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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

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PAUL PENNINGTON,

Plaintiff,

vs.

ZURICH AMERICAN INSURANCE  
COMPANY, et al.,

Defendants.

Case No. 2:12-CV-03038-MCE-CKD

**STIPULATION AND ~~PROPOSED~~  
PROTECTIVE ORDER REGARDING  
CONFIDENTIALITY OF DISCOVERY  
INFORMATION AND DOCUMENTS**

Action Filed: July 18, 2012  
Trial Date: None Set

1 This Stipulated Protective Order is entered into by and between plaintiff Paul Pennington  
2 (“Plaintiff”), on the one hand, and defendant Zurich American Insurance Company (“Defendant”),  
3 on the other hand, by and through their respective counsel of record, with reference to the  
4 following facts.

### 5 RECITALS

6 A. Defendant has in its possession, custody or control certain information or documents  
7 that is/are private, proprietary or confidential. Defendant considers this information and these  
8 documents to be “Confidential Information” or “Highly Confidential Information,” as those terms  
9 are defined below.

10 B. Defendant desires to protect the Confidential Information and Highly Confidential  
11 Information, and ensure that said information shall only be produced, used and submitted in  
12 connection with the litigation of this action, subject to this Stipulated Protective Order.

13 **C. No part of this Stipulated Protective Order shall apply to or have any effect or**  
14 **limitation on the Court or the Court’s officers or personnel.**

### 15 STIPULATION

16 Defendant and Plaintiff (collectively, the “Parties”), stipulate and ask that the Court order  
17 as follows:

18 1. Definitions.

19 a. “Confidential Information” means based on Defendant’s contention, any (1)  
20 non-public, private or privileged personnel or personal information; and/or (2) trade secrets or  
21 other non-public proprietary, confidential, strategic, privileged, financial, business or commercial  
22 information, data or research. All Confidential Information produced pursuant to this Stipulated  
23 Protective Order shall be used solely for the purposes of this litigation, or for purposes of enforcing  
24 an order, judgment, and/or award made in this litigation, as permitted by this Stipulated Protective  
25 Order.

26 b. “Highly Confidential Information” means, based on Defendant’s contention,  
27 “Confidential Information,” as that term is defined above, that is extremely sensitive, the disclosure  
28 of which to Plaintiff or to a nonparty would create a substantial risk of serious injury that cannot be

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1 avoided by less restrictive means. The Parties agree that Highly Confidential Information shall be  
2 for “Attorney Eyes Only” and, accordingly, disclosed to and reviewed only by Plaintiff’s attorneys  
3 of record who have appeared on his behalf as of the date of this Stipulation. Plaintiff may  
4 announce additional attorneys of record on his behalf by providing Defendant with notice of the  
5 same, and Defendant may make like announcements with notice to Plaintiff.

6 c. “Document” and “Documents” mean all written, recorded, or graphic  
7 material, in hard copy or electronic format, including, but not limited to, emails, and further  
8 including, without limitation, deposition transcripts and exhibits, trial and hearing transcripts and  
9 exhibits, pleadings, motions, affidavits, and briefs that may quote, summarize, or contain  
10 Confidential Information or Highly Confidential Information. The term “Documents” further  
11 includes all original documents and copies or derivatives of those Documents.

12 d. “Producing Party” means a party that produces Confidential Information or  
13 Highly Confidential Information in this litigation pursuant to this Stipulated Protective Order.

14 e. “Recipient” means a named party in this litigation (including that named  
15 party’s Counsel of Record or said counsel’s agents) who receives Confidential Information or  
16 Highly Confidential Information in this litigation pursuant to this Stipulated Protective Order.

17 f. “Qualified Persons” means:

- 18 (1) The named parties to this action;
- 19 (2) Counsel of Record in this action and said counsel’s employees
- 20 (3) In house counsel or any such persons who are responsible for the  
21 handling of legal matters on Defendant’s behalf, including said  
22 person’s employees;
- 23 (4) Vendors or contractors who have been or are retained by Counsel of  
24 Record or by In House Counsel and, further, who have been or are  
25 actively engaged in the conduct of this litigation;
- 26 (5) Experts, investigators or litigation consultants engaged by Counsel of  
27 Record to assist in this litigation; and

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1 (6) Fact witnesses providing testimony by deposition or at any trial  
2 proceeding in this case.

3 2. Designation, of Confidential Information or Highly Confidential Information. To  
4 designate Documents as Confidential Information or Highly Confidential Information, the  
5 Producing Party shall place a legend or stamp on the Document in such a way that it brings either  
6 designation to the attention of a reasonable examiner, or otherwise puts the Recipient on reasonable  
7 notice that the Document contains Confidential Information or Highly Confidential Information,  
8 e.g., by stamping the Document “Confidential” or “Highly Confidential Information - Attorney  
9 Eyes Only,” or words to either effect. To designate Confidential Information or Highly  
10 Confidential Information in testimony (or in exhibits referred to therein), the Producing Party shall  
11 (a) make an oral statement to that effect on the record, or (b) notify the Recipient in writing at any  
12 time up to and until twenty (20) days after receipt of the transcript, and, upon such notice, (c) make  
13 arrangements with the reporter to bind the confidential portions of the transcript separately and to  
14 label that bound material accordingly. Further, during depositions or arbitral proceedings, any  
15 Producing Party claiming confidentiality with respect to information that is to be disclosed or upon  
16 which questions are based may exclude from the room any party or person who is not a Qualified  
17 Person, as that term is defined above in Section 1(f).

18 3. Permissible Uses of Confidential Information and Highly Confidential Information.  
19 All Confidential Information obtained by a Recipient in discovery in this litigation, and all Highly  
20 Confidential Information disclosed to a Recipient’s attorneys, shall be used by the Recipient or the  
21 Recipient’s attorneys solely for the prosecution or defense of the claims in this litigation, and shall  
22 not be used by the Recipient or the Recipient’s attorneys in any other legal action, or for any  
23 business, commercial, financial, competitive, personal, personnel, publicity, media or other  
24 purpose, except that nothing herein shall preclude Defendant (or its affiliates) from pursuing legal  
25 or personnel actions in discovered instances of misconduct as to its own employees or vendors  
26 which are necessary to ensure that its employees, vendors or policies are acting or being applied in  
27 accordance with the law. No Recipient or other person to whom Confidential Information or  
28 Highly Confidential Information is disclosed, and no attorney for a Recipient to whom Highly

1 Confidential Information is disclosed, shall copy, transcribe, or otherwise reproduce or distill in  
2 written or any other form any part or portion of any Confidential Information or Highly  
3 Confidential Information except as necessary for purposes of the litigation.

4 4. Permissible Disclosure of Confidential Information or Highly Confidential  
5 Information. The Recipient of Confidential Information or the Recipient's attorneys who have  
6 received Highly Confidential Information shall disclose that information only to Qualified Persons,  
7 and, with respect to certain of these Qualified Persons, only under these conditions:

8 a. Any Recipient of Confidential Information or any attorney for a Recipient  
9 who has received Highly Confidential Information shall not reveal that information to nor discuss  
10 that information with any person who is not entitled to receive that information, except as set forth  
11 in this Stipulated Protective Order.

12 b. Prior to disclosure of Confidential Information to persons described in  
13 paragraphs 1(f)(1) or 1(f)(4)-(6) of this Stipulated Protective Order, the Recipient shall advise that  
14 person that, pursuant to this Stipulated Protective Order, he or she may not divulge that information  
15 to other individuals and, accordingly, the Recipient shall obtain from that person, prior to any such  
16 disclosure, a signed and dated acknowledgment substantially in the form attached as Exhibit "A"  
17 (the "Disclosure Agreement").

18 c. Any person who receives Confidential Information pursuant to paragraphs  
19 1(f)(1) or 1(f)(4)-(6) of this Stipulated Protective Order, shall read this Stipulated Protective Order  
20 and undertake in writing to be bound by its terms, to maintain that information designated as  
21 Confidential Information in confidence, not to use or disclose information designated as  
22 Confidential Information to anyone other than to a Qualified Person, and not to use Confidential  
23 Information except in connection with the instant action. Such persons shall indicate their  
24 agreement to be bound by the terms of this Stipulated Protective Order by signing and dating the  
25 Disclosure Agreement attached as Exhibit "A". Before reviewing Defendant's confidential  
26 documents, Plaintiff or any other person who receives Confidential Information pursuant to  
27 paragraphs 1(f)(1) or 1(f)(4)-(6) shall sign that Disclosure Agreement. Each original, executed  
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1 Disclosure Agreement shall be maintained in the files of the Recipient and shall be available for  
2 review by all counsel and Parties upon reasonable notice.

3 d. Highly Confidential Information may be disclosed only to the Qualified  
4 Persons identified in paragraphs 1(f)(2)-(3). Accordingly, if persons to whom Highly Confidential  
5 Information may not be disclosed are present during times in which that Highly Confidential  
6 Information is being disclosed, the Producing Party shall request that said persons leave the  
7 location where that Highly Confidential Information is being or will be disclosed.

8 e. Nothing shall prevent disclosure beyond the terms of this Stipulated  
9 Protective Order if the Producing Party of Confidential Information or Highly Confidential  
10 Information consents in writing to that disclosure prior to the disclosure of that information.

11 5. Challenging Confidential Information or Highly Confidential Information  
12 Designations. In the event the Recipient disputes or Recipient's attorneys disputes the Producing  
13 Party's designation of individual documents or a category of documents or information as  
14 Confidential Information or Highly Confidential Information, the Recipient shall notify the  
15 Producing Party in writing of such dispute. In an effort to settle such dispute without judicial  
16 intervention, the Parties shall meet and confer to determine whether the restrictions imposed by this  
17 Stipulated Protective Order are warranted with respect to such disputed information, but if  
18 resolution of the dispute cannot be reached, the Recipient may apply to the Court for an appropriate  
19 determination.

20 6. Inadvertent or Improper Disclosure.

21 a. A Producing Party's inadvertent failure to designate Confidential  
22 Information or Highly Confidential Information shall not be construed as a waiver, in whole or in  
23 part, and may be corrected by the Producing Party by written notification to the Recipient or  
24 Recipient's attorneys promptly upon discovery of the failure to designate.

25 b. If a Recipient discloses Confidential Information or a Recipient's attorneys  
26 disclose Highly Confidential Information in a manner not authorized herein, the Recipient must  
27 immediately and in writing notify the Producing Party of all pertinent facts relating to such  
28 disclosure and, without prejudice to other rights and remedies of the Producing Party, make every

1 effort to prevent further disclosure by the Recipient, the Recipient's attorneys, or by the person to  
2 whom the Recipient or Recipient's attorneys disclosed such information. These efforts include  
3 obtaining a signed and dated Disclosure Agreement from any person who was inadvertently  
4 exposed to Confidential or Highly Confidential Information.

5 7. Return or Destruction of Confidential Information or Highly Confidential  
6 Information. Within thirty (30) business days after the conclusion of this litigation, by adjudication  
7 (including appeals) or otherwise, the Recipient shall return to the Producing Party all Confidential  
8 Information and shall cause his, her or its attorney to return all Highly Confidential Information, all  
9 copies of such information, and any Documents incorporating such information. Alternatively, at  
10 the request of the Producing Party, the Recipient shall destroy all such materials and certify in  
11 writing that all such materials have been destroyed.

12 8. Litigation or Arbitral Proceedings Involving or Requiring Confidential Information  
13 or Highly Confidential Information. With respect to trial proceedings involving Confidential  
14 Information or Highly Confidential Information, the Parties will comply with the provisions of  
15 Rule 26 of the Federal Rules of Civil Procedure and Local Rule 141 of the Eastern District of  
16 California.

17 9. Exceptions. The restrictions set forth in this Stipulated Protective Order shall not  
18 apply to:

19 a. Information that was, is or becomes public knowledge through its authorized  
20 release by a person or entity who rightfully obtained and possesses such information during the  
21 normal course of business, and not in violation of this Stipulated Protective Order; or

22 b. Defendant (or its affiliates), with respect to its own information or  
23 information received or created during the normal course of its own businesses.

24 10. Discoverability and Admissibility of Documents. Nothing in this Stipulated  
25 Protective Order shall be construed to affect either the discoverability or admissibility of any  
26 information, document, recording or thing, nor shall any named party's entry into this Stipulated  
27 Protective Order be deemed to waive either that party's right to object to the disclosure or  
28 production of information, documents, recordings or things on appropriate grounds, or to move to

1 compel the production of information, documents, recordings or things wrongfully withheld from  
2 production.

3 11. No waiver. Nothing in this Stipulated Protective Order shall be deemed to be a limit  
4 or waiver of the attorney-client privilege, the work product privilege, or any other relevant  
5 privilege. Further, inadvertent production of privileged information shall not waive the privilege.  
6 If privileged information is inadvertently produced, the Recipient agrees that, upon request from  
7 the Producing Party, it shall promptly return all copies of Documents containing the privileged  
8 information, delete any versions of the Documents containing the privileged information on any  
9 database or computer filing system it maintains, and make no use of the privileged information. In  
10 the event any Recipient of Confidential Information or Highly Confidential Information is served  
11 with a subpoena or other actual or potentially legally enforceable request or order for records or  
12 information, any of which may require the production of such Confidential Information or Highly  
13 Confidential Information, that Recipient must give notice to the Producing Party within five (5)  
14 days of receiving the subpoena. No Confidential or Highly Confidential Information may be  
15 produced in response to a subpoena until such notice is given to the Producing Party and the  
16 Producing Party has been given an opportunity to move to quash or object to the production of the  
17 Confidential or Highly Confidential Information.

18 12. Not a Contract. This Stipulation and Protective Order shall not be construed or  
19 argued or interpreted as creating a contract between the Parties or between their counsel or between  
20 the Parties and their counsel.

21 13. Jurisdiction. At the election of the party who claims a violation of this Stipulated  
22 Protective Order, the United States District Court for the Eastern District of California shall retain  
23 jurisdiction, both before and after the entry of final judgment in this case, whether by settlement or  
24 adjudication, to construe, enforce, and amend the provisions of this Stipulated Protective Order.  
25 The Parties consent to jurisdiction in said court to resolve any disputes or requested relief arising  
26 under this Stipulated Protective Order.

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DATED: \_\_\_\_\_

LAW OFFICE OF ARKADY ITKIN

By: \_\_\_\_\_  
Arkady Itkin

Attorneys for Plaintiff Paul Pennington

DATED: \_\_\_\_\_

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By: \_\_\_\_\_  
Hardy R. Murphy / Lauren M. Cooper

Attorneys for Defendant Zurich American  
Insurance Company

**ORDER**

Based upon the foregoing Stipulation and Protective Order regarding Confidentiality of  
Discovery Information and Documents, and good cause appearing therefore, it is so ordered.

DATED: 2/19/2013

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/s/ Carolyn K. Delaney  
The Honorable Carolyn K. Delaney  
EASTERN DISTRICT OF CALIFORNIA

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**EXHIBIT A**

**DECLARATION OF “QUALIFIED PERSON”**

I, \_\_\_\_\_ declare that I have read the Stipulated Protective Order entered in the action entitled *Paul Pennington v. Zurich American Insurance Company, et al.*, United States District Court for the Eastern District of California, Case No. 2:12-cv-03038-MCE-CKD, and agree to be bound by its terms, to maintain that information designated as Confidential Information in confidence, not to use or disclose information designated as Confidential Information to anyone other than to a Qualified Person, and not to use Confidential Information except in connection with the litigation or preparation for litigation of this proceeding, provided that nothing shall prevent disclosure beyond the terms of this Stipulated Protective Order if the party that designated the document as containing Confidential Information consents in writing prior to disclosure. I further agree to submit to the jurisdiction of the United States and venue in the Eastern District of California, for any actions necessary or required to enforce this Stipulated Protective Order as it pertains to me and my agreement herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration is executed on \_\_\_\_\_

Signature of Declarant \_\_\_\_\_  
Print name: \_\_\_\_\_  
Affiliation: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Home Address: \_\_\_\_\_

14396397.1 (OGLETREE)