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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FARMERS GROUP, INC.,
Plaintiff,
v.
L.J. LINDER AND ASSOCIATES
INSURANCE SERVICES, INC., et al.,
Defendants.

Case No. 1:18-cv-00256-SAB
STIPULATED PROTECTIVE ORDER
(ECF No. 25)

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff FARMERS GROUP, INC. (“Plaintiff” or “Farmers”) and Defendants L.J. LINDER AND ASSOCIATES INSURANCE SERVICES, INC.; REDNIL INSURANCE BROKERS, INC.; LAWRENCE JAMES LINDER; and CAMERON ROSS LINDER (collectively “Defendants”), through counsel undersigned, jointly submit this Stipulated Protective Order to govern the handling of information and materials produced in the course of discovery or filed with the Court in advance of trial in this action.

GOOD CAUSE STATEMENT PURSUANT TO L.R. 141.1(c)

Disclosure and discovery activity in this action are 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 prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The

1 parties acknowledge that this Order does not confer blanket protections on all disclosures or responses
2 to discovery, and that the protection it affords from public disclosure and use extends only to the
3 limited information or items that are entitled to confidential treatment under applicable legal
4 principles.

5 **Statement Under L.R. 141.1(c)(1):** Examples of confidential information that the parties
6 may seek to protect from unrestricted or unprotected disclosure include:

- 7 a) Information that is the subject of a non-disclosure or confidentiality agreement or
8 obligation;
- 9 b) The names of a party's vendors, distributors, or customers (or other information
10 tending to reveal their identities);
- 11 c) Agreements with third-parties;
- 12 d) Information related to budgets, sales, profits, costs, margins, product pricing, or other
13 internal financial/accounting information, including non-public information related to financial
14 condition or performance and income or other non-public tax information;
- 15 e) Information showing the price or other information related to the terms of sale or
16 purchase of products and materials relevant to this case;
- 17 f) Information related to internal operations, including personnel information;
- 18 g) Information related to past, current, and future market analyses and business and
19 marketing development, including plans, strategies, forecasts and competition; and,
- 20 h) Trade secrets (as defined by the jurisdiction in which the information is located).

21 **Statement Under L.R. 141.1(c)(2):** Generally speaking, information and documents shall
22 only be designated under this protective order because the Designating Party believes the information
23 or documents are proprietary, confidential, and/or trade secret information that the Designating Party
24 would not release publicly. Unrestricted or unprotected disclosure of such confidential, technical,
25 commercial, or personal information would result in prejudice or harm to the Producing Party by
26 revealing the Producing Party's competitive confidential information. Such information will have
27 been developed at the expense of the Producing Party and represent valuable tangible and intangible
28 assets of that party. Additionally, privacy interests must be safeguarded. Accordingly, the parties

1 director, or employee of a Party. Nothing in this Protective Order purports to alter in any way the
2 requirements for offering testimony under Fed. R. Evid. 703, or to define the term “expert” for
3 purposes other than those addressed in this Protective Order.

4 (g) The term “House Counsel” shall mean attorneys who are employees of a party to this
5 action. House Counsel does not include outside counsel of record, or any other outside counsel.

6 (h) The term “Non-Party” shall mean any natural person, partnership, corporation,
7 association, or other legal entity not named as a Party to this action.

8 (i) The term “Party” shall mean any party to this action, including all of its officers,
9 directors, employees, and consultants retained in the ordinary course of business.

10 (j) The term “Producing Party” shall mean a Party or Non-Party that produces information
11 or other discovery material in this action.

12 (k) The term “Professional Vendors” shall mean persons or entities that provide litigation
13 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations,
14 and organizing, storing, or retrieving data in any form or medium) and their employees and
15 subcontractors.

16 (l) The term “Protected Material” shall mean any information or other discovery material
17 that is designated as “Confidential.”

18 (m) The term “Receiving Party” shall mean a Party that receives information or other
19 discovery material from a Producing Party.

20 2. DESIGNATING PROTECTED MATERIAL.

21 (a) Exercise of Restraint and Care in Designating Material for Protection. Each Party or
22 Non-Party that designates information or items for protection under this Order must take care to limit
23 any such designations. The Designating Party must designate for protection only those parts of
24 material, documents, items, or oral or written communications that qualify under the appropriate
25 standards so that other portions of the material, documents, items, or communications for which
26 protection is not warranted are not swept unjustifiably within the ambit of this Order. Mass,
27 indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly
28 unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or retard

1 the case development process or to impose unnecessary expenses and burdens on other parties) expose
2 the Designating Party to sanctions. If it comes to a Designating Party's attention that information or
3 items that it designated for protection do not qualify for protection, that Designating Party must
4 promptly notify all other Parties that it is withdrawing the mistaken designation.

5 (b) Manner and Timing of Designations. Except as otherwise provided in this Order or as
6 otherwise stipulated or ordered, discovery material and information that qualify for protection under
7 this Order must be clearly so designated before the material is disclosed or produced. The
8 Designating Party must use reasonable efforts to ensure that the applicable legend appears on each
9 page of each file produced, as permitted by the particular format of a given Document.

10 (c) Materials Subject to Designation. Each party to this litigation may designate any
11 Document, thing, interrogatory answer, admission, deposition testimony, and portions of such
12 materials, or other information which it has provided or which a third-party has provided as
13 "Confidential" in accordance with this Protective Order. The party designating such information as
14 "Confidential" shall be known as the "Designating Party" and the designation shall be set out thereon.
15 In designating Documents or information as "Confidential," the Designating Party's counsel shall
16 make a good faith determination, before applying the designation, that the information warrants
17 protection under Rule 26(c) of the Federal Rules of Civil Procedure.

18 (d) Designating Originals or Tangible Items. In the event the Producing Party elects to
19 produce original Documents and things for inspection rather than produce copies of Documents, no
20 marking need be made by the Producing Party in advance of the initial inspection. Thereafter, upon
21 selection of specified Documents for copying by the inspecting party, the Producing Party shall mark
22 the copies of such Documents as may contain protected subject matter with the appropriate
23 confidentiality marking at the time the copies are produced to the inspecting party. Said marking shall
24 not delay the production of the copies. Information obtained by counsel from initial review of
25 Documents, whether in written form or not, shall be maintained as "Confidential" unless such
26 information is produced without a designation of confidentiality, or as otherwise designated by the
27 Producing Party.

28 (e) Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

1 designate qualified information or items does not, standing alone, waive the Designating Party’s right
2 to secure protection under this Order for such material. Upon timely correction of a designation, the
3 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
4 the provisions of this Order.

5 3. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

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

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

25 (c) Judicial Intervention. If the Parties cannot resolve a challenge without court
26 intervention, the Designating Party shall file and serve a motion to retain confidentiality within
27 twenty-one (21) days of the initial notice of challenge or within fourteen (14) days of the parties
28 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Any

1 motion seeking relief from the Court must comply with Local Rule 251, including the Joint Statement
2 requirement, and Hon. Boone’s Standing Order ¶ 6. Each such motion must be accompanied by a
3 competent declaration affirming that the movant has complied with the meet and confer requirements
4 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion,
5 including the required declaration within fourteen (14) days (or seven (7) days, if applicable), shall
6 automatically waive the confidentiality designation for each challenged designation. In addition, the
7 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
8 good cause for doing so, including a challenge to the designation of a deposition transcript or any
9 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent
10 declaration affirming that the movant has complied with the meet and confer requirements imposed by
11 the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
13 All parties shall continue to afford the material in question the level of protection to which it is
14 entitled under the Producing Party’s designation until the Court rules on the challenge.

15 Nothing in this Paragraph 3(c) shall prevent the parties from jointly stipulating to the Informal
16 Telephonic Conference procedure set forth in Hon. Boone’s Standing Order ¶ 7.

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18 4. ACCESS TO “CONFIDENTIAL” MATERIALS.

19 (a) A Receiving Party may only use “Confidential” Materials that are disclosed or
20 produced by another Party or by a Non-Party in connection with prosecuting, defending, or attempting
21 to settle this litigation. Such “Confidential” Material may be disclosed only to the categories of
22 person and under the conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions for Final Disposition of Protected Material set forth
24 below.

25 (b) Unless otherwise ordered by the Court or permitted in writing by the Designating
26 Party, a Receiving Party may only disclose any information or item designated as “Confidential” to:

27 (i) the Receiving Party’s outside counsel of record, as well as employees of said
28 outside counsel of record to whom it is reasonably necessary to disclose this information;

1 (ii) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
3 the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

4 (iii) Experts (as defined in this Order) of the Receiving Party and employees of said
5 Experts to whom it is reasonably necessary to disclose this information, and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (iv) the court and its personnel;

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

11 (vi) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be so
15 marked by the court reporter and may not be disclosed to anyone except as permitted under this
16 Stipulated Protective Order.

17 (vii) the author or recipient of a document containing the information or a custodian
18 or other person who otherwise possessed or knew the information.

19 5. STORAGE OF PROTECTED INFORMATION BY RECEIVING PARTY.

20 The recipient of any Confidential materials provided under this Protective Order (including
21 copies or excerpts made thereof) shall maintain such information in a secure and safe area, and shall
22 exercise reasonable and proper care with respect to the storage, custody, use, and/or dissemination of
23 such information.

24 6. TREATMENT OF PROTECTED MATERIAL AT DEPOSITIONS IN THIS LITIGATION.

25 (a) Deposition of the Authors and Recipients of Protected Material. With respect to
26 Documents designated as including “Confidential,” any person indicated on the face of the Document
27 to be its originator, author, or recipient may be shown the Documents. Additionally, any Document
28 designated as including “Confidential” may be shown to any employee of the Designating Party

1 and/or the party that produced in this litigation the Document so designated during the deposition of
2 that employee if it is reasonably probable that the employee would have access to or knowledge of the
3 information contained in that Document.

4 (b) Exclusion of Certain Persons From Protected Deposition Testimony. Any Party shall
5 have the right to exclude from attendance at a deposition, during such time as the “Confidential”
6 Documents or information is to be disclosed, every individual not entitled under the Protective Order
7 to receipt of the information, excluding the deponent and the court reporter and/or videographer. The
8 Parties shall exercise restraint if and when excluding persons from a deposition pursuant to this
9 paragraph.

10 (c) Procedure for Designating Transcript Sections as Protected Material. Whenever a
11 deposition taken on behalf of any party involves a disclosure of “Confidential” Documents or
12 information of any party, said deposition or portions thereof shall be designated as containing
13 “Confidential” subject to the provisions of this Protective Order at the time the deposition is taken
14 whenever possible; *however*, any Party shall have until ten (10) days after receipt of the deposition
15 transcript within which to designate, in writing, those portions of the transcript it wishes to remain
16 designated as “Confidential,” and the right to make such designation shall be waived unless made
17 within the ten (10) day period. During such ten (10) period, the entirety of the transcript shall be
18 deemed designated “Confidential” to preserve the right of any Party to make a final designation of
19 “Confidential” during that ten (10) day period.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION.

22 If a Party is served with a subpoena or a court order issues in another litigation that compels
23 disclosure of any information or items designated in this action as “Confidential,” that Party must:

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

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

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

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

10 8. PROTECTED MATERIAL OF A NON-PARTY SOUGHT TO BE PRODUCED IN THIS
11 LITIGATION.

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

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

21 (i) Promptly notify, in writing, the Requesting Party and the Non-Party that some
22 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

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

26 (iii) Make the information requested available for inspection by the Non-Party.

27 (c) Disclosure and Remedy. If the Non-Party fails to object or seek a protective order
28 from this Court within fourteen (14) days of receiving the above notice and accompanying

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

7 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
10 the Receiving Party must immediately (1) notify in writing the Designating Party of the unauthorized
11 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material,
12 (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this
13 Order, and (4) request such person or persons to execute the “Acknowledgment and Agreement to Be
14 Bound” that is attached hereto as Exhibit A.

15 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
16 MATERIAL.

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

25 11. FINAL DISPOSITION.

26 (a) Upon Termination of this Action. Within sixty (60) days after a final disposition of the
27 action, which shall include entry of final judgment and the exhaustion of all rights of appeal, or a
28 dismissal of the action, a Receiving Party shall either return to the Producing Party or destroy all

1 Dated: October 16, 2018

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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By: /s/ Shane G. Smith
Timothy J. Buchanan
Shane G. Smith
Attorneys for Defendants

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SIGNATURE ATTESTATION

I hereby attest that concurrence has been obtained from Aaron P. Rudin, counsel for Plaintiff
Farmers Group, Inc., as indicated by a “conformed” signature (/s/) within this e-filed document.

 /s/ Shane G. Smith
Shane G. Smith

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ORDER

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

1. The protective order is entered;
2. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141; and
3. The party making a request to file documents under seal shall be required to show good cause for documents attached to a nondispositive motion or compelling reasons for documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

IT IS SO ORDERED.

Dated: October 17, 2018


UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [type or print full name] of _____ [print or type full address], hereby declare under penalty of perjury that I have read and am fully familiar with the terms of the Protective Order entered in *Farmers Group, Inc. v. L.J. Linder & Associates Insurance Services, Inc., Rednil Insurance Brokers, Inc., Larry James Linder, and Cameron Ross Linder*, Case No. 1:18-cv-00256-SAB, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of the Court.

I acknowledge that I am about to receive Confidential information in said action, and hereby certify my understanding that such information is being provided to me pursuant to the terms and restrictions of the Protective Order. I understand that such information, and any copies I make of any material containing “Confidential” information, or any notes or other records that may be made regarding any such information, shall not be disclosed to others, except other persons that are identified in or have agreed to comply with and be bound by the terms of the Protective Order. I hereby consent to the jurisdiction of said Court for purposes of enforcing this 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, telephone number, and email address] 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: _____