

United States District Court
Northern District of California

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22 UNITED STATES DISTRICT COURT
 23 CENTRAL DISTRICT OF CALIFORNIA

24 ERICH BACHMANN, MONA
 25 BACHMANN,
 26
 27 Plaintiffs,
 28
 29 v.
 30 SAFECO INSURANCE COMPANY
 31 OF ILLINOIS,
 32
 33 Defendant.

Case No. 2:20-cv-09492 CAS (JEMx)

**STIPULATED PROTECTIVE
 ORDER**

**Complaint filed: October 16, 2020
 Trial date: April 5, 2022**

TO THE COURT AND ALL PARTIES:

Plaintiffs ERICH BACHMANN and MONA BACHMANN on one hand and

{05948246.1}

1 Defendant SAFECO INSURANCE COMPANY OF ILLINOIS on the other, by and
2 through their respective counsel, hereby stipulate and agree as follows:

3 STIPULATED PROTECTIVE ORDER

4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action may involve production of
6 confidential, proprietary, or private information for which special protection from
7 public disclosure and from use for any purpose other than prosecuting this litigation
8 may be warranted. Accordingly, the parties hereby stipulate to and petition the court
9 to enter the following Stipulated Protective Order. The parties acknowledge that this
10 Order does not confer blanket protections on all disclosures or responses to discovery
11 and that the protection it affords from public disclosure and use extends only to the
12 limited information or items that are entitled to confidential treatment under the
13 applicable legal principles. The parties further acknowledge, as set forth in Section
14 12.3, below, that this Stipulated Protective Order does not entitle them to file
15 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
16 that must be followed and the standards that will be applied when a party seeks
17 permission from the court to file material under seal.

18 2. DEFINITIONS

19 2.1 Challenging Party: a Party or Non-Party that challenges the designation
20 of information or items under this Order.

21 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for protection
23 under Federal Rule of Civil Procedure 26(c).

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House
25 Counsel (as well as their support staff).

26 2.4 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL.”

1 2.5 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
7 expert witness or as a consultant in this action.

8 2.7 House Counsel: attorneys who are employees of a party to this action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.8 Non-Party: any natural person, partnership, corporation, association, or
12 other legal entity not named as a Party to this action.

13 2.9 Outside Counsel of Record: attorneys who are not employees of a party
14 to this action but are retained to represent or advise a party to this action and have
15 appeared in this action on behalf of that party or are affiliated with a law firm which
16 has appeared on behalf of that party.

17 2.10 Party: any party to this action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this action.

22 2.12 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.13 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL.”

28 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material

1 from a Producing Party.

2 3. SCOPE

3 The protections conferred by this Stipulation and Order cover not only
4 Protected Material (as defined above), but also (1) any information copied or extracted
5 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
6 Protected Material; and (3) any testimony, conversations, or presentations by Parties
7 or their Counsel that might reveal Protected Material. However, the protections
8 conferred by this Stipulation and Order do not cover the following information: (a)
9 any information that is in the public domain at the time of disclosure to a Receiving
10 Party or becomes part of the public domain after its disclosure to a Receiving Party as
11 a result of publication not involving a violation of this Order, including becoming part
12 of the public record through trial or otherwise; and (b) any information known to the
13 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
14 disclosure from a source who obtained the information lawfully and under no
15 obligation of confidentiality to the Designating Party. Any use of Protected Material at
16 trial shall be governed by a separate agreement or order.

17 4. DURATION

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

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Non-Party that designates information or items for protection under this

1 Order must take care to limit any such designation to specific material that qualifies
2 under the appropriate standards. The Designating Party must designate for protection
3 only those parts of material, documents, items, or oral or written communications that
4 qualify – so that other portions of the material, documents, items, or communications
5 for which protection is not warranted are not swept unjustifiably within the ambit of
6 this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber or retard the case development process or to
10 impose unnecessary expenses and burdens on other parties) expose the Designating
11 Party to sanctions. If it comes to a Designating Party’s attention that information or
12 items that it designated for protection do not qualify for protection, that Designating
13 Party must promptly notify all other Parties that it is withdrawing the mistaken
14 designation.

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

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
24 page that contains protected material. If only a portion or portions of the material on a
25 page qualifies for protection, the Producing Party also must clearly identify the
26 protected portion(s) (e.g., by making appropriate markings in the margins). A Party or
27 Non-Party that makes original documents or materials available for inspection need
28 not designate them for protection until after the inspecting Party has indicated which

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

11 (b) for testimony given in deposition or in other pretrial or trial proceedings,
12 that the Designating Party identify on the record, before the close of the deposition,
13 hearing, or other proceeding, all protected testimony.

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

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

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
28 designation of confidentiality at any time. Unless a prompt challenge to a Designating

1 Party's confidentiality designation is necessary to avoid foreseeable, substantial
2 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
3 litigation, a Party does not waive its right to challenge a confidentiality designation by
4 electing not to mount a challenge promptly after the original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process by providing written notice of each designation it is challenging
7 and describing the basis for each challenge. To avoid ambiguity as to whether a
8 challenge has been made, the written notice must recite that the challenge to
9 confidentiality is being made in accordance with this specific paragraph of the
10 Protective Order. The parties shall attempt to resolve each challenge in good faith and
11 must begin the process by conferring directly (in voice to voice dialogue; other forms
12 of communication are not sufficient) within 14 days of the date of service of notice. In
13 conferring, the Challenging Party must explain the basis for its belief that the
14 confidentiality designation was not proper and must give the Designating Party an
15 opportunity to review the designated material, to reconsider the circumstances, and, if
16 no change in designation is offered, to explain the basis for the chosen designation. A
17 Challenging Party may proceed to the next stage of the challenge process only if it has
18 engaged in this meet and confer process first or establishes that the Designating Party
19 is unwilling to participate in the meet and confer process in a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
21 court intervention, the Designating Party shall file and serve a motion to retain
22 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
23 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
24 the parties agreeing that the meet and confer process will not resolve their dispute,
25 whichever is earlier. Each such motion must be accompanied by a competent
26 declaration affirming that the movant has complied with the meet and confer
27 requirements imposed in the preceding paragraph. Failure by the Designating Party to
28 make such a motion including the required declaration within 21 days (or 14 days, if

1 applicable) shall automatically waive the confidentiality designation for each
2 challenged designation. In addition, the Challenging Party may file a motion
3 challenging a confidentiality designation at any time if there is good cause for doing
4 so, including a challenge to the designation of a deposition transcript or any portions
5 thereof. Any motion brought pursuant to this provision must be accompanied by a
6 competent declaration affirming that the movant has complied with the meet and
7 confer requirements imposed by the preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has waived
12 the confidentiality designation by failing to file a motion to retain confidentiality as
13 described above, all parties shall continue to afford the material in question the level
14 of protection to which it is entitled under the Producing Party's designation until the
15 court rules on the challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated "CONFIDENTIAL"

1 only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
3 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
4 disclose the information for this litigation and who have signed the “Acknowledgment
5 and Agreement to Be Bound” that is attached hereto as Exhibit A;

6 (b) the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this litigation and
8 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants,
14 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
15 for this litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to
19 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
20 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
21 reveal Protected Material must be separately bound by the court reporter and may not
22 be disclosed to anyone except as permitted under this Stipulated Protective Order.

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
26 OTHER LITIGATION

27 If a Party is served with a subpoena or a court order issued in other litigation
28 that compels disclosure of any information or items designated in this action as

1 “CONFIDENTIAL,” that Party must:

2 (a) promptly notify in writing the Designating Party. Such notification shall
3 include a copy of the subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or order to
5 issue in the other litigation that some or all of the material covered by the subpoena or
6 order is subject to this Protective Order. Such notification shall include a copy of this
7 Stipulated Protective Order; and

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

10 If the Designating Party timely seeks a protective order, the Party served with
11 the subpoena or court order shall not produce any information designated in this
12 action as “CONFIDENTIAL” before a determination by the court from which the
13 subpoena or order issued, unless the Party has obtained the Designating Party’s
14 permission. The Designating Party shall bear the burden and expense of seeking
15 protection in that court of its confidential material – and nothing in these provisions
16 should be construed as authorizing or encouraging a Receiving Party in this action to
17 disobey a lawful directive from another court.

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

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

25 (b) In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party’s confidential information in its possession, and the Party is
27 subject to an agreement with the Non-Party not to produce the Non-Party’s
28 confidential information, then the Party shall:

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

4 (2) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
6 specific description of the information requested; and

7 (3) make the information requested available for inspection by the Non-
8 Party.

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

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain

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

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to use in evidence of any of the material covered by this Protective Order.

18 12.3 Filing Protected Material. Without written permission from the
19 Designating Party or a court order secured after appropriate notice to all interested
20 persons, a Party may not file in the public record in this action any Protected Material.
21 A Party that seeks to file under seal any Protected Material must comply with Civil
22 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
23 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
24 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
25 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
26 entitled to protection under the law. If a Receiving Party's request to file Protected
27 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
28 the Receiving Party may file the information in the public record pursuant to Civil

1 Local Rule 79-5(e) unless otherwise instructed by the court.

2 13. FINAL DISPOSITION

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

20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21 DATED: June 2, 2021

Respectfully submitted,
MAYNARD COOPER & GALE, LLP

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By: /s/ Corban J. Porter
NICHOLAS J. BOOS
CORBAN J. PORTER
Attorneys for Defendant SAFECO
INSURANCE COMPANY OF ILLINOIS

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DATED: June 2, 2021


Respectfully submitted,
STERLING SCOTT WINCHELL A
PROFESSIONAL LAW CORP.

By: /s/ Sterling Scott Winchell
STERLING SCOTT WINCHELL
Attorney for Plaintiffs ERICH BACHMANN
and MONA BACHMANN

* Pursuant to L.R. 5-4.3.4(2)(i), the filer attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 6/4/21


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 perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 _____ [date] in the case of *ERICH BACHMANN, et al. v. SAFECO*
8 *INSURANCE COMPANY OF ILLINOIS, Case No. 2:20-cv-09492-CAS-JEM*. I agree
9 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
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
12 disclose in any manner any information or item that is subject to this Stipulated
13 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 Central 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
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Stipulated Protective
23 Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27
28 Signature: _____