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 TRICOR AMERICA, INC.
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7 **UNITED STATES DISTRICT COURT**
 8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 TRICOR AMERICA, INC., A California
 10 Corporation

Case No.: 3:13-cv-03391-JST

11 Plaintiff,

**~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER**

12
 13 vs.

14
 15 FEDERAL INSURANCE COMPANY, a
 16 corporation; and DOES 1 THROUGH 50,
 17 inclusive,

18
 19 Defendants.

20
 21 Plaintiff TRICOR AMERICA, INC. (“TRICOR” or “Plaintiff”), on the one hand, and
 22 Defendants Federal Insurance, Inc. (“Defendant”), and Cross-Defendant Mike Chung (“Cross-
 23 Defendant”) on the other hand, by and through their counsel and pursuant to Rule 26 of the
 24 Federal Rules of Civil Procedure, hereby stipulate and agree as follows:

25 WHEREAS, counsel for for the parties intend to serve, or have served, discovery requests
 26 directed to the opposing party; and
 27
 28

1 WHEREAS, it appears likely to counsel for the parties that responding to such discovery
2 requests may reveal legally-protected trade secret, confidential or privacy-protected information.

3 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that the following
4 procedures shall be employed and the following terms, conditions, and restrictions shall govern
5 with respect to all discovery served or exchanged by any party to this case, including all
6 summaries, extracts and material derived from this case (hereinafter “information”):

7 1. Any party or other person producing information in this case may, in good faith,
8 designate information as CONFIDENTIAL. As used herein, the term CONFIDENTIAL denotes
9 information containing confidential and/or proprietary trade secret information, including, but
10 not limited to, technical and competitively-sensitive information protected by law, and
11 information protected by California’s constitutional and common law right to privacy. Records
12 or documents containing “personal records,” as defined in Section 1985.3(a)(1) et seq. of the
13 Code of Civil Procedure, may also be designated as CONFIDENTIAL. Information that is
14 already in the public domain may not be designated as CONFIDENTIAL. At the time of
15 production or other disclosure of such CONFIDENTIAL information, the producing party or
16 other person shall designate such material by placing the word CONFIDENTIAL on each such
17 document or other material, or if it is not possible to so label the material, by means of such other
18 designation as will identify the CONFIDENTIAL information with sufficient specificity to
19 permit counsel to adhere to the provisions of this Protective Order. In the event Defendant
20 produces financial statements, time records, payroll records or other employment documents
21 with respect to employees, Defendant is not required to place the word CONFIDENTIAL on
22 such records or documents. Instead, such records or documents will be automatically deemed
23 designated CONFIDENTIAL without the need to label such records or documents
24 CONFIDENTIAL.

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26 2. In the event that additional parties join or are joined in this litigation, they shall
27 not have access to materials designated as CONFIDENTIAL pursuant to this Protective Order
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1 until they have executed and, at the request of the parties, filed with the Court their agreement to
2 be bound by this Protective Order.

3 3. Any party believing materials designated as CONFIDENTIAL by another is not
4 entitled to such designation shall notify the producing or designating party of that belief in
5 writing, provide a brief statement of the basis for that belief with service on all other parties, and
6 allow ten (10) days for the producing or designating party to respond. If the producing or
7 designating party does not modify its designation of the materials in response to a notice
8 pursuant to this paragraph, then the party challenging the CONFIDENTIAL designation may
9 move the Court for an order modifying or removing such designation. To maintain
10 CONFIDENTIAL status, the burden shall be on the proponent of confidentiality to show that the
11 material or information is entitled to protection under applicable law. Unless and until a
12 CONFIDENTIAL designation is voluntarily withdrawn by the producing or designating party, or
13 the Court issues an order modifying or removing such designation, the provisions of the
14 Protective Order shall continue to apply.

15 4. Any CONFIDENTIAL information that is produced shall be produced only to
16 counsel of record for the parties to this litigation. Counsel for any party who obtains any
17 CONFIDENTIAL information from any other party shall protect it and its contents from all
18 disclosure to anyone, save for the persons designated in this paragraph. Counsel of record may
19 disclose CONFIDENTIAL information where necessary to the proper preparation for, and trial
20 of, this case, to:

- 21
- 22 (a) their employees and employee equivalents (e.g., contract paralegals);
 - 23 (b) independent experts or consultants for the purpose of aiding counsel of
24 record in connection with counsel's preparation for trial, who shall have no ownership interest in
25 or business relationship with any other party named in this litigation or any competitor of
26 Defendant;
 - 27 (c) witnesses and deponents testifying under oath and the certified shorthand
28 reporter conducting the deposition;

1 (d) the parties to this litigation, which for the corporate parties shall include
2 their respective employees who are involved in matters pertaining to the lawsuit;

3 (e) this Court and members of its staff;

4 (f) mediators or other alternative dispute resolution neutrals (including their
5 employees, agents and contractors) to whom disclosure is reasonably necessary to their
6 involvement in this litigation;

7 (g) any person who created a document or was the recipient thereof;

8 (h) employees of outside copying services and other vendors retained by
9 counsel to assist in the copying, imaging, handling or computerization of documents, but only to
10 the extent necessary to provide such services in connection with this litigation and only after
11 being informed of the provisions of this Protective Order and agreeing to abide by its terms; or

12 (i) the jury in this matter.

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14 Counsel shall distribute this Protective Order to all such persons referenced in
15 subsections (a) through (f) above and shall require that said persons read this Order and agree to
16 be bound by its terms by signing the Acknowledgment form attached hereto as Exhibit A.

17 5. Whenever any CONFIDENTIAL information is introduced or used at a
18 deposition, those portions of the deposition that concern CONFIDENTIAL information: (a) shall
19 be conducted in such a way that only persons authorized by this Protective Order to have access
20 to such matters are present; and (b) shall be separately bound after transcription and marked as
21 CONFIDENTIAL, and then shall be deemed to be subject to the terms of this Protective Order.
22 CONFIDENTIAL information may be elicited or used in depositions only of parties, persons
23 employed by parties, former employees of the parties, or clients of the parties (to the extent
24 CONFIDENTIAL information relates to the particular party, former employee, or client) who
25 produced such information, but only if the person deposed has knowledge of such information,
26 has agreed to be bound by the terms of this Protective Order, and has reviewed and signed
27 Exhibit A.
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1 6. Counsel may show CONFIDENTIAL material to a witness at a deposition and
2 examine that witness concerning the same, provided that such counsel must, in the course of the
3 deposition, inquire as to whether the witness agrees to be bound by the terms of this Protective
4 Order. If the witness does not so agree, then neither the witness nor his or her counsel, if any,
5 may retain or be given any copy of the CONFIDENTIAL material including, but not limited to, a
6 copy of any pages of the transcript of the deposition that are designated CONFIDENTIAL. In
7 the event of such refusal by the witness, the reporter shall be instructed to give the witness
8 written notice when the transcript has been prepared, stating that the witness may inspect the
9 transcript and its exhibits in the reporter's office, and that if the original deposition transcript is
10 not signed within thirty (30) days after the date of the notice, it will be used as if it had been
11 signed. The witness shall not be furnished with a copy of portions of the deposition transcript or
12 exhibits that have been designated as CONFIDENTIAL. If the witness does not sign the original
13 deposition transcript within thirty (30) days after the date of the written notice described in this
14 paragraph, the deposition transcript may be used as if it had been signed.
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16 7. Failure of counsel to designate testimony or exhibits as CONFIDENTIAL at
17 deposition shall not constitute a waiver of the confidentiality of the testimony or exhibits. Upon
18 receipt of the transcript of the deposition, counsel shall be entitled to designate specific pages
19 and lines of the transcript or exhibits as CONFIDENTIAL; however, any other party shall be
20 entitled to treat the transcript or exhibits as non-CONFIDENTIAL material until such time as the
21 CONFIDENTIAL designation is made.

22 8. Whenever any party wishes to file with the Court or introduce or use at trial,
23 hearing or other proceeding any CONFIDENTIAL information, that party must comply with
24 Rule 26 of the Federal Rules of Civil Procedure to the extent applicable. In addition, the party
25 shall provide written notice to all parties and to the Court prior to disclosing or filing of the
26 CONFIDENTIAL information. Thereafter any party may move the Court by application or
27 noticed motion pursuant to the Federal Rules of Civil Procedure, to have all filings and
28 disclosures containing CONFIDENTIAL information filed under seal. If the party moves the

1 Court pursuant to the Federal Rules, all filings and disclosures containing CONFIDENTIAL
2 information shall be lodged and filed in redacted form as set forth in the Federal Rules of Civil
3 Procedure until the Court makes such rulings and provides instruction to the parties on how to
4 file such CONFIDENTIAL information thereafter.

5 9. If any CONFIDENTIAL material is provided to a discovering party without being
6 marked as CONFIDENTIAL, the failure to mark the material shall not be deemed a waiver of its
7 confidentiality. The producing party shall promptly notify the receiving party that the
8 information should be treated in accordance with the terms of this Protective Order, and shall
9 forward appropriately marked copies of the items in question. Such designation shall be made as
10 soon as possible after the discovery of the inadvertent production or disclosure. Within five (5)
11 days of the receipt of substitute copies, the receiving party shall return the previously
12 undesignated items and all copies thereof. Until the material is designated as CONFIDENTIAL
13 by the producing party, however, the discovering party shall be entitled to treat the material as
14 non-CONFIDENTIAL. Upon designation, such material shall be treated as CONFIDENTIAL in
15 accordance with the provisions of this Protective Order.

16 10. Within thirty (30) days after the final settlement or conclusion of this action,
17 discovering counsel shall return to producing counsel all documents including, without
18 limitation, depositions and trial, hearing, or other transcripts containing information designated
19 as CONFIDENTIAL, as well as all copies, and shall return or destroy any extracts, summaries,
20 or material derived from the information. However, documents delivered to Federal Insurance
21 prior to the inception of the lawsuit, which consist of its claim file shall be excluded from the
22 obligation to return or destroy the CONFIDENTIAL material, provided that Federal Insurance
23 continues to comply with all other aspects of this protective order. In addition, the Clerk of this
24 Court shall return to producing counsel all documents, transcripts, exhibits and any other
25 materials containing information designated as CONFIDENTIAL that have been filed with this
26 Court.
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1 Dated: January 24, 2014

2 /s/
3 David Dibiase, Attorney for
4 Defendant Federal Insurance
5 Company

6 Dated: January 24, 2014

7 /s/
8 Daniel Flores, Attorney for
9 Cross-Defendant Mike Chung

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14 The Stipulated Protective Order also does not entitle the parties to file confidential information
15 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the
16 standards that will be applied when a party seeks permission from the court to file material
17 under seal.

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19 Dated: January 31, 2014

