

16 **STIPULATED PROTECTIVE
17 ORDER**

18 1. A. PURPOSES AND LIMITATIONS

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

9 This action is likely to involve privileged, confidential communications and/or
10 proprietary information related to the underlying environmental enforcement lawsuit
11 entitled *Commonwealth of Pennsylvania Department of Environmental Protection v.*
12 *Whittaker Corp., et al.*, Civil Case No. 08-06010 (the “PADEP Action”) for which
13 special protection from public disclosure and from use for any other purpose than in this
14 action is warranted. Such confidential and privileged materials and information consist
15 of, among other things, confidential communications between Whittaker and its insurers
16 regarding the PADEP Action (some of which are privileged vis-à-vis third parties), some
17 of which may be privileged and confidential pursuant to California Civil Code Section
18 2860(d), some of which may be privileged or confidential under insurance privacy laws
19 including California Constitution, Article I, Section 1; California Insurance Code Section
20 791.13; California Code of Civil Procedure §§ 1985.3, 2020.410(d); the Graham-Leach-
21 Bliley Act, 15 U.S.C. §§6801, et. seq, as well as HIPAA, 15 U.S.C. § 6801, et. seq.,
22 HITECH, confidential business and financial information regarding Whittaker’s
23 expenditure of “Remedial Investigation” and “Feasibility Study” (“RI/FS”) costs in the
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1 PADEP Action, information regarding confidential business practices, or other
2 confidential research, development, or commercial information otherwise generally
3 unavailable to the public, or which may be privileged or otherwise protected from
4 disclosure under state or federal statutes, court rules, case decisions, or common law.
5 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
6 disputes over confidentiality of discovery materials, to adequately protect information the
7 parties are entitled to keep confidential, to ensure that the parties are permitted reasonable
8 necessary uses of such material in preparation for and in the conduct of trial, to address
9 their handling at the end of the litigation, and serve the ends of justice, a protective order
10 for such information is justified in this matter. It is the intent of the parties that
11 information will not be designated as confidential for tactical reasons and that nothing be
12 so designated without a good faith belief that it has been maintained in a confidential,
13 non-public manner, and there is good cause why it should not be part of the public record
14 of this case.

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20 2. DEFINITIONS

21 2.1. Action: this pending federal insurance coverage lawsuit.

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23 2.2. Challenging Party: a Party or Non-Party that challenges the designation of
24 information or items under this Order.

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

3
4 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
5 support staff).

6
7 2.5. Designating Party: a Party or Non-Party that designates information or items
8 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

9
10 2.6. Disclosure or Discovery Material: all items or information, regardless of the
11 medium or manner in which it is generated, stored, or maintained (including, among
12 other things, testimony, transcripts, and tangible things), that are produced or generated in
13 disclosures or responses to discovery in this matter.

14
15 2.7. Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
17 expert witness or as a consultant in this Action.

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19 2.8. House Counsel: attorneys who are employees of a party to this Action.
20 House Counsel does not include Outside Counsel of Record or any other outside counsel.

21
22 2.9. Non-Party: any natural person, partnership, corporation, association, or other
23 legal entity not named as a Party to this action.

24
25 2.10. Outside Counsel of Record: attorneys who are not employees of a party to
26 this Action but are retained to represent or advise a party to this Action and have
27 appeared in this Action on behalf of that party or are affiliated with a law firm which has
28 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 authorized agents, claims administrators, employees, consultants, retained experts, and
3 Outside Counsel of Record (and their support staffs).
4

5 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
6 Discovery Material in this Action.
7

8 2.13. Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
11 their employees and subcontractors.
12

13 2.14. Protected Material: any Disclosure or Discovery Material that is designated
14 as “CONFIDENTIAL.”
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16 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material from
17 a Producing Party.
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19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected
21 Material (as defined above), but also (1) any information copied or extracted from
22 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
23 Material; and (3) any testimony, conversations, or presentations by Parties or their
24 Counsel that might reveal Protected Material.
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26 Any use of Protected Material at trial shall be governed by the orders of the trial
27 judge. This Order does not govern the use of Protected Material at trial.
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1 4. DURATION

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

11 5.1. Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under this
13 Order must take care to limit any such designation to specific material that qualifies
14 under the appropriate standards. The Designating Party must designate for protection
15 only those parts of material, documents, items, or oral or written communications that
16 qualify so that other portions of the material, documents, items, or communications for
17 which protection is not warranted are not swept unjustifiably within the ambit of this
18 Order.
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24 Mass, indiscriminate, or routinized designations are prohibited. Designations that
25 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
26 to unnecessarily encumber the case development process or to impose unnecessary
27 expenses and burdens on other parties) may expose the Designating Party to sanctions.
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1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.
4

5 5.2. Manner and Timing of Designations. Except as otherwise provided in this
6 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
7 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
8 must be clearly so designated before the material is disclosed or produced.
9

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic documents,
12 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
13 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
14 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
15 portion or portions of the material on a page qualifies for protection, the Producing Party
16 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
17 in the margins).
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21 A Party or Non-Party that makes original documents available for inspection need
22 not designate them for protection until after the inspecting Party has indicated which
23 documents it would like copied and produced. During the inspection and before the
24 designation, all of the material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
26 copied and produced, the Producing Party must determine which documents, or portions
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1 thereof, qualify for protection under this Order. Then, before producing the specified
2 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
3 that contains Protected Material. If only a portion or portions of the material on a page
4 qualifies for protection, the Producing Party also must clearly identify the protected
5 portion(s) (e.g., by making appropriate markings in the margins).
6

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8 (b) for testimony given in depositions that the Designating Party identify the
9 Disclosure or Discovery Material on the record, before the close of the deposition all
10 protected testimony.
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12 (c) for information produced in some form other than documentary and for any
13 other tangible items, that the Producing Party affix in a prominent place on the exterior of
14 the container or containers in which the information is stored the legend
15 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
16 the Producing Party, to the extent practicable, shall identify the protected portion(s).
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19 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
20 to designate qualified information or items does not, standing alone, waive the
21 Designating Party’s right to secure protection under this Order for such material. Upon
22 timely correction of a designation, the Receiving Party must make reasonable efforts to
23 assure that the material is treated in accordance with the provisions of this Order.
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25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

1 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process under Local Rule 37.1 et seq.
3

4 6.3. The burden of persuasion in any such challenge proceeding shall be on the
5 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
6 harass or impose unnecessary expenses and burdens on other parties) may expose the
7 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
8 the confidentiality designation, all parties shall continue to afford the material in question
9 the level of protection to which it is entitled under the Producing Party's designation until
10 the Court rules on the challenge.
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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 or for the Party's use
17 in the investigation and evaluation in connection with the claims in the underlying
18 *PADEP* Action. The Parties agree that nothing in this Order shall preclude any Party
19 from using Protected Material in mediation, arbitration, or litigation of a dispute between
20 the insured and insurers (including the captioned action), provided that Protected Material
21 is submitted or filed pursuant to this Protective Order. Such Protected Material may be
22 disclosed only to the categories of persons and under the conditions described in this
23 Order. When the Action has been terminated, a Receiving Party must comply with the
24 provisions of section 13 below (FINAL DISPOSITION).
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1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.
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5 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
7 may disclose any information or item designated “CONFIDENTIAL” only to:
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9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to
11 disclose the information for this Action;
12

13 (b) the officers, directors, claims administrators, authorized agents, and
14 employees (including House Counsel) of the Receiving Party to whom disclosure is
15 reasonably necessary for this Action, including the Party’s insurers, reinsurers,
16 retrocessionaires, and regulators;
17

18 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
19 is reasonably necessary for this Action and who have signed the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A);
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22 (d) the court and its personnel;
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24 (e) court reporters and their staff;
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26 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
27 to whom disclosure is reasonably necessary for this Action and who have signed the
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

13
14 (i) any mediator or settlement officer, and their supporting personnel, mutually
15 agreed upon by any of the parties engaged in settlement discussions.

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17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18
19 OTHER LITIGATION
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21 If a Party is served with a subpoena or a court order issued in other litigation that
22 compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:
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25 (a) promptly notify in writing the Designating Party. Such notification shall
26 include a copy of the subpoena or court order;
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1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or
3 order is subject to this Protective Order. Such notification shall include a copy of this
4 Stipulated Protective Order; and
5

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by
7 the Designating Party whose Protected Material may be affected.
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9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” before a determination by the court from which the subpoena or
12 order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that court of
14 its confidential material and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
16 from another court.
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20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
21 IN THIS LITIGATION
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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.
28

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 shall:
5

6 (1) promptly notify in writing the Requesting Party and the Non-Party
7 that some or all of the information requested is subject to a confidentiality agreement
8 with a Non-Party;
9

10 (2) promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and a reasonably
12 specific description of the information requested; and
13

14 (3) make the information requested available for inspection by the Non-
15 Party, if requested.
16

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

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

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12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
13 PROTECTED MATERIAL

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

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27 12. MISCELLANEOUS
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1 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
2 person to seek its modification by the Court in the future.

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

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

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18 13. FINAL DISPOSITION

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20 After the final disposition of this Action, as defined in paragraph 4, within 60 days
21 of a written request by the Designating Party, each Receiving Party must return all
22 Protected Material to the Producing Party or destroy such material. However, the Parties
23 and their representatives may maintain in their files, in continuing compliance with the
24 terms of this Protective Order, those documents, testimony or other information
25 necessary to comply with applicable legal or regulatory requirements. At the conclusion
26 of this case, unless other arrangements are agreed upon, each document and all copies
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1 thereof which have been designated as CONFIDENTIAL shall be maintained as
2 CONFIDENTIAL and subject to the parties' respective document retention/destruction
3 policies.
4

5 As used in this subdivision, "all Protected Material" includes all copies, abstracts,
6 compilations, summaries, and any other format reproducing or capturing any of the
7 Protected Material. Whether the Protected Material is returned, retained, or destroyed, the
8 Receiving Party must submit a written certification to the Producing Party (and, if not the
9 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
10 (by category, where appropriate) all the Protected Material that was returned, retained, or
11 destroyed and (2) affirms that the Receiving Party has not retained any other copies,
12 abstracts, compilations, summaries or any other format reproducing or capturing any of
13 the Protected Material. Notwithstanding this provision, Counsel and the Parties are
14 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
15 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
16 expert reports, attorney work product, and consultant and expert work product, even if
17 such materials contain Protected Material. Any such archival copies that contain or
18 constitute Protected Material remain subject to this Protective Order as set forth in
19 Section 4 (DURATION).
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25 14. Any violation of this Order may be punished by any and all appropriate measures
26 including, without limitation, contempt proceedings and/or monetary sanctions.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2
3

4 **Local Rule 5-4.3.4 Certification**

5 I, Reynold L. Siemens, am the ECF User whose ID and password are being used to
6 file this document. In compliance with Local Rule 5-4.3.4, I attest that all signatories
7 listed, on whose behalf this filing is submitted, concur in the filing's content and have
8 authorized this filing.
9

10
11 DATED: June 22, 2018

Respectfully submitted,

12
13 By: /s/ Reynold L. Siemens

14 Reynold L. Siemens (Bar No. 177956)

15 Email: rsiemens@cov.com

16 Jeffrey A. Kiburtz (Bar No. 228127)

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25 Attorneys for Whittaker Corporation

26
27 DATED: June 22, 2018

28 By: /s/ Carlos E. Needham

Deborah A. Aiwasian

Carlos E. Needham

Attorneys for Defendant

PACIFIC INDEMNITY COMPANY

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DATED: June 22, 2018

By: /s/ Douglas R. Irvine
Rebecca R. Weinreich
Douglas R. Irvine
Attorneys for Defendant
The Insurance Company of the State of
Pennsylvania

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: June 26, 2018

/s/
Honorable Alka Sagar
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety
6 and understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California on [date] in the case of *Whittaker*
8 *Corporation v. Pacific Indemnity Company, et al.*, Case No.: 2:18-cv-01828-GW-AS. I
9 agree to comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective Order to
13 any person or entity except in strict compliance with the provisions of this Order. I
14 further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action. I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone
19 number] as my California agent for service of process in connection with this action or
20 any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24
25 Signature: _____
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