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 CONTRA COSTA WATER DISTRICT

14
 15 UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 CONTRA COSTA WATER DISTRICT,

19 Plaintiff,

20 v.

21 HARTFORD UNDERWRITERS
 INSURANCE COMPANY; and Does 1
 22 through 10, inclusive,

23 Defendants.

24 HARTFORD UNDERWRITERS
 INSURANCE COMPANY,

25 Counterclaimant,

26 v.

27 CONTRA COSTA WATER DISTRICT,

28 Counterdefendant

CASE NO. CV 09-0983 MMC

STIPULATED PROTECTIVE ORDER

Courtroom: 7
Judge: Hon. Maxine M. Chesney



1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 9, below, that this Stipulated
10 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
11 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
12 when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner generated, stored, or maintained (including, among other things, testimony,
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 2.3 “Confidential” Information or Items: information (regardless of how generated,
21 stored or maintained) or tangible things that qualify for protection under standards developed under
22 F.R.Civ.P. 26(c).

23 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
26 Material in this action.

27 2.6. Designating Party: a Party or non-party that designates information or items that
28 it produces in disclosures or in responses to discovery as “Confidential.”

1 2.7 Protected Material: any Disclosure or Discovery Material that is designated
2 “CONFIDENTIAL.”

3 2.8. Outside Counsel: attorneys who are not employees of a Party but who are
4 retained to represent or advise a Party in this action.

5 2.9 House Counsel: attorneys who are employees of a Party.

6 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
7 their support staffs).

8 2.11 Expert: a person with specialized knowledge or experience in a matter pertinent
9 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
10 consultant in this action and who is not a past or a current employee of a Party or of a competitor of
11 a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a
12 competitor of a Party. This definition includes a professional jury or trial consultant retained in
13 connection with this litigation.

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

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected Material
19 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
20 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
21 parties or counsel to or in court or in other settings that might reveal Protected Material.

22 4. DURATION

23 Even after the termination of this litigation, the confidentiality obligations imposed by this
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
25 otherwise directs.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
28 Party or non-party that designates information or items for protection under this Order must take

1 care to limit any such designation to specific material that qualifies under the appropriate standards.
2 A Designating Party must take care to designate for protection only those parts of material,
3 documents, items, or oral or written communications that qualify – so that other portions of the
4 material, documents, items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
7 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
8 unnecessarily encumber or retard the case development process, or to impose unnecessary expenses
9 and burdens on other parties), expose the Designating Party to sanctions.

10 If it comes to a Party's or a non-party's attention that information or items that it designated
11 for protection do not qualify for protection at all, or do not qualify for the level of protection
12 initially asserted, that Party or non-party must promptly notify all other parties that it is
13 withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
15 (see, e.g., third paragraph of section 5.2, below), or as otherwise stipulated or ordered, material that
16 qualifies for protection under this Order must be clearly so designated before the material is
17 disclosed or produced.

18 The Producing Party shall affix the legend "CONFIDENTIAL" at the top of each page that
19 contains protected material. If only a portion or portions of the material on a page qualifies for
20 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
21 appropriate markings in the margins).

22 A Party or non-party that makes original documents or materials available for inspection
23 need not designate them for protection until after the inspecting Party has indicated which material
24 it would like copied and produced. During the inspection and before the designation, all of the
25 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
26 Party has identified the documents it wants copied and produced, the Producing Party must
27 determine which documents, or portions thereof, qualify for protection under this Order, then,
28 before producing the specified documents, the Producing Party must affix the legend

1 “CONFIDENTIAL” at the top of each page that contains Protected Material. If only a portion or
2 portions of the material on a page qualifies for protection, the Producing Party also must clearly
3 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items as “Confidential” does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material. If material is
7 appropriately designated as “Confidential” after the material was initially produced, the Receiving
8 Party, on timely notification of the designation, must make reasonable efforts to assure that the
9 material is treated in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
12 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
13 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
14 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
15 after the original designation is disclosed.

16 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
17 Party’s confidentiality designation must do so in good faith and must begin the process by
18 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
19 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
20 for its belief that the confidentiality designation was not proper and must give the Designating
21 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
22 change in designation is offered, to explain the basis for the chosen designation. A challenging
23 Party may proceed to the next stage of the challenge process only if it has engaged in this meet and
24 confer process first.

25 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
26 designation after considering the justification offered by the Designating Party may file and serve a
27 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
28 identifies the challenged material and sets forth in detail the basis for the challenge. Each such

1 motion must be accompanied by a competent declaration that affirms that the movant has complied
2 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
3 specificity the justification for the confidentiality designation that was given by the Designating
4 Party in the meet and confer dialogue.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating
6 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
7 question the level of protection to which it is entitled under the Producing Party's designation.

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

9 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a non-party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order. When
13 the litigation has been terminated, a Receiving Party must comply with the provisions of section 10
14 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
19 disclose any information or item designated CONFIDENTIAL only to:

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

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

27 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
28 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by

1 Protective Order” (Exhibit A);

2 (d) the Court and its personnel;

3 (e) court reporters, their staffs, and professional vendors to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
5 Protective Order” (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
7 necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

8 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
9 must be separately bound by the court reporter and may not be disclosed to anyone except as
10 permitted under this Stipulated Protective Order.

11 (g) the author of the document or the original source of the information.

12 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20 9. FILING PROTECTED MATERIAL. Without written permission from the Designating
21 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
22 in the public record in this action any Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5.

24 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
25 Producing Party, within sixty days after the final termination of this action, each Receiving Party
26 must return all Protected Material to the Producing Party. As used in this subdivision, “all
27 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
28 reproducing or capturing any of the Protected Material. With permission in writing from the

1 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of
2 returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
3 submit a written certification to the Producing Party (and, if not the same person or entity, to the
4 Designating Party) by the 60-day deadline that identifies (by category, where appropriate) all the
5 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not
6 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing
7 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
8 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
9 attorney work product, even if such materials contain Protected Material. Any such archival copies
10 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
11 Section 4 (DURATION), above.

12 11. MISCELLANEOUS

13 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
14 seek its modification by the Court in the future.

15 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
18 Party waives any right to object on any ground to use in evidence of any of the material covered by
19 this Protective Order.

20
21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 DATED: October 26, 2009 SEDGWICK, DETERT, MORAN & ARNOLD LLP


23
24
25 By: /s/ Dean J. McElroy

26 Bruce D. Celebrezze
27 Matthew C. Lovell
28 Dean J. McElroy
Attorneys for Defendant and Counterclaimant
HARTFORD UNDERWRITERS INSURANCE
COMPANY

1 DATED: October 23, 2009

BOWLES & VERNA LLP


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By: 
Robert I. Westerfield
Michael P. Connolly
Attorneys for plaintiff and counterdefendant
CONTRA COSTA WATER DISTRICT

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 3, 2009


HON. MAXINE M. CHESNEY
UNITED STATES DISTRICT JUDGE

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 under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California on [date] in the case of Contra Costa Water District v. Hartford
7 Underwriters Insurance Company, Case No. CV 09-0983 MMC. I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is subject to
11 this Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern 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 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 Signature: _____