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13 Attorneys for Defendant,

NATIONWIDE MUTUAL INSURANCE COMPANY

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

17 WANDA A. SELL, individually
18 and a Trustee of the Nancy A.
Muhs Trust,

19 Plaintiffs,

20 vs.

21 NATIONWIDE MUTUAL
22 INSURANCE COMPANY, and
DOES 1 through 10, inclusive,

23 Defendants.

CASE NO. 2:09-cv-01584-GEB-GGH

*Assigned to Honorable Garland E. Burrell,
Jr.*

STIPULATED PROTECTIVE ORDER

Trial: January 11, 2011

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1 **TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE**
2 **COUNSEL OF RECORD:**

3 **IT IS HEREBY STIPULATED AND AGREED** to, by and between the
4 parties to this action, through their respective attorneys of record, HINES SMITH
5 CARDER DINCEL BLAND for Defendant, Nationwide Mutual Insurance
6 Company (“NMIC”), and GIFFORD & HARR, for Plaintiff Wanda A. Sell,
7 individually and as Trustee of the Nancy A. Muhs Trust (“Plaintiff”), that certain
8 documents produced in connection with discovery proceedings in this action shall
9 be subject to the following confidentiality agreement (“the Agreement”):

10 1. The documents that are the subject of this Agreement include
11 proprietary and confidential documents of NMIC containing trade secret or other
12 confidential research, development or commercial information, and which NMIC
13 contends are protected by trade secret privileges under Civil Code §3426 et seq.
14 and Federal Rule of Civil Procedure 26 and which NMIC is producing to Plaintiff
15 pursuant to discovery procedures while the above-referenced action is pending and
16 marked by NMIC as “CONFIDENTIAL” (“Confidential Documents”).
17 Confidential Documents may be marked by NMIC as “CONFIDENTIAL” at any
18 time, regardless of when produced. Further, stamping the legend
19 “CONFIDENTIAL” on the cover of any multi-page document shall designate all
20 pages of the documents as confidential, unless otherwise indicated by the
21 producing party.

22 2. The Confidential Documents, and all copies or extracted therefrom,
23 excerpts, summaries, compilations, testimony, conversations, presentations by
24 parties or counsel to or in court, or in any other settings that might reveal said
25 information, and information learned from the Confidential Documents, are
26 confidential and proprietary in nature and protected by privacy rights and trade
27 secret laws. It is the intent of the parties to preserve the confidentiality of the

1 Confidential Documents and the information learned from it. The Confidential
2 Documents and the information learned from them are not to be used in any
3 fashion other than for the purposes of this litigation, and are not to be disclosed to
4 any persons or entities except as set forth in the Agreement, and are to be kept
5 confidential to the greatest extent possible, even within the confines of this
6 litigation.

7 3. In the event NMIC marks any document or testimony
8 “CONFIDENTIAL” which Plaintiff believes is not protected by any trade secret
9 privilege or is not confidential or proprietary in nature, the parties shall within
10 thirty (30) days of Plaintiff’s request, meet and confer in good faith regarding
11 removal of the “CONFIDENTIAL” designation. In the event the parties are unable
12 to reach an agreement regarding designation of the documents as Confidential
13 Documents subject to this Agreement or designation of testimony as subject to the
14 restrictions of this Agreement, Plaintiff shall move the Court for an order de-
15 designating the subject documents as “CONFIDENTIAL,” and nothing within this
16 Agreement or corresponding order shall preclude Plaintiff from making such
17 motion. The burden of persuasion of any challenge proceeding shall be on the
18 designating party. The parties agree to continue to afford the material confidential
19 protection until the Court rules on any such motion.

20 4. The parties agree NMIC need not file a motion for protective order
21 pursuant to Federal Rules of Civil Procedure 26.

22 5. Immediately following the conclusion of this litigation, either by
23 settlement, judgment, dismissal or otherwise, the Plaintiff’s attorneys shall return
24 to NMIC’s counsel the Confidential Documents, including any copies they made
25 of the Confidential Documents and including any extracts and/or summaries of the
26 Confidential Documents containing information taken from the Confidential
27 Documents. Plaintiff and Counsel for Plaintiff shall not discuss the Confidential

1 Documents or information gleaned from the Confidential Documents at all with
2 any party at any time after conclusion of the litigation, other than with their
3 respective counsel and clients in the above-captioned action, counsel for NMIC,
4 and the Court under seal.

5 6. The Confidential Documents shall be disclosed only to:

6 a. The Court and its officers in accordance with Paragraph 8 herein;

7 b. Counsel of Record for the parties and the staff assigned to assist
8 Counsel of Record in this matter;

9 c. Any experts or consultants retained by any of the Parties; provided
10 such expert or consultant complies with Paragraph 7 herein;

11 d. Witnesses during depositions in accordance with Paragraph 9
12 herein;

13 e. Persons recording testimony involving such Confidential
14 information, including Court reporters, stenographers and audio and/or video
15 technicians, and clerical staff employed by any of the foregoing;

16 f. Mediators who may be authorized by the parties to mediate the
17 case; and

18 g. Such other persons as hereafter may be designated by written
19 stipulation of the parties, or by the Order of the Court.

20 To “disclose” the Confidential Documents means to provide the Confidential
21 Documents, or any one of them, to provide any documents which discuss the
22 Confidential Documents, or to discuss or refer to any of the contents of the
23 Confidential Documents.

24 7. The Confidential Documents shall be disclosed to an expert or
25 consultant under Paragraph 6 of the Agreement only upon the expert or consultant
26 signing Exhibit 1 to the Agreement. Said expert or consultant witnesses shall not
27 disclose the Confidential Documents to any person or entity. Said expert or

1 consultant shall return the Confidential Documents and all copies thereof,
2 including extracts and/or summaries of the Confidential Documents containing
3 information taken from the Confidential Documents, to the party's respective
4 counsel at the conclusion of the litigation. The original of such signed Exhibit 1
5 shall be retained by counsel for each party who intends to or does provide such
6 expert or consultant any such Confidential Documents, until the conclusion of the
7 above-captioned action, including any appeals. If requested to do so by counsel for
8 any party, counsel shall provide a copy of such declarations to counsel making the
9 request, unless such disclosure would provide information not otherwise subject to
10 discovery (e.g., identification of non-testifying consultant experts or retained
11 experts prior to expert disclosure date or identification of potential witnesses in
12 violation of work product protection or any privilege). The parties agree not to use
13 these declarations for any purpose other than monitoring and enforcing compliance
14 with this Order. The parties further agree to treat the declarations as confidential.

15 8. The Confidential Documents, and any documents or testimony
16 disclosing its contents, shall be treated as confidential. Without written permission
17 from NMIC's counsel, or a court order secured after appropriate notice to all
18 interested parties, Plaintiff may not file in the public record in this action any
19 Confidential Documents. Any party that wishes to file under seal any Confidential
20 Documents in connection with a motion, trial or appeal in this action, must comply
21 with Local Rule 141.¹

22 9. During any deposition in which any of the Confidential Documents or
23 confidential material subject to this Agreement are offered as an exhibit, or a
24 witness is questioned about the specific contents of same, whether or not offered as

25 ¹ See E.D. Cal. R. 141, 141.1, Pintos v. Pacific Creditors Ass'n, 565 F.3d 1106, 1115 (9th Cir.
26 2009) (finding compelling reasons required in dispositive motions), and Phillips v. General
27 Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002) (holding good cause necessary in non-
dispositive motions).

1 an exhibit, all persons present at the deposition shall agree to observe the
2 confidentiality of the Confidential Documents, the material and the terms of the
3 Agreement. Said agreement shall be placed on the record at the deposition, and the
4 Agreement shall be made an exhibit to the deposition. No witness shall be
5 permitted to take any of the Confidential Documents, or any copies of same, from
6 the deposition, nor shall they be permitted to retain any of the Confidential
7 Documents, nor shall they be permitted to disclose any of the Confidential
8 Documents. Within fifteen (15) days of receipt of the original or a certified copy
9 of the deposition transcript, if NMIC contends testimony pertaining to any
10 document marked "CONFIDENTIAL" is subject to this Agreement, counsel for
11 NMIC shall provide written notice to counsel for Plaintiff of the page and line
12 numbers so designated. If a document designated as "CONFIDENTIAL" is used
13 as an exhibit at a deposition, that document and the deposition testimony
14 concerning it shall be deemed "CONFIDENTIAL" matter regardless of whether a
15 party makes any formal designation thereof in connection with the deposition. If
16 any portion of a deposition transcript is designated and/or deemed a
17 "CONFIDENTIAL" matter, including exhibits, any production or lodging of the
18 transcript in its entirety shall be produced and/or lodged under seal pursuant to
19 Paragraph 8, above.

20 10. The parties reserve the right to seek an order from the Court, on
21 noticed motion, to modify or change this Agreement, including the right to have
22 documents designated as confidential deemed not confidential. This Agreement
23 and the Confidential Documents governed hereby can only be deemed not
24 confidential by an order of the Court upon motion or by stipulation.

25 11. Notwithstanding the termination of this action by settlement,
26 judgment, dismissal or otherwise, the United States District Court for the Central
27 District of California shall retain jurisdiction to enforce the Agreement.

1 **IT IS SO STIPULATED.**
2 *[Signatures on next page.]*

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4 Dated: May ____, 2010

GIFFORD & HARR

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6 By:

Randall L. Harr
Attorney for Plaintiff
WANDA A. SELL

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9 Dated: May ____, 2010

HINES SMITH CARDER DINCEL BLAND

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11 By:

Marc S. Hines
Christine M. Emanuelson
Attorneys for Defendant
NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY

1 **EXHIBIT 1**

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3 I, _____, declare:

4 1. I hereby acknowledge that I have read the Stipulated Protective Order
5 regarding the Confidential Documents (hereinafter “Order”) in the case of Wanda
6 A. Sell v. Nationwide Mutual Insurance Company, U.S. District Court for the
7 Eastern District of California, Case No. 2:09-CV-01584-GEB-GGH (the
8 “Lawsuit”) and I understand the terms of the Order and agree to abide by and be
9 bound by the terms of the Order.

10 2. I further acknowledge that I understand that the Confidential
11 Documents may not be disclosed to anyone, except as authorized by this Order.

12 3. I further acknowledge that the Confidential Documents may not be
13 used for any purpose other than as required for my work in the Lawsuit. I further
14 understand and acknowledge that any dissemination or use of such Confidential
15 Documents or information in a manner inconsistent with the Order may subject me
16 to contempt proceedings.

17 4. I hereby consent to the jurisdiction of said Court for purposes of
18 enforcing this Order.

19 5. Upon final dissolution of the Lawsuit, I shall return all copies of the
20 Confidential Documents to the attorney, entity or person that retained me or my
21 firm in the Lawsuit, or that provided me with the Confidential Documents.

22 I declare under penalty of perjury under the laws of the State of California
23 that the foregoing is true and correct.

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25 Dated: _____ By: _____

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2 **ORDER**
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4 Based on the above Stipulation, and good cause appearing,

5 **IT IS ORDERED** that the Stipulated Protective Order, the term of which
6 are set forth above, be in force as a Protective Order of this Court, and that the
7 parties, person and entities to whom Defendant, Nationwide Mutual Insurance
8 Company's confidential documents, information and materials be released shall be
9 subject to and bound by the terms and conditions of the Stipulated Protective
10 Order.

11 **IT IS SO ORDERED.**

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13 Dated: June 17, 2010

14 _____ /s/ Gregory G. Hollows

15 Gregory G. Hollows

16 U.S. MAGISTRATE JUDGE
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