

1 entitle them to file confidential information under seal, but that they must follow proscribed
2 Eastern District of California procedures, including Local Rule 141, in order to do so.

3 The documents categorized below in Paragraph 2.2 as “‘CONFIDENTIAL’ Information
4 or Items” require the protection of this stipulated protective order, as they contain sensitive
5 confidential, financial and/or proprietary information not fit for widespread distribution. The
6 parties agree that a court order enforcing the protection of these documents is a superior
7 alternative to a private agreement between the parties, as a court order (1) will ensure clear
8 parameters for the handling and production of confidential documents, and (2) better enable the
9 parties to seek judicial intervention, if necessary, regarding any issues pertaining to such
10 confidential documents.

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

14 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
15 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
16 of Civil Procedure 26(c), such as sensitive confidential, financial and/or proprietary information
17 not fit for widespread distribution, including, but not limited to, billing statements and invoices
18 generated in connection with *RF Land v. City of Ripon*, San Joaquin Superior Court case number
19 CV025997, insurance policy forms, and other information and documents discoverable in
20 connection with this lawsuit which a party asserts contain confidential, proprietary and/or
21 sensitive information so as to be subject to this Order.

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
23 well as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or items that
25 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other things,
28

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent
4 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
5 a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or other
9 legal entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
11 action but are retained to represent or advise a party to this action and have appeared in this
12 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
13 that party.

14 2.10 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support services
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
20 organizing, storing, or retrieving data in any form or medium) and their employees and
21 subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
23 “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only Protected Material
28 (as defined above), but also (1) any information copied or extracted from Protected Material;

1 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
2 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
3 However, the protections conferred by this Stipulation and Order do not cover the following
4 information: (a) any information that is in the public domain at the time of disclosure to a
5 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
6 a result of publication not involving a violation of this Order, including becoming part of the
7 public record through trial or otherwise; and (b) any information known to the Receiving Party
8 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
9 obtained the information lawfully and under no obligation of confidentiality to the Designating
10 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations imposed by
13 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
14 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
15 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
16 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
17 action, including the time limits for filing any motions or applications for extension of time
18 pursuant to applicable law.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
21 or Non-Party that designates information or items for protection under this Order must take care
22 to limit any such designation to specific material that qualifies under the appropriate standards.
23 The Designating Party must designate for protection only those parts of material, documents,
24 items, or oral or written communications that qualify – so that other portions of the material,
25 documents, items, or communications for which protection is not warranted are not swept
26 unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
28 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
7 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
8 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
9 designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

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

1 (b) for testimony given in deposition or in other pretrial or trial proceedings,
2 that the Designating Party identify on the record, before the close of the deposition, hearing, or
3 other proceeding, all protected testimony.

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

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the Designating Party’s
11 right to secure protection under this Order for such material. Upon timely correction of a
12 designation, the Receiving Party must make reasonable efforts to assure that the material is
13 treated in accordance with the provisions of this Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
22 process by providing written notice of each designation it is challenging and describing the basis
23 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
24 notice must recite that the challenge to confidentiality is being made in accordance with this
25 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
26 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
27 forms of communication are not sufficient) within 14 days of the date of service of notice.
28 In conferring, the Challenging Party must explain the basis for its belief that the confidentiality

1 designation was not proper and must give the Designating Party an opportunity to review the
2 designated material, to reconsider the circumstances, and, if no change in designation is offered,
3 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
4 stage of the challenge process only if it has engaged in this meet and confer process first or
5 establishes that the Designating Party is unwilling to participate in the meet and confer process in
6 a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
8 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
9 the rules proscribed by the Eastern District of California within 21 days of the initial notice of
10 challenge or within 14 days of the parties agreeing that the meet and confer process will not
11 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
12 competent declaration affirming that the movant has complied with the meet and confer
13 requirements imposed in the preceding paragraph. Failure by the Designating Party to make
14 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
15 automatically waive the confidentiality designation for each challenged designation. In addition,
16 the Challenging Party may file a motion challenging a confidentiality designation at any time if
17 there is good cause for doing so, including a challenge to the designation of a deposition
18 transcript or any portions thereof. Any motion brought pursuant to this provision must be
19 accompanied by a competent declaration affirming that the movant has complied with the meet
20 and confer requirements imposed by the preceding paragraph.

21 The burden of persuasion in any such challenge proceeding shall be on the Designating
22 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
23 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
24 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
25 file a motion to retain confidentiality as described above, all parties shall continue to afford the
26 material in question the level of protection to which it is entitled under the Producing Party's
27 designation until the court rules on the challenge.
28

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
3 or produced by another Party or by a Non-Party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 section 13 below (FINAL DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
12 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
14 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
15 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” that is attached hereto as Exhibit A;

17 (b) the officers, directors, and employees (including House Counsel) and
18 reinsurers, if any, of the Receiving Party to whom disclosure is reasonably necessary for this
19 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

23 (d) the court and its personnel;

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

27 (f) during their depositions, witnesses in the action to whom disclosure is
28 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
2 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
3 separately bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this Stipulated Protective Order.

5 (g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation that compels
10 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
11 Party must:

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

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

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

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

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
2 THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
5 Parties in connection with this litigation is protected by the remedies and relief provided by this
6 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
7 additional protections.

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

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

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
17 description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party.

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

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

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

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
22 seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
26 no Party waives any right to object on any ground to use in evidence of any of the material
27 covered by this Protective Order.
28

1 12.3 Filing Protected Material. Without written permission from the Designating Party
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with proscribed Eastern District of California procedures,
5 including Local Rule 141, in order to do so.

6 13. FINAL DISPOSITION

7 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
8 Receiving Party must return all Protected Material to the Producing Party or destroy such
9 material, unless the Protected Material is required by law to be maintained in an insurer's claims
10 file. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
11 compilations, summaries, and any other format reproducing or capturing any of the Protected
12 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
13 submit a written certification to the Producing Party (and, if not the same person or entity, to the
14 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
15 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
16 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
18 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
19 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
20 product, and consultant and expert work product, even if such materials contain Protected
21 Material. Any such archival copies that contain or constitute Protected Material remain subject
22 to this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: 9/9/13

BROWN & WINTERS

3

/s/ Benjamin P. Syz [as authorized on 9/9/13]

4

Benjamin P. Syz

5

Attorneys for Plaintiff

CITY OF RIPON

6 DATED: 9/9/13

SEDGWICK LLP

7

8

/s/ Laura L. Goodman

9

Laura L. Goodman

Attorneys for Defendant

10

CONTINENTAL INSURANCE COMPANY

11

12 DATED: 9/10/13

BECHERER KANNETT & SCHWEITZER

13

14

/s/ Dolores B. Dalton [as authorized on 9/10/13]

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Dolores B. Dalton

Attorneys for Defendant


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TRAVELERS INDEMNITY COMPANY

17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 Dated: September 17, 2013

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KENDALL J. NEWMAN

UNITED STATES MAGISTRATE JUDGE

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Eastern District of California on
7 _____ in the case of *City of Ripon v. Continental Insurance Company, et al.*, Case
8 No. 2:12-cv-01638-WBS-KJN. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____
18 [print or type full address and telephone number] as my California agent for service of process in
19 connection with this action or any proceedings related to enforcement of this Stipulated
20 Protective Order.

21 Date: _____

22
23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____

28