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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JENNIFER MARIE TUCKER,) CASE NO. 1:17-cv-01761-DAD-MJS
12 Plaintiff,)
13 vs.) **STIPULATED CONFIDENTIALITY**
14 AMCO INSURANCE COMPANY, and Does 1) **AGREEMENT AND PROTECTIVE**
through 25, inclusive,) **ORDER**
15 Defendants.) State Court Complaint Filed:
16) November 17, 2017
17) Removal Filed: January 28, 2017
18)
19)

20 **1. INTRODUCTION**

21 1.1 PURPOSES AND LIMITATIONS.

22 Disclosure and discovery activity in this action are likely to involve production of
23 confidential, proprietary, or private information for which special protection from public
24 disclosure and from use for any purpose other than this litigation would be warranted.
25 Accordingly, the parties hereby jointly request that the Court enter the following Protective
26 Order. The parties acknowledge that this Order does not confer blanket protections on all
27 disclosures or responses to discovery and that the protection it affords extends only to the limited
28 information or items that are entitled under the applicable legal principles to treatment as

1 confidential. The parties also acknowledge, as set forth in Section 10, below, that this Stipulated
2 Protective Order creates no entitlement to file confidential information under seal; and further
3 that Local Rule 141 sets forth the procedures that must be followed when a party seeks
4 permission from the court to file material under seal.

5 1.2 GOOD CAUSE STATEMENT.

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

25 **2. DEFINITIONS**

26 2.1 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and outside counsel (and their support staff).

28

1 2.2 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner generated, stored, or maintained (including, among other things, testimony,
3 transcripts, or tangible things) that are produced or generated in disclosures or responses to
4 discovery in this matter.

5 2.3 “Confidential” Information or Items: information (regardless of how generated,
6 stored or maintained) or tangible things produced in connection with formal or informal
7 discovery in this litigation that a Party in good faith believes contains, reflects or concerns its
8 trade secrets, confidential business or commercial information or other sensitive or proprietary
9 information which, if disclosed to third parties, would likely cause the party injury, prejudice,
10 harm, damage or disadvantage. Confidential Information includes, but is not limited to,
11 proprietary business information, business plans, pricing, information relating to personnel
12 matters, and financial and other sensitive information that is not publicly available (or not
13 publicly available in the form maintained by the party). Confidential Information may not be
14 used or disseminated except as provided in this Protective Order. Confidential Information
15 includes all documents or information derived from Confidential Information, including
16 excerpts, copies or summaries of Confidential Information.

17 2.4 “Highly Confidential — Attorneys’ Eyes Only” Information or Items: extremely
18 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty
19 would create a substantial risk of serious injury that could not be avoided by less restrictive
20 means.

21 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
22 Producing Party.

23 2.6 Producing Party: a Party that produces Disclosure or Discovery Material in this
24 action.

25 2.7 Designating Party: a Party that designates information or items that it produces in
26 disclosures or in responses to discovery as “Confidential” or “Highly Confidential — Attorneys’
27 Eyes Only.”
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1 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
2 “Confidential” or as “Highly Confidential — Attorneys’ Eyes Only.”

3 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
4 to represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party.

6 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
7 support staffs).

8 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
9 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
10 consultant in this action and who is not a past or a current employee or of a competitor of a
11 Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or
12 a competitor of a Party’s. This definition includes a professional jury or trial consultant retained
13 in connection with this litigation.

14 2.13 Professional Vendors: persons or entities that provide litigation support services
15 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
16 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

17 **3. SCOPE**

18 The protections conferred by this Stipulation and Order cover not only Protected Material
19 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
20 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
21 parties or counsel to or in court or in other settings that might reveal Protected Material.

22 **4. DURATION**

23 Even after the termination of this litigation, the confidentiality obligations imposed by
24 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
25 order otherwise directs.

26 **5. DESIGNATING PROTECTED MATERIAL**

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
28 that designates information or items for protection under this Order must take care to limit any

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

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

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

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
14 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
15 material that qualifies for protection under this Order must be clearly so designated before the
16 material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of
19 depositions or other pretrial or trial proceedings), that the Producing Party affix the Legend
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” at the
21 top or bottom of each page that contains protected material. If only a portion or portions of the
22 material on a page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
24 each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL — ATTORNEYS’ EYES ONLY”).

26 A Party that makes original documents or materials available for inspection need not
27 designate them for protection until after the inspecting Party has indicated which material it
28 would like copied and produced. During the inspection and before the designation, all of the

1 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL —
2 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
3 copied and produced, the Producing Party must determine which documents, or portions thereof,
4 qualify for protection under this Order, then, before producing the specified documents, the
5 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL — ATTORNEYS’ EYES ONLY”) at the top or bottom of each page that
7 contains protected Material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
9 making appropriate markings in the margins) and must specify, for each portion, the level of
10 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —
11 ATTORNEYS’ EYES ONLY”).

12 (b) for testimony given in deposition or in other pretrial or trial
13 proceedings, that the Party offering or sponsoring the testimony identify on the record, before the
14 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
15 any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL — ATTORNEYS’
16 EYES ONLY.” When it is impractical to identify separately each portion of testimony that is
17 entitled to protection, and when it appears that substantial portions of the testimony may qualify
18 for protection, the Party that sponsors, offers, or gives the testimony may invoke on the record
19 (before the deposition or proceeding is concluded) a right to have up to 20 days after receipt of
20 transcripts from the court reporter to identify the specific portions of the testimony as to which
21 protection is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or
22 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”). Only those portions of the
23 testimony that are appropriately designated for protection within the 20 days shall be covered by
24 the provisions of this Stipulated Protective Order.

25 Transcript pages containing Protected Material must be separately bound by the court
26 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
27 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” as instructed by the Party
28 offering or sponsoring the witness or presenting the testimony.

1 (c) for information produced in some form other than documentary,
2 and for any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information or item is stored the legend
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” If only
5 portions of the information or item warrant protection, the Producing Party, to the extent
6 practicable, shall identify the protected portions, specifying whether they qualify as
7 “Confidential” or as “Highly Confidential — Attorneys’ Eyes Only.”

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items as “Confidential” or “Highly Confidential — Attorneys’
10 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
11 under this Order for such material. If material is appropriately designated as “Confidential” or
12 “Highly Confidential — Attorneys’ Eyes Only” after the material was initially produced, the
13 Receiving Party, on timely notification of the designation, must make reasonable efforts to
14 assure that the material is treated in accordance with the provisions of this Order.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
17 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
18 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
19 waive its right to challenge a confidentiality designation by electing not to mount a challenge
20 promptly after the original designation is disclosed.

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
22 Party’s confidentiality designation must do so in good faith and must begin the process by
23 conferring directly (including in voice to voice dialogue) with counsel for the Designating Party.
24 In conferring, the challenging Party must explain the basis for its belief that the confidentiality
25 designation was not proper and must give the Designating Party an opportunity to review the
26 designated material, to reconsider the circumstances, and, if no change in designation is offered,
27 to explain the basis for the chosen designation. A challenging Party may proceed to the next
28 stage of the challenge process only if it has engaged in this meet and confer process first.

1 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
2 designation after considering the justification offered by the Designating Party may file and
3 serve a motion that identifies the challenged material and sets forth in detail the basis for the
4 challenge. Each such motion must be accompanied by a competent declaration that affirms that
5 the movant has complied with the meet and confer requirements imposed in the preceding
6 paragraph and that sets forth with specificity the justification for the confidentiality designation
7 that was given by the Designating Party in the meet and confer dialogue.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating
9 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
10 question the level of protection to which it is entitled under the Producing Party's designation.

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

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
13 or produced by another Party in connection with this case only for prosecuting, defending, or
14 attempting to settle this litigation. Such Protected Material may be disclosed only to the
15 categories of persons and under the conditions described in this Order. When the litigation has
16 been terminated, a Receiving Party must comply with the provisions of section 11, below
17 (FINAL DISPOSITION).

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

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
22 disclose any information or item designated CONFIDENTIAL only to:

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

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

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1 (c) experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
3 Bound by Protective Order” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to whom disclosure
6 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
7 Protective Order” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
10 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
11 Protected Material must be separately bound by the court reporter and may not be disclosed to
12 anyone except as permitted under this Stipulated Protective Order.

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

14 7.3 Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”
15 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
16 Designating Party, a Receiving Party may disclose any information or item designated
17 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” only to:

18 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
19 employees of said Counsel to whom it is reasonably necessary to disclose the information for
20 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
21 attached hereto as Exhibit A;

22 (b) House Counsel of a Receiving Party to whom disclosure is reasonably
23 necessary for this litigation and who has signed the “Agreement to be Bound by Protective
24 Order” (Exhibit A);

25 (c) Experts (as defined in this Order) to whom disclosure is reasonably
26 necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
27 Order” (Exhibit A);

28 (d) the Court and its personnel;

1 (e) court reporters, their staffs, and professional vendors to whom disclosure
2 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
3 Protective Order” (Exhibit A); and

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

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
6 **OTHER LITIGATION**

7 If a Receiving Party is served with a subpoena or an order issued in other litigation that
8 would compel disclosure of any information or items designated in this action as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” the
10 Receiving Party must so notify the Designating Party, in writing (by fax or electronic mail, if
11 possible) immediately and in no event more than three court days after receiving the subpoena or
12 order. Such notification must include a copy of the subpoena or court order. The Receiving
13 Party also must immediately inform in writing the Party who caused the subpoena or order to
14 issue in the other litigation that some or all the material covered by the subpoena or order is the
15 subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this
16 Protective Order promptly to the Party in the other action that caused the subpoena or order to
17 issue.

18 The purpose of imposing these duties is to alert the interested parties to the existence of
19 this Protective Order and to afford the Designating Party in this case an opportunity to try to
20 protect its confidentiality interests in the court from which the subpoena or order issued. The
21 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
22 its confidential material — and nothing in these provisions should be construed as authorizing or
23 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

24 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Protective Order, the
27 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
28 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the

1 person or persons to whom unauthorized disclosures were made of all the terms of this Order;
2 and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
3 Bound” that is attached hereto as Exhibit A. Inadvertent production of such documents or
4 information in this case without designation as “Confidential” or “Highly Confidential—
5 Attorneys & Experts Only” shall not be deemed a waiver, in whole or in part, of Nationwide’s
6 claim to confidentiality of such documents or information, either as to the specific information
7 disclosed or as to any other information relating to the subject matter of the information
8 disclosed.

9 **10. FILING PROTECTED MATERIAL**

10 Documents designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL —
11 ATTORNEYS’ EYES ONLY,” and all information contained therein or derived therefrom, may
12 be discussed or referred to in pleadings, motions, affidavits, briefs and other papers filed with the
13 Court, or attached as exhibits thereto, provided that such “confidential” documents and
14 information, and any portion of any paper filed with the Court that discusses or refers to them,
15 are stamped “confidential” and separately filed provisionally under seal with the Clerk of the
16 Court. Applicable law, including Civil Local Rule 141, govern the filing of documents under
17 seal with the District Court.

18 **11. FINAL DISPOSITION**

19 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
20 after the final termination of this action, each Receiving Party must return all Protected Material
21 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
22 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
23 Protected Material. With permission in writing from the Designating Party, the Receiving Party
24 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
25 Material is returned or destroyed, the Receiving Party must submit a written certification to the
26 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
27 deadline that identifies (by category, where appropriate) all the Protected Material that was
28 returned or destroyed and that affirms that the Receiving Party has not retained any copies,

1 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
2 Protected Material.

3 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
4 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
5 product, even if such materials contain Protected Material. Any such archival copies that contain
6 or constitute Protected Material remain subject to this Protective Order as set forth in Section 4
7 (DURATION), above.

8 **12. MISCELLANEOUS**

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
10 seek its modification by the Court in the future. The parties stipulate that this Court shall retain
11 jurisdiction over them and any person to whom Confidential Information is disclosed to the
12 extent necessary to enforce the terms of the Protective Order.

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

18 12.3 Modifications of Protective Order. This Stipulation and Protective Order contains
19 the entire agreement between the parties concerning the subject matter hereof, and no
20 modifications of this Protective Order or waiver of its provisions will be binding upon the
21 parties, unless made in writing by the parties.

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12.4 Execution. This Stipulation and Protective Order may be executed in counterparts.

IT IS SO STIPULATED.

Dated: March 29, 2018

WILKINS, DROLSHAGEN & CZESHINSKI LLP

By /s/ James A. Wilkins (as authorized on 3.29.18)

James H. Wilkins
Attorneys for Plaintiff
JENNIFER MARIE TUCKER

Dated: March 29, 2018

GORDON REES SCULLY MANSUKHANI, LLP

By /s/ Jennifer N. Wahlgren

Jennifer N. Wahlgren
Attorneys for Defendant
AMCO INSURANCE COMPANY

ORDER

The STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER in CASE NO. 1:17-cv-01761-DAD-MJS is accepted and its terms adopted as the Order of this Court.

IT IS SO ORDERED.

Dated: April 4, 2018

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT "A"
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE
ORDER

I, _____, declare as follows:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____.

I received a copy of the Confidentiality Agreement and Protective Order for the matter of *Jennifer Marie Tucker v. AMCO Insurance Company*, United States District Court, Eastern District of California, Case No. 1:17-cv-01761-DAD-MJS ("Protective Order").

4. I have carefully read this Protective Order and certify that I understand its provisions.

5. I agree to comply with all the provisions of this Protective Order.

6. Subject to the terms of the Protective Order, I will hold in confidence, and will not disclose to anyone not qualified under the Protective Order, any information contained in the Protected Material that is disclosed to me in this case.

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7. Subject to the terms of the Protective Order, I will use such information that is disclosed to me only for purposes of this case.

8. Upon request, I will return and deliver all Protected Material that comes into my possession, and all documents or things that I have prepared relating thereto, to my counsel in this action, or to counsel for the Party by whom I am employed or retained or from whom I received the Protected Material.

9. I hereby submit to the jurisdiction of this Court for the purpose of enforcing the Protective Order in this case.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this _____ day of _____, 20__, at _____ [City], _____ [State].
