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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

LINCOLN BENEFIT LIFE COMPANY,	Case No. SA CV 18-00260-DOC (JDEx)
Plaintiff and Counter-Defendant,	Assigned For All Purposes to: Honorable David O. Carter
vs.	[Discovery Document: Referred to Magistrate Judge John D. Early.]
PAIGE FUNDAMENT,	STIPULATED PROTECTIVE ORDER
Defendant and Counter-Plaintiff.	Date Action Filed: February 14, 2018 Trial Date: March 19, 2019

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 pursuing 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

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles.

3 2. GOOD CAUSE STATEMENT

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

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1 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
2 PROCEDURE

3 The parties further acknowledge, as set forth in Section 14.3, below, that this
4 Stipulated Protective Order does not entitle them to file confidential information
5 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
6 and the standards that will be applied when a party seeks permission from the court
7 to file material under seal. There is a strong presumption that the public has a right
8 of access to judicial proceedings and records in civil cases. In connection with non-
9 dispositive motions, good cause must be shown to support a filing under seal. See
10 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006),
11 Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-
12 Welbon v. Sony Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
13 stipulated protective orders require good cause showing), and a specific showing of
14 good cause or compelling reasons with proper evidentiary support and legal
15 justification, must be made with respect to Protected Material that a party seeks to
16 file under seal. The parties' mere designation of Disclosure or Discovery Material as
17 CONFIDENTIAL does not— without the submission of competent evidence by
18 declaration, establishing that the material sought to be filed under seal qualifies as
19 confidential, privileged, or otherwise protectable—constitute good cause.

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

1 Any document that is not confidential, privileged, or otherwise protectable in
2 its entirety will not be filed under seal if the confidential portions can be redacted. If
3 documents can be redacted, then a redacted version for public viewing, omitting
4 only the confidential, privileged, or otherwise protectable portions of the document,
5 shall be filed. Any application that seeks to file documents under seal in their
6 entirety should include an explanation of why redaction is not feasible.

7 4. DEFINITIONS

8 4.1 Action: this pending federal lawsuit.

9 4.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
14 the Good Cause Statement.

15 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 4.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 4.6 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery.

24 4.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

27 4.8 House Counsel: attorneys who are employees of a party to this Action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 4.9 Non-Party: any natural person, partnership, corporation, association or
3 other legal entity not named as a Party to this action.

4 4.10 Outside Counsel of Record: attorneys who are not employees of a party
5 to this Action but are retained to represent a party to this Action and have appeared
6 in this Action on behalf of that party or are affiliated with a law firm that has
7 appeared on behalf of that party, and includes support staff.

8 4.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 4.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 4.14 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.”

19 4.15 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 5. SCOPE

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

27 Any use of Protected Material at trial shall be governed by the orders of the
28 trial judge and other applicable authorities. This Order does not govern the use of

1 Protected Material at trial.

2 6. DURATION

3 Once a case proceeds to trial, information that was designated as
4 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
5 as an exhibit at trial becomes public and will be presumptively available to all
6 members of the public, including the press, unless compelling reasons supported by
7 specific factual findings to proceed otherwise are made to the trial judge in advance
8 of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause”
9 showing for sealing documents produced in discovery from “compelling reasons”
10 standard when merits-related documents are part of court record). Accordingly, the
11 terms of this protective order do not extend beyond the commencement of the trial.

12 7. DESIGNATING PROTECTED MATERIAL

13 7.1 Exercise of Restraint and Care in Designating Material for
14 Protection. Each Party or Non-Party that designates information or
15 items for protection under this Order must take care to limit any such designation to
16 specific material that qualifies under the appropriate standards. The Designating
17 Party must designate for protection only those parts of material, documents, items or
18 oral or written communications that qualify so that other portions of the material,
19 documents, items or communications for which protection is not warranted are not
20 swept unjustifiably within the ambit of this Order.

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

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

1 7.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
3 that qualifies for protection under this Order must be clearly so designated before
4 the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
10 contains protected material. If only a portion of the material on a page qualifies for
11 protection, the Producing Party also must clearly identify the protected portion(s)
12 (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and
16 before the designation, all of the material made available for inspection shall be
17 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
18 documents it wants copied and produced, the Producing Party must determine which
19 documents, or portions thereof, qualify for protection under this Order. Then, before
20 producing the specified documents, the Producing Party must affix the
21 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
22 portion of the material on a page qualifies for protection, the Producing Party also
23 must clearly identify the protected portion(s) (e.g., by making appropriate markings
24 in the margins).

25 (b) for testimony given in depositions that the Designating Party
26 identifies the Disclosure or Discovery Material on the record, before the close of the
27 deposition all protected testimony.

28 (c) for information produced in some form other than documentary and

1 for any other tangible items, that the Producing Party affix in a prominent place on
2 the exterior of the container or containers in which the information is stored the
3 legend “CONFIDENTIAL.” If only a portion or portions of the information
4 warrants protection, the Producing Party, to the extent practicable, shall identify the
5 protected portion(s).

6 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the Designating Party’s right to secure protection under this Order for such material.
9 Upon timely correction of a designation, the Receiving Party must make reasonable
10 efforts to assure that the material is treated in accordance with the provisions of this
11 Order.

12 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with the Court’s
15 Scheduling Order.

16 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37-1 et seq.

18 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
19 joint stipulation pursuant to Local Rule 37-2.

20 8.4 The burden of persuasion in any such challenge proceeding shall be on
21 the Designating Party. Frivolous challenges, and those made for an improper
22 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
23 parties) may expose the Challenging Party to sanctions. Unless the Designating
24 Party has waived or withdrawn the confidentiality designation, all parties shall
25 continue to afford the material in question the level of protection to which it is
26 entitled under the Producing Party’s designation until the Court rules on the
27 challenge.

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1 9. ACCESS TO AND USE OF PROTECTED MATERIAL

2 9.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under the
6 conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 15 below (FINAL
8 DISPOSITION).

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

12 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated

15 “CONFIDENTIAL” only to:

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

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

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

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

12 (i) any mediators or settlement officers and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
15 PRODUCED IN OTHER LITIGATION

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

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

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

25 (c) cooperate with respect to all reasonable procedures sought to be
26 pursued by the Designating Party whose Protected Material may be affected. If the
27 Designating Party timely seeks a protective order, the Party served with the
28 subpoena or court order shall not produce any information designated in this action

1 as “CONFIDENTIAL” before a determination by the court from which the
2 subpoena or order issued, unless the Party has obtained the Designating Party’s
3 permission. The Designating Party shall bear the burden and expense of seeking
4 protection in that court of its confidential material and nothing in these provisions
5 should be construed as authorizing or encouraging a Receiving Party in this Action
6 to disobey a lawful directive from another court.

7 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO
8 BE PRODUCED IN THIS LITIGATION

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

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

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

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

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

26 (c) If the Non-Party fails to seek a protective order from this court
27 within 14 days of receiving the notice and accompanying information, the Receiving
28 Party may produce the Non-Party’s confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the Receiving
2 Party shall not produce any information in its possession or control that is subject to
3 the confidentiality agreement with the Non-Party before a determination by the
4 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
5 expense of seeking protection in this court of its Protected Material.

6 12. UNAUTHORIZED DISCLOSURE OF PROTECTED
7 MATERIAL

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

16 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
17 OTHERWISE PROTECTED MATERIAL

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

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1 14. MISCELLANEOUS

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 14.2 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
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 14.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
11 only be filed under seal pursuant to a court order authorizing the sealing of the
12 specific Protected Material. If a Party's request to file Protected Material under seal
13 is denied by the court, then the Receiving Party may file the information in the
14 public record unless otherwise instructed by the court.

15 15. FINAL DISPOSITION

16 After the final disposition of this Action, as defined in paragraph 6, within 60
17 days of a written request by the Designating Party, each Receiving Party must return
18 all Protected Material to the Producing Party or destroy such material. As used in
19 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
20 summaries, and any other format reproducing or capturing any of the Protected
21 Material. Whether the Protected Material is returned or destroyed, the Receiving
22 Party must submit a written certification to the Producing Party (and, if not the same
23 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
24 (by category, where appropriate) all the Protected Material that was returned or
25 destroyed and (2) affirms that the Receiving Party has not retained any copies,
26 abstracts, compilations, summaries or any other format reproducing or capturing any
27 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing

1 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
2 reports, attorney work product, and consultant and expert work product, even if such
3 materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth in
5 Section 6 (DURATION).

6 16. VIOLATION

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

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 Dated: October 4, 2018

DRINKER BIDDLE & REATH LLP

11

12 By: /s/ Jason P. Gosselin

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Jason P. Gosselin
John M. Moore
Alexis N. Burgess

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15 Attorneys for Plaintiff and Counter-
Defendant
16 LINCOLN BENEFIT LIFE COMPANY

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18 Dated: October 4, 2018

RUTAN & TUCKER, LLP

19

20 By: /s/ Corey H. Collins

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Alejandro S. Angulo
Damon D. Mircheff
Corey H. Collins

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23 Attorneys for Defendant and Counter-
Plaintiff
PAIGE FUNDAMENT

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1 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Corey H. Collins, attest that all
2 signatories identified above, and on whose behalf the filing is submitted, concur in
3 the filing's content and have authorized the filing.

4 Dated: October 4, 2018


RUTAN & TUCKER, LLP

5
6 By: /s/ Corey H. Collins
Alejandro S. Angulo
7 Damon D. Mircheff
Corey H. Collins

8 Attorneys for Defendant and Counter-
9 Plaintiff
10 PAIGE FUNDAMENT

11 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

12
13 DATED: October 05, 2018

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16 JOHN D. EARLY
United States Magistrate Judge

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EXHIBIT A
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

LINCOLN BENEFIT LIFE
COMPANY,

Plaintiff and Counter-
Defendant,

v.

PAIGE FUNDAMENT,

Defendant and Counter-
Plaintiff.

Case No. SA CV 18-00260-DOC (JDEx)
**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND**

Assigned For All Purposes to
Hon. David O. Carter

Trial Date: March 19, 2019
Action Filed: February 14, 2018

1. I, _____, hereby acknowledge that I am about to receive Protected Material supplied in the above-captioned matter.
2. I have read the Stipulated Protective Order, which was entered by the Court in the above-captioned action, a copy of which has been provided to me. I agree to be bound by its terms.
3. I will not utilize any materials marked with the legend “Confidential” or designated as containing Protected Material for any purpose other than in connection with the Action. I further affirm that I will not reveal the Protected Material to, nor discuss it with, anyone except in accordance with the terms of the Stipulated Protective Order.
4. At the termination of this litigation, I will return all materials containing Protected Material to the person who supplied the Protected Material to me.

