

1 JOHN F. CAVIN (Bar No. 88946)
 STEVEN J. KAHN (Bar No. 234104)
 2 Bardellini, Straw, Cavin & Bupp, LLP
 2000 Crow Canyon Place, Suite 330
 3 San Ramon, CA 94583
 Telephone: 925.277.3580
 4 Facsimile: 925.277.3591
 Email: *jcavin@bscb.com*
 5 *skahn@bscb.com*

6 Attorneys for Plaintiff
 THOMAS J. KERRINS d.b.a.
 7 SQUARE ONE REAL ESTATE & SQUARE ONE FINANCIAL

8 BRIAN D. HARRISON (Bar No. 157123)
 VEENA A. MITCHELL (Bar No. 161153)
 9 Sedgwick LLP
 333 Bush Street, 30th Floor
 10 San Francisco, CA 94104-2834
 Telephone: 415.781.7900
 11 Facsimile: 415.781.2635
 Email: *brian.harrison@sedgwicklaw.com*
 12 *veena.mitchell@sedgwicklaw.com*

13 Attorneys for Defendant
 SCOTTSDALE INSURANCE COMPANY
 14

15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA,
 17 SAN FRANCISCO DIVISION

18 THOMAS J. KERRINS d.b.a. SQUARE
 19 ONE REAL ESTATE & SQUARE ONE
 20 FINANCIAL

21 Plaintiff,

22 v.

23 SCOTTSDALE INSURANCE
 COMPANY, and DOES 1 through 20,
 24 inclusive,

25 Defendants.

CASE NO. 4:13-cv-04266-EMC

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

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

14 2. DEFINITIONS

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

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

21 2.3 “Confidential” Information or Items: information (regardless of how
22 generated, stored or maintained) or tangible things that qualify for protection under standards
23 developed under Federal Rule of Civil Procedure 26(c).

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

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

28 2.6 Designating Party: a Party or non-party that designates information or

1 items that it produces in disclosures or in responses to discovery as “Confidential.”

2 2.7 Protected Material: any Disclosure or Discovery Material that is
3 designated as “Confidential.”

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

6 2.9 House Counsel: attorneys who are employees of a Party.

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

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

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

19 3. SCOPE

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

24 Protected Material shall be used only for the purpose of the prosecution, defense or settlement of
25 the action, and for no other purpose.

26 Nothing herein shall impose any restrictions on the use or disclosure by a party of
27 material obtained by such Party independent of discovery in this action, whether or not such
28 material is also obtained through discovery in this action, or from disclosing its own Confidential

1 information as it deems appropriate.

2 4. DURATION

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

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection.

8 Each Party or non-party that designates information or items for protection under this
9 Order must take care to limit any such designation to specific material that qualifies under the
10 appropriate standards. A Designating Party must take care to designate for protection only those
11 parts of material, documents, items, or oral or written communications that qualify—so that other
12 portions of the material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this Order.

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

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

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this
23 Order (see, e.g., second paragraph of Section 5.2(a), below), or as otherwise stipulated or
24 ordered, material that qualifies for protection under this Order must be clearly so designated
25 before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (apart from transcripts of
28 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend

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

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

14 (b) for testimony given in deposition or in other pretrial or trial
15 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
16 record, before the close of the deposition, hearing, or other proceeding, all protected testimony.
17 When it is impractical to identify separately each portion of testimony that is entitled to
18 protection, and when it appears that substantial portions of the testimony may qualify for
19 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
20 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify
21 the specific portions of the testimony as to which protection is sought. Only those portions of the
22 testimony that are appropriately designated for protection within the 20 days shall be covered by
23 the provisions of this Stipulated Protective Order.

24 Transcript pages containing Protected Material must be separately bound by the court
25 reporter, who must affix to the bottom of each such page the legend “CONFIDENTIAL” as
26 instructed by the Party or nonparty offering or sponsoring the witness or presenting the
27 testimony.

28 (c) for information produced in some form other than documentary,

1 and for any other tangible items, that the Producing Party affix in a prominent place on the
2 exterior of the container or containers in which the information or item is stored the legend
3 “CONFIDENTIAL.” If only portions of the information or item warrant protection, the
4 Producing Party, to the extent practicable, shall identify the protected portions.

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

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

26 6.3 Judicial Intervention. A Party that elects to press a challenge to a
27 confidentiality designation after considering the justification offered by the Designating Party
28 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule

1 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
2 challenge. Each such motion must be accompanied by a competent declaration that affirms that
3 the movant has complied with the meet and confer requirements imposed in the preceding
4 paragraph and that sets forth with specificity the justification for the confidentiality designation
5 that was given by the Designating Party in the meet and confer dialogue.

6 The burden of persuasion in any such challenge proceeding shall be on the Designating
7 Party. Until the court rules on the challenge, 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.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

28 (c) experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
2 Bound by Protective Order” (Exhibit A):

3 (d) reinsurers, auditors and regulators of the Receiving Party; however, the
4 Receiving Party shall take reasonable precautions to ensure that such reinsurers, auditors and
5 regulators sign the “Agreement to Be Bound by Protective Order” (Exhibit A);

6 (e) the Court and its personnel;

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

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

15 (h) the author of the document or the original source of the information.

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

18 If a Receiving Party is served with a subpoena or an order issued in other
19 litigation that would compel disclosure of any information or items designated in this action as
20 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by
21 email, if possible) immediately and in no event more than three court days after receiving the
22 subpoena or order. Such notification must include a copy of the subpoena or court order.

23 The Receiving Party also must immediately inform in writing the Party who
24 caused the subpoena or order to issue in the other litigation that some or all the material covered
25 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
26 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
27 that caused the subpoena or order to issue.

28 The purpose of imposing these duties is to alert the interested parties to the

1 existence of this Protective Order and to afford the Designating Party in this case an opportunity
2 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
3 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
4 of its confidential material—and nothing in these provisions should be construed as authorizing
5 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

14 10. FILING PROTECTED MATERIAL

15 Without written permission from the Designating Party or a court order secured after
16 appropriate notice to all interested persons, a Party may not file in the public record in this action
17 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
18 with Civil Local Rule 79-5.

19 11. FINAL DISPOSITION

20 After the final termination of this action, each Receiving Party may retain, return or
21 destroy all Protected Material. All Protected Material that a Receiving Party retains remains
22 subject to this Protective Order as set forth in Section 4 (DURATION), above.

23 As used in this subdivision, all “Protected Material” includes all copies, abstracts,
24 compilations, summaries or any other form of reproducing or capturing any of the Protected
25 Material.

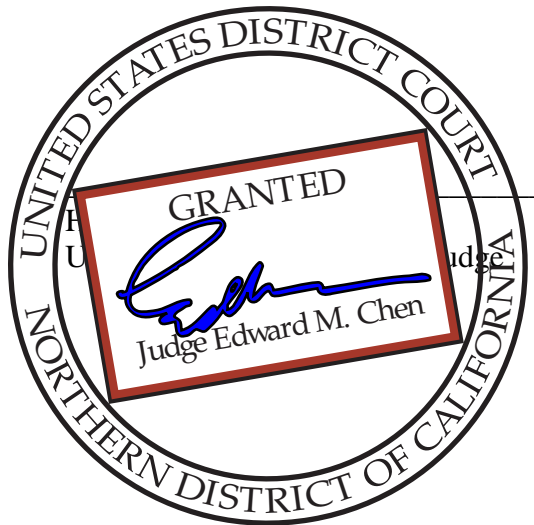
26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Stipulated Protective
4 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
5 the material covered by this Protective Order.

6 IT IS SO ORDERED:

7
8 Dated: 2/21, 2014



28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____, 2014 in the case of *Thomas Kerrins dba Square One Real Estate & Square One Financial*, Case No. 4:13-cv-04266-EMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____