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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT E. COYLE UNITED STATES COURTHOUSE - FRESNO

PRAETORIAN INSURANCE COMPANY, an
Illinois corporation,

Plaintiff,

v.

WESTERN MILLING LLC, a California
limited liability company,

Defendant.

WESTERN MILLING LLC, a California
limited liability company,

Counter-Complainant,

v.

PRAETORIAN INSURANCE COMPANY, an
Illinois corporation; and DOES 1-25,

Counter-Defendant.

Case No.: 1:15-cv-00557-DAD-EPG

*For All Purposes Assigned To: Hon. Dale A.
Drozd, Courtroom 5, 7th floor – Fresno
Discovery Matters: Hon. Magistrate Judge
Erica P. Grosjean, Courtroom 10, 6th Floor -
Fresno*

**JOINT STIPULATION FOR PROTECTIVE
ORDER**

Complaint Filed: April 10, 2015
Counter-Claim Filed: December 7, 2015

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted. The parties
5 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
6 discovery and that the protection it affords extends only to the limited information or items that are
7 entitled under the applicable legal principles to treatment as confidential.

8 **2. DEFINITIONS**

9 **2.1 CHALLENGING PARTY:** a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 **2.2 "CONFIDENTIAL" INFORMATION OR ITEMS:** information (regardless of how
12 generated, stored or maintained) or tangible things reflecting confidential or personal information that
13 counsel or any of the stipulating parties have in good faith designated as "Confidential".

14 **2.3 COUNSEL:** Outside Counsel and (as well as their support staff).

15 **2.4 DESIGNATING PARTY:** a Party or Non-Party that designates information or items
16 that it produces in disclosures or in responses to discovery as "Confidential".

17 **2.5 DISCLOSURE OR DISCOVERY MATERIAL:** all items or information, regardless
18 of the medium or manner generated, stored, or maintained (including, among other things, testimony,
19 transcripts, and tangible things) that are produced or generated in disclosures or responses to
20 discovery in this matter.

21 **2.6 EXPERT:** a person with specialized knowledge or experience in a matter pertinent to
22 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
23 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,
24 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
25 competitor. This definition includes a professional jury or trial consultant retained in connection with
26 this litigation.

27 **2.7 NON-PARTY:** any natural person, partnership, corporation, association, or other legal
28 entity not named as a Party to this action.

1 **2.8 OUTSIDE COUNSEL:** attorneys who are not employees of a Party but are retained
2 to represent or advise a Party and have appeared in this action on behalf of that Party or are affiliated
3 with a law firm which has appeared on behalf of that Party.

4 **2.9 PARTY:** any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and Outside Counsel (and their support staff).

6 **2.10 PRODUCING PARTY:** a Party or Non-Party that produces Disclosure or Discovery
7 Material in this action.

8 **2.11 PROFESSIONAL VENDORS:** persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
10 organizing, storing, or retrieving data in any form or medium) and their employees and
11 subcontractors.

12 **2.12 PROTECTED MATERIAL:** any Disclosure or Discovery Material that is designated
13 as “Confidential”.

14 **2.13 RECEIVING PARTY:** a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 **3. SCOPE**

17 **3.1** The protections conferred by this Order cover not only Protected Material (as defined
18 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
19 summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or their
20 Counsel that might reveal Protected Material.

21 **4. DURATION**

22 **4.1** Even after final disposition of this litigation, the confidentiality obligations imposed
23 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
24 order or arbitrator’s order otherwise directs.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 **5.1 Exercise of Restraint and Care in Designating Material for Protection**

27 Each Party or Non-Party that designates information or items for protection under this Order
28 must take care to limit any such designation to specific material that qualifies under the appropriate

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

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

9 If it comes to a Designating Party's attention that information or items designated for
10 protection do not qualify for protection at all, or do not qualify for the level of protection initially
11 asserted, then the Designating Party must promptly notify all other Parties that it is withdrawing the
12 mistaken designation.

13 **5.2 Manner and Timing of Designations**

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

18 **Designation in Conformity with this Order Requires:**

19 (a) for information in documentary form (apart from transcripts of depositions or other pretrial
20 or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that
21 contains protected material. If only a portion or portions of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 (b) for testimony given in deposition or in other pre-trial or trial proceedings, that the Party or
25 Non-Party offering or sponsoring the testimony identify on the record, before the close of the
26 deposition, hearing, or other proceeding, all protected testimony. When it is impractical to identify
27 separately each portion of testimony that is entitled to protection, and when it appears that substantial
28 portions of the testimony may qualify for protection, the Party or Non-Party that sponsors, offers, or

1 gives the testimony may invoke on the record (before the deposition, hearing, or other proceeding is
2 concluded) a right to have up to twenty (20) days to identify the specific portions of the testimony as
3 to which protection is sought. Only those portions of the testimony that are appropriately designated
4 for protection within the twenty (20) days shall be covered by the provisions of this Protective Order.
5 Alternatively, a Party or Non-Party offering or sponsoring the testimony may specify, at the
6 deposition or up to twenty (20) days afterwards if that period is properly invoked, that the entire
7 transcript shall be treated as “CONFIDENTIAL”.

8 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or
9 other proceeding to include Protected Material so that the other parties can ensure that only
10 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
11 A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in
12 any way affect its designation as “CONFIDENTIAL”.

13 Transcripts containing Protected Material shall have an obvious legend on the title page that
14 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
15 (including line numbers as appropriate) that have been designated as Protected Material. The
16 Designating Party shall inform the court reporter of these requirements.

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

22 **5.3 Inadvertent Failures to Designate**

23 If timely corrected, an inadvertent failure to designate qualified information or items as
24 “Confidential” does not, standing alone, waive the Designating Party’s right to secure protection
25 under this Order for such material. If material *is* appropriately designated as “Confidential” after the
26 material was initially produced, the Receiving Party, on timely notification of the designation, must
27 make reasonable efforts to assure that the material is treated in accordance with the provisions of this
28 Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges**

3 Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a
4 prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid
5 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
6 delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by
7 electing not to mount a challenge promptly after the original designation is disclosed.

8 **6.2 Meet and Confer**

9 The Challenging Party shall initiate the dispute resolution process by providing written notice
10 of each designation it is challenging and describing the basis for each challenge. The parties shall
11 attempt to resolve each challenge in good faith and must begin the process by conferring directly (in
12 writing or voice-to-voice dialogue). In conferring, the Challenging Party must explain the basis for
13 its belief that the confidentiality designation was not proper and must give the Designating Party an
14 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
15 designation is offered, to explain the basis for the chosen designation. A Challenging Party may
16 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
17 process first or establishes that the Designating Party is unwilling to participate in the meet and
18 confer process in a timely manner.

19 **6.3 Judicial Intervention**

20 A Challenging Party, after considering the justification offered by the Designating Party, may
21 file and serve a motion consistent with this Protective Order that identifies the challenged material
22 and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a
23 competent declaration that affirms the movant has complied with the meet and confer requirements
24 imposed by the preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
26 Until the Court rules on the challenge, all parties shall continue to afford the material in question the
27 level of protection to which it is entitled under the Producing Party’s designation.

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

2 **7.1 Basic Principles**

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

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

10 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.**

11 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

13 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of
14 said Outside Counsel to whom it is reasonably necessary to disclose the information for this
15 litigation;

16 (b) the officers, directors, and employees of the Receiving Party to whom disclosure is
17 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to
18 Be Bound," attached hereto as Exhibit A;

19 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
20 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to
21 Be Bound" (Exhibit A);

22 (d) the Judge, the Court, and its personnel;

23 (e) court reporters and their staff, professional jury or trial consultants, and Professional
24 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
27 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
28 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed

1 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
2 bound by the court reporter and may not be disclosed to anyone except as permitted under this
3 Protective Order.

4 (g) the author or recipient of the document or the original source of the information.

5 **7.3 Filing of "CONFIDENTIAL" Information or Items with the Court**

6 Documents containing confidential information shall not be filed with the Court absent: (a)
7 consent from the party designating the materials as confidential; or (b) the issuance of a sealing order
8 from the Court addressing such confidential information. If the designating party does not consent,
9 the party seeking to file documents containing confidential information with the Court shall file a
10 motion or an application for an order sealing the document, pursuant to Rule 2.551 of the California
11 Rules of Court.

12 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

13 **8.1** If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
14 Protected Material to any person or in any circumstance not authorized under this Protective Order,
15 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
16 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
17 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
18 request such person or persons to execute an acknowledgment and agreement to be bound by this
19 protective order.

20 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.**

21
22 If a Party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as "CONFIDENTIAL", that Party
24 must:

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

27 (b) promptly notify in writing the party, who caused the subpoena or order, to issue in the
28 other litigation that some or all of the material covered by the subpoena or order is subject to this

1 Protective Order. Such notification shall include a copy of this Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
3 Designating Party whose Protected Material may be affected.¹

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

11 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
12 **LITIGATION.**

13 (a) The terms of this Order are applicable to information produced by a Non-Party in this
14 action and designated as “CONFIDENTIAL”. Such information produced by Non-Parties in
15 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing
16 in these provisions should be construed as prohibiting a Non-Party from seeking additional
17 protection.

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

21 1. promptly notify in writing the Requesting Party and the Non-Party that some or
22 all of the information requested is subject to a confidentiality agreement with a Non-Party;

23 2. promptly provide the Non-Party with a copy of the Protective Order in this
24 litigation, the relevant discovery request(s), and a reasonably specific description of the information
25 requested; and

26 _____
27 ¹ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
confidentiality interests in the court from which the subpoena or order issued.

1 3. make the information requested available for inspection by the Non-Party.

2 (c) If the Non-Party fails to object or seek a protective order from this court within
3 fourteen (14) days of receiving the notice and accompanying information, the Receiving Party may
4 produce the Non-Party’s confidential information responsive to the discovery request. If the Non-
5 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
6 possession or control that is subject to the confidentiality agreement with the Non-Party before a
7 determination by the court.² Absent a court order to the contrary, the Non-Party shall bear the burden
8 and expense of seeking protection in this Court of its Protected Material.

9 **11. FINAL DISPOSITION**

10 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days
11 after the final disposition of this action, each Receiving Party must return all Protected Material to the
12 Producing Party. Alternatively, the Receiving Party may destroy some or all of the Protected
13 Material instead of returning it. As used in this subdivision, “all Protected Material” includes all
14 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the
15 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
16 must submit a written certification to the Producing Party (and, if not the same person or entity, to the
17 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the
18 Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not
19 retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing
20 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
21 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence,
22 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
23 product, even if such materials contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order.

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27 _____
28 ² The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this Court.

1 **12. MISCELLANEOUS**

2 **12.1 Right to Further Relief**

3 Nothing in this Order abridges the right of any person to seek its modification by the Court in
4 the future.

5 **12.2 Right to Assert Other Objections**

6 By entering in to this Protective Order no Party waives any right it otherwise would have to
7 object to disclosing or producing any information or item on any ground not addressed in this
8 Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of
9 any of the material covered by this Protective Order.
10

11 **IT IS SO STIPULATED AND AGREED.**

12 Dated: March 23, 2016

SELVIN WRAITH HALMAN LLP

13
14
15 By: /s/ Nancy J. Strout - signature attached
16 Gary R. Selvin
17 Nancy J. Strout
18 Attorneys for Plaintiff and Counter-Defendants
19 PRAETORIAN INSURANCE COMPANY

20 Dated: March 23, 2016

MCCORMICK, BARSTOW, SHEPPARD, WAYTE
& CARRUTH LLP

21 By: /s/ James P. Wagoner - signature attached
22 James P. Wagoner
23 Attorneys for Defendant
24 WESTERN MILLING, LLC.
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Order

The Court has reviewed the above stipulation (ECF No. 27) and adopts it except that the terms related to judicial intervention outlined in paragraph 6.3 will not be automatic, rather, the Court will determine on a case-by-case basis whether judicial intervention is warranted. In order to file a motion under this paragraph, counsel must receive permission from the Court following an informal telephone conference. A party wishing to schedule such a conference should contact chambers at (559) 499-5962 to receive available dates. The Court will schedule the conference as soon as possible, taking into consideration the urgency of the issue. Before contacting the Court, the parties must meet and confer by speaking with each other in person, over the telephone, or as outlined in paragraph 6.2 in an attempt to resolve the dispute independently without Court involvement.

Prior to the conference, the Court will require the parties to submit letter briefs of no more than 3 pages in length to chambers for review. Telephonic conferences will not be on the record and the Court will not issue a formal ruling at that time. Nevertheless, the Court will attempt to provide guidance to the parties to narrow or dispose of the dispute. If no resolution is reached, the Court will consider whether the filing of a formal motion is appropriate.

Finally, paragraph 7.3 that outlines the procedures for filing confidential information under seal is amended to reflect that the parties shall follow the procedures outlined in this Court's Local Rule 144 rather than Rule 2.551 of the California Rules of Court as currently identified in that paragraph.

IT IS SO ORDERED.

Dated: March 31, 2016

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE