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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
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10 CONSTANCE FINLEY,

11 Plaintiff,

12 v.

13 HARTFORD LIFE AND ACCIDENT
14 INSURANCE COMPANY, et al.,

15 Defendants.
16

No. C06-06247 CW (MEJ)

STIPULATED PROTECTIVE ORDER

17 1. PURPOSES AND LIMITATIONS

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

1 2. DEFINITIONS

2 2.1 Party: any party to this action, including all of its officers,
3 directors, employees, consultants, retained experts, and outside counsel (and their
4 support staff).

5 2.2 Disclosure or Discovery Material: all items or information, regardless of the
6 medium or manner generated, stored, or maintained (including, among other things, testimony,
7 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
8 in this matter.

9 2.3 “Confidential” Information or Items: information (regardless of how
10 generated, stored or maintained) or tangible things that qualify for protection under standards
11 developed under F.R.Civ.P. 26(c).

12 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
13 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
14 party would create a substantial risk of serious injury that could not be avoided by less restrictive
15 means.

16 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
19 Material in this action.

20 2.7 Designating Party: a Party or non-party that designates information or items
21 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential
22 — Attorneys’ Eyes Only.”

23 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
24 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

25 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
26 retained to represent or advise a Party in this action.

27 2.10 House Counsel: attorneys who are employees of a Party.

28 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
 their support staffs).

1 2.12 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action and who is not a past or a current employee of a Party or of a
4 competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of
5 a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant
6 retained in connection with this litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation
8 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
9 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their
10 employees and subcontractors.

11 3. SCOPE

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

16 4. DURATION

17 Even after the termination of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs.
20

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
23 or non-party that designates information or items for protection under this Order must take care to
24 limit any such designation to specific material that qualifies under the appropriate standards. A
25 Designating Party must take care to designate for protection only those parts of material, documents,
26 items, or oral or written communications that qualify – so that other portions of the material,
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1 documents, items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
12 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that
13 qualifies for protection under this Order must be clearly so designated before the material is
14 disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (apart from transcripts of depositions
17 or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
18 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" 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) and must specify, for each portion, the level of protection being
22 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
23 ONLY").

24 A Party or non-party that makes original documents or materials available for
25 inspection need not designate them for protection until after the inspecting Party has indicated which
26 material it would like copied and produced. During the inspection and before the designation, all of
27 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
28 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,
2 qualify for protection under this Order, then, before producing the specified documents, the
3 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected
5 Material. If only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins) and must specify, for each portion, the level of protection being asserted
8 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings,
10 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
11 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
12 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to
14 protection, and when it appears that substantial portions of the testimony may qualify for protection,
15 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before
16 the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific
17 portions of the testimony as to which protection is sought and to specify the level of protection being
18 asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).
19 Only those portions of the testimony that are appropriately designated for protection within the 20
20 days shall be covered by the provisions of this Stipulated Protective Order.

21 Transcript pages containing Protected Material must be separately bound by the court reporter, who
22 must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering
24 or sponsoring the witness or presenting the testimony.

25 (c) for information produced in some form other than documentary, and for
26 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
27 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information

1 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
2 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
3 Eyes Only.”

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

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

27
28 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
designation after considering the justification offered by the Designating Party may file and serve a

1 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
2 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
3 motion must be accompanied by a competent declaration that affirms that the movant has complied
4 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
5 specificity the justification for the confidentiality designation that was given by the Designating Party
6 in the meet and confer dialogue.

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

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

27 (b) the officers, directors, and employees (including House Counsel) of the
28 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed

1 the “Agreement to Be Bound by Protective Order” (Exhibit A);

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

5 (d) the Court and its personnel;

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

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

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

15 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
17 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

23 [(b) – *Optional – as deemed appropriate in case-specific circumstances:*

24 **OMITTED BY PARTIES;**

25 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably
26 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order”
27 (Exhibit A), [*Optional: OMITTED BY PARTIES*];

28 (d) the Court and its personnel;

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

4 (f) the author of the document or the original source of the information.

5 [*Optional: OMITTED BY PARTIES*]

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
7 LITIGATION.

8 If a Receiving Party is served with a subpoena or an order issued in other litigation
9 that would compel disclosure of any information or items designated in this action as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
11 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
12 and in no event more than three court days after receiving the subpoena or order. Such notification
13 must include a copy of the subpoena or court order.

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

19 The purpose of imposing these duties is to alert the interested parties to the existence of this
20 Protective Order and to afford the Designating Party in this case an opportunity to try to
21 protect its confidentiality interests in the court from which the subpoena or order issued. The
22 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
23 confidential material – and nothing in these provisions should be construed as authorizing or
24 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

25
26 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
28 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
2 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and
3 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
4 that is attached hereto as Exhibit A.

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

10
11 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing
12 Party, within sixty days after the final termination of this action, each Receiving Party must return all
13 Protected Material to the Producing Party. As used in this subdivision, “all Protected Material”
14 includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing
15 any of the Protected Material. With permission in writing from the Designating Party, the Receiving
16 Party may destroy some or all of the Protected Material instead of returning it. Whether the
17 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
18 the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
19 deadline that identifies (by category, where appropriate) all the Protected Material that was returned
20 or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,
21 compilations, summaries or other forms of reproducing or capturing any of the Protected Material.
22 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
23 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such
24 materials contain Protected Material. Any such archival copies that contain or constitute Protected
Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
27 to seek its modification by the Court in the future.

28 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
Order no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
2 Party waives any right to object on any ground to use in evidence of any of the material covered by
3 this Protective Order.
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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 DATED: May 21, 2009 /s/ Teresa S. Renaker

9 Attorneys for Plaintiff

10 DATED: May 19, 2009 /s/ Michelle McIsaac

11 Attorneys for Defendant

12 Pursuant to General Order 45, I attest that concurrence in the filing of this document has been
13 obtained from each of the other signatories.

14 DATED: May 21, 2009 /s/ Teresa S. Renaker

15 Attorneys for Plaintiff

16
17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18
19 DATED: May 26, 2009 _____



20 CLAUDIA WILKEN

21 United States District Judge
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1
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____ [print
5 or type full address], declare under penalty of perjury that I have read in its entirety and understand
6 the Stipulated Protective Order that was issued by the United States District Court for the Northern
7 District of California on [date] in the case of **Constance Finley v. Hartford Life and Accident Ins.**
8 **Co., Case No. C06-06247.** I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose
10 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Stipulated Protective Order to
12 any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the Northern
14 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
15 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 number]
18 as my California agent for service of process in connection with this action or any proceedings
19 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]