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6 Attorneys for Defendant
 7 AMCO INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 PACATTE CONSTRUCTION COMPANY,
 11 INC.,

12 Plaintiff,

13 v.

14 AMCO INSURANCE COMPANY, a
 15 corporation, GREAT AMERICAN
 16 ASSURANCE COMPANY, a corporation; and
 DOES 1 through V, inclusive,

17 Defendants.

CASE NO. C 12-01472 JSW

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER**

Courtroom: Courtroom 11
 Judge: Hon. Jeffrey S. White

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve production of
 21 confidential, proprietary, or private information for which special protection from public
 22 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 23 Accordingly, the parties hereby stipulate to and petition the court to enter the following
 24 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
 25 protections on all disclosures or responses to discovery and that the protection it affords from
 26 public disclosure and use extends only to the limited information or items that are entitled to
 27 confidential treatment under the applicable legal principles. The parties further acknowledge, as
 28 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file

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1 confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the
 2 procedures that must be followed and the standards that will be applied when a party seeks
 3 permission from the court to file material under seal. The parties further acknowledge that this
 4 Order does not compel or require any party to produce information that is protected from
 5 disclosure by statute or law.

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
 10 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
 11 Rule of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House
 13 Counsel (as well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or
 15 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
 16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 2.5 Disclosure or Discovery Material: all items or information, regardless of
 18 the medium or manner in which it is generated, stored, or maintained (including, among other
 19 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
 20 or responses to discovery in this matter.

21 2.6 Expert: a person with specialized knowledge or experience in a matter
 22 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
 23 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a
 24 Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a
 25 Party or of a Party’s competitor.

26 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 27 Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of
 28 which to another Party or Non-Party would create a substantial risk of serious harm that could not

1 be avoided by less restrictive means.

2 2.8 House Counsel: attorneys who are employees of a party to this action.
3 House Counsel does not include Outside Counsel of Record or any other outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
7 this action but are retained to represent or advise a party to this action and have appeared in this
8 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
9 that party.

10 2.11 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their support
12 staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
17 organizing, storing, or retrieving data in any form or medium) and their employees and
18 subcontractors.

19
20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY.”

23 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material
27 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
28 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

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

10 4. DURATION

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

18 //

19 5.1 DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each Party or Non-Party that designates information or items for protection under this
 22 Order must take care to limit any such designation to specific material that qualifies under the
 23 appropriate standards. To the extent it is practical to do so, the Designating Party must designate
 24 for protection only those parts of material, documents, items, or oral or written communications
 25 that qualify – so that other portions of the material, documents, items, or communications for
 26 which protection is not warranted are not swept 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.

3 If it comes to a Designating Party's attention that information or items that it designated
4 for protection do not qualify for protection at all or do not qualify for the level of protection
5 initially asserted, that Designating Party must promptly notify all other parties that it is
6 withdrawing the mistaken designation.

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

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
14 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
15 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or
16 portions of the material on a page qualifies for protection, the Producing Party also must clearly
17 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
18 specify, for each portion, the level of protection being asserted.

19 A Party or Non-Party that makes original documents or materials available for inspection
20 need not designate them for protection until after the inspecting Party has indicated which
21 material it would like copied and produced. During the inspection and before the designation, all
22 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
23 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
24 copied and produced, the Producing Party must determine which documents, or portions thereof,
25 qualify for protection under this Order. Then, before producing the specified documents, the
26 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected
28 Material. If only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins) and must specify, for each portion, the level of protection being
3 asserted.

4 (b) for testimony given in deposition or in other pretrial or trial
5 proceedings, that the Designating Party identify on the record, before the close of the deposition,
6 hearing, or other proceeding, all protected testimony and specify the level of protection being
7 asserted. When it is impractical to identify separately each portion of testimony that is entitled to
8 protection and it appears that substantial portions of the testimony may qualify for protection, the
9 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
10 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
11 which protection is sought and to specify the level of protection being asserted. Only those
12 portions of the testimony that are appropriately designated for protection within the 21 days shall
13 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
14 Party may specify, at the deposition or up to 21 days afterwards if that period is properly
15 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
18 or other proceeding to include Protected Material so that the other parties can ensure that only
19 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
21 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23 Transcripts containing Protected Material shall have an obvious legend on the title page
24 that the transcript contains Protected Material, and the title page shall be followed by a list of all
25 pages (including line numbers as appropriate) that have been designated as Protected Material
26 and the level of protection being asserted by the Designating Party. The Designating Party shall
27 inform the court reporter of these requirements. Any transcript that is prepared before the
28 expiration of a 21-day period for designation shall be treated during that period as if it had been

1 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless
 2 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
 3 actually designated.

4 (c) for information produced in some form other than documentary and
 5 for 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" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY. If only a
 8 portion or portions of the information or item warrant protection, the Producing Party, to the
 9 extent practicable, shall identify the protected portion(s) and specify the level of protection being
 10 asserted.

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

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 18 designation of confidentiality and/or level of protection by providing written notice of each
 19 designation it is challenging and describing the basis for each challenge within 45 days of the
 20 Challenging Party's receipt of the information designated as "Confidential." To avoid ambiguity
 21 as to whether a challenge has been made, the written notice must recite that the challenge to
 22 confidentiality is being made in accordance with this specific paragraph of the Protective Order.

23 6.2 Meet and Confer. The parties shall attempt to resolve each challenge in
 24 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
 25 forms of communication are not sufficient) within 14 days of the date of service of notice. In
 26 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
 27 designation and/or level of designation was not proper and must give the Designating Party an
 28 opportunity to review the designated material, to reconsider the circumstances, and, if no change

1 in designation or level of designation is offered, to explain the basis for the chosen designation or
2 level of designation. A Challenging Party may proceed to the next stage of the challenge process
3 only if it has engaged in this meet and confer process first or establishes that the Designating
4 Party is unwilling to participate in the meet and confer process in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
6 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
7 and/or level of designation under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
8 5 and General Order 62, if applicable) within 21 days of the initial notice of challenge or within
9 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
10 whichever is earlier. Each such motion must be accompanied by a competent declaration
11 affirming that the movant has complied with the meet and confer requirements imposed in the
12 preceding paragraph. Failure by the Designating Party to make such a motion including the
13 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
14 confidentiality designation and/or level of designation for each challenged designation and/or
15 level of designation. In addition, the Challenging Party may file a motion challenging a
16 confidentiality designation or a level of designation if there is good cause for doing so, including
17 a challenge to the designation or level of designation of a deposition transcript or any portions
18 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
19 declaration affirming that the movant has complied with the meet and confer requirements
20 imposed by the preceding paragraph.

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

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed 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
14 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to
15 disclose the information for this litigation and who have signed the “Acknowledgment and
16 Agreement to Be Bound” that is attached hereto as Exhibit A;

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

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

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

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

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
8 ONLY” Information or Items: Unless otherwise ordered by the court or permitted in writing by
9 the Designating Party, a Receiving Party may disclose any information or item designated
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as
12 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to
13 disclose the information for this litigation and who have signed the “Acknowledgment and
14 Agreement to Be Bound” that is attached hereto as Exhibit A;

15 (b) Experts of the Receiving Party (1) to whom disclosure is
16 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and
17 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
18 7.4(a)(2), below, have been followed;

19 (c) the court and its personnel;

20 (d) court reporters and their staff, professional jury or trial consultants,
21 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
22 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

23 (e) the author or recipient of a document containing the information or
24 a custodian or other person who otherwise possessed or knew the information.

25 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

27 (a) Unless otherwise ordered by the court or agreed to in writing by the
28 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any

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1 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
 2 EYES ONLY pursuant to paragraph 7.2(c) first must make a written request to the Designating
 3 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
 4 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
 5 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
 6 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
 7 identifies each person or entity from whom the Expert has received compensation or funding for
 8 work in his or her areas of expertise or to whom the expert has provided professional services,
 9 including in connection with a litigation, at any time during the preceding five years,¹ and (6)
 10 identifies (by name and number of the case, filing date, and location of court) any litigation in
 11 connection with which the Expert has offered expert testimony, including through a declaration,
 12 report, or testimony at a deposition or trial, during the preceding five years.²

13 (b) A Party that makes a request and provides the information specified
 14 in the preceding respective paragraph may disclose the subject Protected Material to the
 15 identified Expert unless, within 14 days of delivering the request, the Party receives a written
 16 objection from the Designating Party. Any such objection must set forth in detail the grounds on
 17 which it is based.

18 (c) A Party that receives a timely written objection must meet and
 19 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
 20 matter by agreement within seven days of the written objection. If no agreement is reached, the
 21 Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local
 22 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the
 23 court to do so. Any such motion must describe the circumstances with specificity, set forth in
 24 _____

25 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the
 26 Expert should provide whatever information the Expert believes can be disclosed without violating any
 confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with
 the Designating Party regarding any such engagement.

27 ² It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to
 28 the termination of the litigation that could foreseeably result in an improper use of the Designating Party’s
 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

1 detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm
 2 that the disclosure would entail, and suggest any additional means that could be used to reduce
 3 that risk. In addition, any such motion must be accompanied by a competent declaration
 4 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content
 5 of the meet and confer discussions) and setting forth the reasons advanced by the Designating
 6 Party for its refusal to approve the disclosure.

7 In any such proceeding, the Party opposing disclosure to the Expert shall
 8 bear the burden of proving that the risk of harm that the disclosure would entail (under the
 9 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its
 10 Expert.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 12 OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that compels
 14 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
 15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with the
 25 subpoena or court order shall not produce any information designated in this action as
 26 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a
 27 determination by the court from which the subpoena or order issued, unless the Party has
 28 obtained the Designating Party's permission. The Designating Party shall bear the burden and

1 expense of seeking protection in that court of its confidential material – and nothing in these
2 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
3 disobey a lawful directive from another court.

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

6 (a) The terms of this Order are applicable to information produced by a Non-
7 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
9 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
10 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

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1 burden and expense of 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 Stipulated Protective
5 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
6 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
7 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
8 made of all the terms of this Order, and (d) request such person or persons to execute the
9 “Acknowledgment and Agreement to 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
13 produced material is subject to a claim of privilege or other protection, the obligations of the
14 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
15 provision is not intended to modify whatever procedure may be established in an e-discovery
16 order that provides for production without prior privilege review. Pursuant to Federal Rule of
17 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
18 communication or information covered by the attorney-client privilege or work product
19 protection, the parties may incorporate their agreement in the stipulated protective order
20 submitted to the court.

21 12. MISCELLANEOUS

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

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

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1 12.3 Filing Protected Material. Without written permission from the
2 Designating Party or a court order secured after appropriate notice to all interested persons, a
3 Party may not file in the public record in this action any Protected Material. A Party that seeks to
4 file under seal any Protected Material must comply with Civil Local Rule 79-5 and General
5 Order 62. Protected Material may only be filed under seal pursuant to a court order authorizing
6 the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and
7 General Order 62, a sealing order will issue only upon a request establishing that the Protected
8 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection
9 under the law. If a Receiving Party's request to file Protected Material under seal pursuant to
10 Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party
11 may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless
12 otherwise instructed by the court.

13 13. FINAL DISPOSITION

14 Counsel shall keep a record of all copies of Protected Material distributed, in whole or in
15 part, to any Qualified Person. Within 60 days after the final disposition of this action, as defined
16 in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or
17 destroy such material. As used in this subdivision, "all Protected Material" includes all copies,
18 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
19 Protected Material. The Receiving Party must submit a written certification to the Producing
20 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that
21 (1) identifies (by category, where appropriate) all the Protected Material that was returned or
22 destroyed, and (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the Protected
24 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
25 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
26 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
27 consultant and expert work product, even if such materials contain Protected Material. Any such
28 archival copies that contain or constitute Protected Material remain subject to this Protective

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Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: Dec 7, 2012

Kathleen A. Dineen
Attorneys for Plaintiff PACATTE CONSTRUCTION
COMPANY, INC.

DATED: Dec 7, 2012

[Signature]
Attorneys for Defendant AMCO INSURANCE
COMPANY

DATED: _____, 2012

Attorneys for Defendant GREAT AMERICAN
ASSURANCE COMPANY

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

Honorable Jeffrey S. White
United States District Judge

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Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

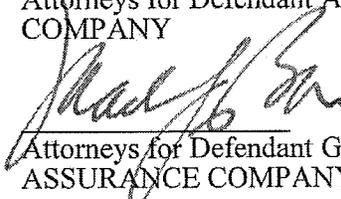
DATED: _____, 2012

Attorneys for Plaintiff PACATTE CONSTRUCTION COMPANY, INC.

DATED: _____, 2012

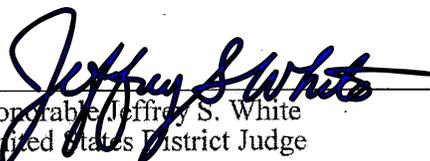
Attorneys for Defendant AMCO INSURANCE COMPANY

DATED: Dec. 14, 2012


Attorneys for Defendant GREAT AMERICAN ASSURANCE COMPANY

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: January 2, 2013


Honorable Jeffrey S. White
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, _____ [print or type full name], of _____
 2 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 3 understand the Stipulated Protective Order that was issued by the United States District Court for
 4 the Northern District of California on _____ in the case of Pacatte Construction
 5 Company, Inc. v. AMCO Insurance Company, et al., Case No. 3:12-cv-01472-JSW. I agree to
 6 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
 7 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
 8 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
 9 item that is subject to this Stipulated Protective Order to any person or entity except in strict
 10 compliance with the provisions of this Order.
 11

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

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

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
 24 [printed name]

25 Signature: _____
 26 [signature]
 27
 28

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