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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED SPECIALTY INSURANCE
COMPANY, a Delaware corporation,

Plaintiff,

v.

DEAN PETERSEN dba PETERSEN
CONSTRUCTION SERVICES, a citizen of
the State of California;

Defendant.

CIVIL ACTION NO.: 2:16-cv-02480-KJM-
GGH

**[PROPOSED] JOINT PROTECTIVE
ORDER**

Assigned to: Hon. Kimberly J. Mueller

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential or privileged information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. As a result, Magistrate Judge Gregory G. Hollows ordered on September 12, 2017 that the Parties submit a Joint Draft Protective Order on or before September 14, 2017. Accordingly, the parties hereby submit the following protective order, which they request that the Court enter.

The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

1 applicable legal principles. The parties further acknowledge, as set forth in Section 13.3, below, that
2 this Protective Order does not entitle them to file confidential information under seal; Ninth Circuit
3 rules, local rules, and standing orders of this Court set forth the procedures that must be followed
4 and the standards that will be applied when a party seeks permission from the court to file material
5 under seal.

6 **2. DEFINITIONS**

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
11 Civil Procedure 26(c), that may be subject to discovery in this action, but that should not be
12 disclosed to anyone not a party to this action or made publicly available. Specifically, this case is
13 likely to include information that would be protected from disclosure as to third parties by the joint
14 defense, common interest, work product, mediation, settlement communication, attorney-client or
15 other applicable privileges or protections related to the litigation of the case entitled *David*
16 *Finkelstein and Michelle Finkelstein v. Dean Petersen, et al.*, Placer County Superior Court, case no.
17 SCV 0035325 (the “Underlying Action”), including but not limited to a) communications by and
18 between the Parties relating to the mediation of and settlement negotiations of the Underlying
19 Action, and b) communications between the Parties and defense counsel in the Underlying Action.

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
21 as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it
23 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
25 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
26 transcripts, and tangible things), that are produced or generated in disclosures or responses to
27 discovery in this matter.

28 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to

1 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
2 consultant in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action. House
4 Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
6 entity not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
8 but are retained to represent or advise a party to this action and have appeared in this action on
9 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors, employees,
11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
13 Material in this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support services
15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
16 storing, or retrieving data in any form or medium) and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
18 “CONFIDENTIAL.”

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
20 Producing Party.

21 **3. SCOPE**

22 The protections conferred by this Stipulation and Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
24 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
25 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
26 However, the protections conferred by this Stipulation and Order do not cover the following
27 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
28 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of

1 publication not involving a violation of this Order, including becoming part of the public record
2 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
3 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
4 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
5 Protected Material at trial shall be governed by a separate agreement or order.

6 **4. DURATION**

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

13 **5. DESIGNATING PROTECTED MATERIAL**

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
15 Non-Party that designates information or items for protection under this Order must take care to
16 limit any such designation to specific material that qualifies under the appropriate standards. The
17 Designating Party must designate for protection only those parts of material, documents, items, or
18 oral or written communications that qualify – so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept unjustifiably within
20 the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. If it comes to a Designating
22 Party's attention that information or items that it designated for protection do not qualify for
23 protection, that Designating Party must promptly notify all other Parties that it is withdrawing the
24 mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
26 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
27 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
28 designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
4 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion
5 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

7 A Party or Non-Party that makes original documents or materials available for inspection need not
8 designate them for protection until after the inspecting Party has indicated which material it would
9 like copied and produced. During the inspection and before the designation, all of the material made
10 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
11 identified the documents it wants copied and produced, the Producing Party must determine which
12 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
13 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
14 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

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

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

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the Designating Party’s
27 right to secure protection under this Order for such material. Upon timely correction of a
28 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in

1 accordance with the provisions of this Order.

2 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
4 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
5 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
6 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
7 confidentiality designation by electing not to mount a challenge promptly after the original
8 designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
10 by providing written notice of each designation it is challenging and describing the basis for each
11 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
12 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
13 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
14 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
15 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
16 Party must explain the basis for its belief that the confidentiality designation was not proper and
17 must give the Designating Party an opportunity to review the designated material, to reconsider the
18 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
19 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
20 has engaged in this meet and confer process first or establishes that the Designating Party is
21 unwilling to participate in the meet and confer process in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
23 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 14
24 days of the parties agreeing that the meet and confer process will not resolve their dispute. Each such
25 motion must be accompanied by a competent declaration affirming that the movant has complied
26 with the meet and confer requirements imposed in the preceding paragraph. Failure by the
27 Designating Party to make such a motion shall automatically waive the confidentiality designation
28 for each challenged designation. In addition, the Challenging Party may file a motion challenging a

1 confidentiality designation at any time if there is good cause for doing so, including a challenge to
2 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
3 this provision must be accompanied by a competent declaration affirming that the movant has
4 complied with the meet and confer requirements imposed by this paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating
6 Party. Unless the Designating Party has waived the confidentiality designation by failing to file a
7 motion to retain confidentiality as described above, all parties shall continue to afford the material in
8 question the level of protection to which it is entitled under the Producing Party's designation until
9 the court rules on the challenge.

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

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

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

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
20 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
21 information or item designated "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
23 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
24 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
25 attached hereto as Exhibit A;

26 (b) the officers, directors, and employees (including House Counsel) of the Receiving
27 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

4 (d) the court and its personnel;

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

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

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

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

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

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

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

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

28 If the Designating Party timely seeks a protective order, the Party served with the subpoena

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

7 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
8 **THIS LITIGATION**

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

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

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

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

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

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

1 seeking protection in this court of its Protected Material.

2 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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

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

20 **12. PARTIES’ OWN CONFIDENTIAL INFORMATION**

21 Nothing herein shall impose any restrictions on a designating party from disclosing its own
22 “Confidential Information” as it deems appropriate.

23 **13. MISCELLANEOUS**

24 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
25 its modification by the court in the future.

26 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
27 no Party waives any right it otherwise would have to object to disclosing or producing any
28 information or item on any ground not addressed in this Protective Order. Similarly, no Party waives

1 any right to object on any ground to use in evidence of any of the material covered by this Protective
2 Order.

3 13.3 Filing Protected Material. Without written permission from the Designating Party or a
4 court order secured after appropriate notice to all interested persons, a Party may not file in the
5 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
6 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
7 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
8 to Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected
9 Material at issue is entitled to protection under the law. If a Receiving Party's request to file
10 Protected Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the
11 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)
12 unless otherwise instructed by the court.

13 13.4 Pursuant to Judge Mueller's standing order:

14 No document will be sealed, nor shall a redacted document be filed, without the prior
15 approval of the court. If a document for which sealing or redaction is sought relates
16 to the record on a motion to be decided by Judge Mueller, the request to seal or redact
17 should be directed to her and not the assigned Magistrate Judge. All requests to seal
18 or redact shall be governed by Local Rules 141 (sealing) and 140 (redaction);
19 protective orders covering the discovery phase of litigation shall not govern the filing
20 of sealed or redacted documents on the public docket. The court will only consider
21 requests to seal or redact filed by the proponent of sealing or redaction. If a party
22 plans to make a filing that includes material an opposing party has identified as
23 confidential and potentially subject to sealing, the filing party shall provide the
24 opposing party with sufficient notice in advance of filing to allow for the seeking of
25 an order of sealing or redaction from the court.

26 **14. FINAL DISPOSITION**

27 Within 90 days after the final disposition of this action, as defined in paragraph 4, each
28 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
summaries, and any other format reproducing or capturing any of the Protected Material. Whether
the Protected Material is returned or destroyed, the Receiving Party must submit a written

1 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
2 by the 90 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
3 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
4 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
5 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
6 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
7 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
8 and expert work product, even if such materials contain Protected Material. Any such archival copies
9 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
10 Section 4 (DURATION).

11 **15. MODIFICATION**

12 This Protective Order is subject to revocation and/or modification by order of the Court or
13 upon written stipulation of the Parties or upon noticed motion by any Party.

14
15 **IT IS SO ORDERED.***

16 Dated: September 21, 2017

17 /s/ Gregory G. Hollows
18 UNITED STATES MAGISTRATE JUDGE

19 *The parties have referenced "Civil Local Rule 79" in paragraph 13 of this protective order along
20 with references to Civil Local Rule 141. The undersigned assumes the parties are referencing
21 Eastern District of California Local Rule 141 when referencing Rule 79.

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