

1 Traci M. Ribeiro (admitted *pro hac vice*)
 2 traci.ribeiro@sedgwicklaw.com
 3 Alice Ye (admitted *pro hac vice*)
 4 alice.ye@sedgwicklaw.com
 5 SEDGWICK LLP
 6 One North Wacker Drive, Suite 4200
 7 Chicago, Illinois 60606
 8 Telephone: 312.641.9050
 9 Facsimile: 312.641.9530

10 Curtis D. Parvin (Bar No. 116079)
 11 curtis.parvin@sedgwicklaw.com
 12 Jenni K. Katzer (Bar No. 253684)
 13 jenni.katzer@sedgwicklaw.com
 14 SEDGWICK LLP
 15 Three Park Plaza, 17th Floor
 16 Irvine, California 92614
 17 Telephone: 949.852.8200
 18 Facsimile: 949.852.8282

19 *Attorneys for Defendant, Lexington*
 20 *Insurance Company*

21 **UNITED STATES DISTRICT COURT**
 22 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

23 CELL-CRETE CORPORATION, a
 24 California corporation, and DAVID L.
 25 BRAULT, an Individual,

26 Plaintiffs,

27 v.

28 LEXINGTON INSURANCE COMPANY,
 a Corporation, and DOES 1 through 200,
 inclusive,

Defendants.

Case No. 8:14-cv-00503-AG-PLA
 Assigned to Hon. Andrew J. Guilford

**STIPULATED PROTECTIVE
 ODER**

1 **A. PURPOSES AND LIMITATIONS**

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

15 **B. GOOD CAUSE STATEMENT**

16 This action is likely to involve confidential, proprietary or private information
17 for which special protection from public disclosure and from use for any purpose
18 other than prosecution of this action is warranted. Such confidential and proprietary
19 materials and information consist of, among other things, the following:

- 20 - Documents or information relating to any underlying claims against Cell-
21 Crete Corporation (“Cell-Crete”) which are still open, as such
22 information is otherwise unavailable to the public and may impact Cell-
23 Crete’s position in the underlying litigation of these claims if publicly
24 disseminated;
- 25 - Documents or information from Lexington Insurance Company’s
26 underwriting files for the seven Lexington policies issued to Cell-Crete,
27 which includes Lexington’s confidential business or financial
28 information;

- 1 - Lexington’s Litigation Management Guidelines, which includes
- 2 information regarding Lexington’s confidential business practices;
- 3 - David L. Brault’s and the Law Offices of David L. Brault’s tax returns,
- 4 return information and financial data;
- 5 - Any other documents or information which may be privileged or
- 6 otherwise protected from disclosure under state or federal statutes, court
- 7 rules, case decisions, or common law.

8 Accordingly, to expedite the flow of information, to facilitate the prompt
9 resolution of disputes over confidentiality of discovery materials, to adequately protect
10 information the parties are entitled to keep confidential, to ensure that the parties are
11 permitted reasonable necessary uses of such material in preparation for and in the
12 conduct of trial, to address their handling at the end of the litigation, and serve the
13 ends of justice, a protective order for such information is justified in this matter. It is
14 the intent of the parties that information will not be designated as confidential for
15 tactical reasons and that nothing be so designated without a good faith belief that it
16 has been maintained in a confidential, non-public manner, and there is good cause
17 why it should not be part of the public record of this case.

18 **2. DEFINITIONS**

19 2.1 Action: *Cell-Crete Corporation, et al. v. Lexington Insurance Company, et al.*,
20 Case No. 8:14-cv-00503-AG-PLA, in the United States District Court, Central District
21 of California, Southern Division.

22 2.2 Challenging Party: a Party or Non-Party that challenges the designation
23 of information or items under this Order.

24 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
25 how it is generated, stored or maintained) or tangible things that qualify for protection
26 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
27 Cause Statement.

28 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as

1 their support staff).

2 2.5 Designating Party: a Party or Non-Party that designates information or
3 items that it produces in disclosures or in responses to discovery as
4 “CONFIDENTIAL.”

5 2.6 Disclosure or Discovery Material: all items or information, regardless of
6 the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced or
8 generated in disclosures or responses to discovery in this matter.

9 2.7 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as
11 an expert witness or as a consultant in this Action.

12 2.8 House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association, or
16 other legal entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a party
18 to this Action but are retained to represent or advise a party to this Action and have
19 appeared in this Action on behalf of that party or are affiliated with a law firm that has
20 appeared on behalf of that party, including support staff.

21 2.11 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.13 Professional Vendors: persons or entities that provide litigation support
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or
28 demonstrations, and organizing, storing, or retrieving data in any form or medium)

1 and their employees and subcontractors.

2 2.14 Protected Material: any Disclosure or Discovery Material that is
3 designated as “CONFIDENTIAL.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 3. **SCOPE**

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

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

14 4. **DURATION**

15 Once a case proceeds to trial, all of the information to be introduced that was
16 previously designated as confidential or maintained pursuant to this protective order
17 becomes public and will be presumptively available to all members of the public,
18 including the press, unless compelling reasons supported by specific factual findings
19 to proceed otherwise are made to the trial judge in advance of the trial. See Kamakana
20 v. City and County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006)
21 (distinguishing “good cause” showing for sealing documents produced in discovery
22 from “compelling reasons” standard when merits-related documents are part of court
23 record). Accordingly, the terms of this protective order do not extend beyond the
24 commencement of the trial.

25 5. **DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
27 Party or Non-Party that designates information or items for protection under this
28 Order must take care to limit any such designation to specific material that qualifies

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

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

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

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

19 Designation in conformity with this Order requires:

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

27 A Party or Non-Party that makes original documents available for inspection
28 need not designate them for protection until after the inspecting Party has indicated

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

11 (b) for testimony given in depositions that the Designating Party identify the
12 Disclosure or Discovery Material on the record, before the close of the deposition.

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

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure 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.
22 Upon timely correction of a designation, the Receiving Party must make reasonable
23 efforts to assure that the material is treated in accordance with the provisions of this
24 Order.

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

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

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

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

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

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

- (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably

1 necessary to disclose the information for this Action;

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

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

7 (d) the Court and its personnel;

8 (e) court reporters and their staff;

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

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

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

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

25 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
26 **PRODUCED IN 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
3 shall include a copy of the subpoena or court order;

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

8 (c) cooperate with respect to all reasonable procedures sought to be
9 pursued 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**
19 **PRODUCED 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-
2 Party that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this Action, 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
8 Non-Party, if requested.

9 (c) If the Non-Party fails to 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
15 Court. Absent a court order to the contrary, the Non-Party shall bear the burden and
16 expense 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 writing
21 the Designating Party of the unauthorized disclosures, (b) use its best efforts to
22 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**
27 **OTHERWISE 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
9 to 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. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
20 only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material at issue; good cause must be shown in the request to file
22 under seal. If a Party's request to file Protected Material under seal is denied by the
23 Court, then the Receiving Party may file the information in the public record unless
24 otherwise instructed by the Court.

25 **13. FINAL DISPOSITION**

26 After the final disposition of this Action, within 60 days of a written request by
27 the Designating Party, each Receiving Party must return all Protected Material to the
28 Producing Party or destroy such material. As used in this subdivision, "all Protected

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

16 14. Any violation of this Order may be punished by any and all appropriate
17 measures including, without limitation, contempt proceedings and/or monetary
18 sanctions.

19 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

20
21 DATED: December 16, 2014

22 
23 _____

24 Paul L. Abrams
25 United States Magistrate Judge

26
27
28

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

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Central District of California on [date] in the case of
_____ *Cell-Crete Corporation et al. v. Lexington Insurance Company, et al.*,
Case No. 8:14-cv-00503-AG-PLA, Central District of California, Southern Division. I
agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____