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10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF NEVADA**

12 ROSALIND SEARCY,
 13 Plaintiff,
 14 vs.
 15 ESURANCE INSURANCE COMPANY, and
 16 DOES I through X, inclusive; and ROE
 17 CORPORATIONS I through X, inclusive,
 18 Defendants.

Case No.: 2:15-cv-00047-APG-NJK

**STIPULATED CONFIDENTIALITY
 AND PROTECTIVE ORDER**

19 This Stipulated Confidentiality and Protective Order (“Protective Order”) is stipulated to by
 20 and between Plaintiff Rosalind Searcy (“Searcy”) and Defendant Esurance Insurance Company
 21 (“Esurance”), by and among the undersigned counsel, acting for, on behalf of, and with the express
 22 authorizations and approval of Searcy and Esurance (each a “party” and, collectively, the “parties”).

23 WHEREAS, Searcy has filed a lawsuit against her insurer, Esurance, regarding Esurance’s
 24 handling of her first party insurance claim arising from an automobile collision on August 2, 2012.
 25 Searcy alleges causes of action against Esurance for breach of the covenant of good faith and fair
 26 dealing, breach of fiduciary duty, and breach of Nevada’s Unfair Claims Practices Act, codified as
 27 N.R.S. 686A.310. Esurance filed a Motion to Dismiss on February 6, 2015, which is fully briefed,
 28 and currently pending before the Court.

1 WHEREAS, disclosure and discovery activity in this action are likely to involve production
2 of confidential, proprietary, or private information for which special protection from public
3 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

4 WHEREAS, the parties have an interest in preserving and maintaining the confidentiality of
5 any confidential and/or proprietary business information from public view or dissemination.

6 NOW THEREFORE, the undersigned counsel, Searcy, and Esurance hereby stipulate and
7 petition the Court:

8 A. Definitions

9 1. "Document," whether used in the singular or plural, means any document or
10 electronically-stored information as set forth in the Federal Rules of Civil Procedure.

11 2. "Designating Party" means a party or third-person who produces information in
12 discovery that is deemed "Confidential" pursuant to this Order.

13 3. "Confidential Information" means any information that is designated as such by a
14 Designating Party. Information may be designated "Confidential" only if the Designating Party has
15 a good-faith basis for believing the information: (a) is confidential under federal or state law or
16 regulations; or (b) contains sensitive personal, financial, or professional information that is generally
17 unavailable to the public and that, if made available to the public, may be injurious to that party's
18 personal, financial, or professional interests.

19 4. "Filing Party" shall mean any party who seeks to file with the Court documents or
20 other papers reflecting information designated as "Confidential Information."

21 5. "Privilege" shall mean the attorney-client privilege, the attorney work-product
22 doctrine, or any other legally-recognized privilege, doctrine, or protection that may apply to
23 documents or information in this case.

24 B. Use of Confidential Information

25 6. All Confidential Information produced or exchanged in the course of this litigation
26 shall be treated as confidential and shall be used solely for the prosecution and defense of this
27 litigation and for no other purpose. No Confidential Information shall be revealed, disclosed, or
28 made available for inspection and copying to any person who is not permitted to see it pursuant to

1 the terms of this Order without express written consent of the Designating Party. Before receiving
2 access to any of the Confidential Information, each person described in subparagraphs 7(6) through
3 (7)(10) shall execute an agreement to be fully bound by this Order in the form of Exhibit A, attached
4 hereto.

5 7. Except as specifically provided for in this or subsequent Court orders, discovery
6 materials designated “Confidential” or their contents shall not be revealed, disclosed, or otherwise
7 made known to any persons, other than the following listed below. The parties and their counsel
8 agree that the Confidential Information provided under this Agreement shall only be used to
9 investigate, analyze, defend, and resolve the claims asserted in the above-captioned lawsuit.

- 10 (1) Counsel of record in this action;
- 11 (2) Employees of counsel of record in this action;
- 12 (3) The Court;
- 13 (4) Court reporters employed in connection with this litigation;
- 14 (5) Special masters, settlement judges and/or mediators;
- 15 (6) Outside vendors who are necessary to assist counsel of record in this action in
16 the preparation and trial of this action;
- 17 (7) Experts retained by counsel of record in this action;
- 18 (8) Deposition witnesses;
- 19 (9) Any person or entity to the extent required by operation of law, lawful
20 subpoena, or court order; and
- 21 (10) Any other person with the consent, in writing, of all parties.

22 8. Every person given access to Confidential Information shall be advised that the
23 information is being disclosed pursuant to and subject to the terms of this Order, and may not be
24 disclosed other than pursuant to the terms thereof.

25 9. If any party intends to file with the Court or offer into evidence any document claimed
26 to reflect Confidential Information, the Filing Party shall file a motion to seal in compliance with the
27 Ninth Circuit’s directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
28

1 2006) and the Court’s electronic filing procedures provided for in Rule 10-5(b) of the Local Rules of
2 Practice of the United States District Court, District of Nevada, which provides that,

3 Unless otherwise permitted by statute, rule or prior Court order, papers
4 filed with the Court under seal shall be accompanied by a motion for
5 leave to file those documents under seal, and shall be filed in
6 accordance with the Court’s electronic filing procedures. If papers are
7 filed under seal pursuant to prior Court order, the papers shall bear the
8 following notation on the first page, directly under the case number:
“FILED UNDER SEAL PURSUANT TO COURT ORDER DATED
_____.” All papers filed under seal will remain sealed until such time
as the Court may deny the motion to seal or enter an order to unseal
them, or the documents are unsealed pursuant to Local Rule.

9 *Id.* The Ninth Circuit has held that there is a presumption of public access to judicial files and
10 records, and that parties seeking to maintain the confidentiality of documents attached to
11 nondispositive motion must show good cause exists to overcome the presumption of public access.
12 *Kamakana*, 447 F.3d at 1179. Parties seeing to maintain the secrecy of documents attached to
13 dispositive motions must show compelling reasons sufficient to overcome the presumption of public
14 access. *Id.* at 1180. If the sole ground for a motion to seal is that the Designating Party has
15 designated a document as subject to protection pursuant to the stipulated protective order, the
16 movant must notify the Designating Party at least seven day prior to filing the designated document.
17 The Designating Party must then make a good faith determination if the relevant standard for sealing
18 is met. To the extent the Designating Party does not believe the relevant standard for sealing can be
19 met, it shall indicate that the document may be filed publicly no later than four days after receiving
20 notice of the intended filing. To the extent the Designating Party believes that relevant standard for
21 sealing can be met, it shall provide a declaration supporting that assertion no later than four days
22 after receiving notice of the intended filing. The filing party shall then attach that declaration to its
23 motion to seal the designated material. If the Designating Party fails to provide such a declaration in
24 support of the motion to seal, the filing party shall file a motion to seal so indicating and the Court
25 may order the document filed in the public record.¹

26 _____
27 ¹ In the event of an emergency motion, the above procedures shall not apply. Instead, the movant
28 shall file a motion to seal and the Designating Party shall file a declaration in support of that motion
to seal within three days of its filing. If the designating party fails to timely file such a declaration,
the Court may order the document filed in the public record.

1 10. Nothing in this Order prevents use or disclosure of Confidential Information beyond its
2 terms if the Designating Party consents to such use or disclosure, or if the Court, after notice to all
3 affected parties, orders such use or disclosure.

4 11. This Order does not in any way restrict a Designating Party's ability to use his or her
5 own Confidential Information for any purpose.

6 12. Any non-party producing documents in this litigation may avail itself of the
7 confidential treatment provided for in this Protective Order for its documents, information, or
8 testimony by following the procedures provided herein. Any non-party that wishes to produce
9 documents subject to this provision agrees to be bound by the terms and conditions of this Protective
10 Order and agrees that any disputes or issues relating to the application, interpretation, or use of the
11 Protective Order will be resolved in the United States District Court for the District of Nevada.

12 C. Designating Confidential Material

13 13. This Order covers information or items that the disclosing party or non-party
14 (hereinafter, "source") designates "CONFIDENTIAL." The designation "CONFIDENTIAL" shall
15 be limited to information and items that the source in good faith believes is privileged, proprietary,
16 commercially sensitive, invades an employee or third-party's rights to privacy, may be injurious to
17 that party's personal, financial, or professional interests, or for similar reasons should otherwise be
18 subject to "CONFIDENTIAL" treatment. If only a portion of the materials, documents, items, or
19 oral or written communications qualify for protection, the Designating Party must designate for
20 protection only those parts of materials, documents, items, or oral or written communications that
21 qualify. Each party or non-party that designates information or items as confidential under this
22 Order must take care to limit any such designation to specific material that qualifies under the
23 appropriate standards. Mass, indiscriminate, or routinized designations are prohibited.

24 14. Information and items that are in the public domain, including but not limited to
25 documents presented at trial or other court proceedings publically and not under seal, may not be
26 designated as "CONFIDENTIAL." This provision shall not apply to any document that is in the
27 public domain as a result of violation of any stipulation or court order with respect to such document
28 or any information included in such document.

1 15. Designation in conformity with this Order requires:

2 (a) For documents, the Designating Party shall affix “CONFIDENTIAL” to each
3 page of the document that contains protected material. If only a portion or
4 portions of the material on a page qualifies for protection, the Designating
5 Party also must clearly identify the protected portions(s) by making an
6 appropriate marking in the margins.

7 (b) For testimony given at deposition, the Designating Party identify on the
8 record, before the close of the deposition, all protected testimony.

9 (c) For testimony given in other pretrial or trial proceedings, the Designating Party
10 identify on the record, before the close of the hearing or other proceeding, all
11 protected testimony.

12 (d) For information produced in some other form other than documentary and for
13 any other tangible items, the Designating Party affix “CONFIDENTIAL” in a
14 prominent place on the exterior of the container or containers in which the
15 information or item is stored.

16 16. If it comes to a Designating Party’s attention that information or items that it
17 designated for protection do not qualify for protection, the Designating Party must promptly notify
18 all other parties that it is withdrawing the mistaken designation.

19 17. If timely corrected, an inadvertent failure to designate qualified information or items
20 does not, standing alone, waive the Designating Party’s right to secure protection under this Order
21 for such material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the provisions of this
23 Order.

24 D. Disputing Confidentiality Designations

25 18. If any party objects to any “Confidential” designation, that party may, after making a
26 good-faith effort to resolve such objection, move on reasonable notice for an order vacating the
27 designation. While such application is pending, the information shall continue to be treated as
28

1 Confidential pursuant to this Order. This paragraph is not intended to shift the burden of
2 establishing confidentiality, which remains at all times on the Designating Party.

3 19. By agreeing to this stipulated confidentiality and protective order, it shall in no way be
4 viewed as a concession by the Non-Designating Party that any document marked
5 “CONFIDENTIAL” is confidential, nor shall this stipulation be deemed a waiver of any party’s right
6 to challenge the propriety of a “Confidential” designation.

7 20. The parties shall not be obligated to challenge the propriety of a “Confidential”
8 designation within any set period after receiving the designated information.

9 E. Demands by Others for Confidential Information

10 21. If any other person, organization, or governmental entity demands by subpoena or
11 other appropriate authority the production of any Confidential Information produced to it by another
12 party, the party receiving such demand shall immediately notify the Designating Party of such
13 demand. At its option, the Designating Party may elect to challenge the demand and assert any
14 applicable protections, and shall notify the person, organization, or governmental entity of its
15 challenge within such time as required by law or required by compliance with the demand. When
16 such a challenge is made, the party who received the demand shall not produce any Confidential
17 Information in the absence of consent by the Designating Party or an order by the issuing court
18 compelling production.

19 F. End of Litigation

20 22. Absent written permission from the Designating Party or on further order of the Court,
21 this Order shall continue to be binding throughout and after the conclusion of this litigation,
22 including any settlements, appeals, and subsequent proceedings.

23 23. After this case is closed in the district court, the parties may seek the return of any
24 documents they filed under seal.

25 24. Within ninety (90) days after final adjudication of this case, including appeals or
26 resolution through settlement, unless otherwise agreed to in writing by an attorney of record for the
27 Designating Party, each Party shall either: (a) assemble and return all Confidential Information,
28 including all copies thereof, to the Party that produced it; or (b) certify in writing that all such

1 information has been destroyed, provided, however, that any other party may seek to retain on a
2 confidential basis any files or documents containing such material: (i) as long as necessary as may be
3 required by statute, regulation, or rule; (ii) as long as necessary in order to satisfy obligations to
4 insurers and to make insurance recoveries. A party who seeks to retain documents pursuant to
5 subparagraph (b) hereunder shall promptly so advise the party requesting return or destruction of
6 such documents of its intention. Any disputes concerning the applicability of this paragraph shall be
7 resolved by this Court.

8 G. Miscellaneous

9 25. Agreeing to, producing, or receiving Confidential Information or otherwise complying
10 with this Order shall not:

- 11 (a) Prejudice the parties' rights to object to the production of documents they
12 consider not subject to discovery;
- 13 (b) Prejudice the parties' rights to object to the authenticity, relevance, or
14 admissibility into evidence of any document, testimony, or other evidence;
- 15 (c) Prevent the parties from agreeing to alter or waive any portion of this Order
16 with respect to any particular piece of Confidential Information; or
- 17 (d) Prevent any party from seeking from the Court a modification of this Order,
18 including, but not limited to, additional protection with respect to the
19 confidentiality of any information.

20 26. In the event additional parties join or are joined in this litigation, they shall not have
21 access to Confidential Information until the newly-joined party, by its counsel, has executed and, at
22 the request of any party, filed with the Court, its agreement to be fully bound by this Order.

23 27. The Parties agree to be fully bound by this Order pending its entry by the Court, and
24 any violation of this Order shall be subject to the same sanctions and penalties as if the Order has
25 been entered.

26 28. The production of material protected by the attorney-client privilege, the attorney work
27 product doctrine, or other privilege or protection ("Protected Material") does not waive, estop, or
28 prevent the producing party from asserting any privilege or other ground for withholding such

1 Protected Material in the course of discovery in this case. The parties may make documents
2 available for preliminary review or otherwise produce documents in this case with or without any
3 pre-production, post-production, or other review for Protected Material, and neither conducting nor
4 foregoing such review shall form a basis to prevent a party from asserting any privilege or other
5 ground for withholding Protected Material as provided for in this Order.

6 29. A producing party shall have ninety (90) days after one of its counsel in this case
7 becomes actually aware that a specific document containing arguably Protected Material has been
8 produced in which to request its return; otherwise, any claim of protection for the Protected Material
9 shall be deemed presumptively waived. All such requests to return Protected Material shall be in
10 writing to lead counsel for all parties and shall identify the produced Protected Material by Bates
11 range(s). A producing party's counsel shall be deemed to be actually aware that Protected Material
12 was produced at the time the producing party's counsel is served with an exhibit list for trial that
13 specifically lists the Protected Material. If a producing party timely requests the return of Protected
14 Material, any party to which such material was produced shall, within seven (7) days after the
15 request, delete the produced Protected Material and all data associated with such Protected Material
16 (including images and metadata such as extracted text) from any database or document management
17 system containing the Protected Material and associated data, return to the producing party any disk
18 or other media containing Protected Material, return to the producing party or destroy all paper
19 copies of Protected Material, request in writing that any third-party to whom the Protected Material
20 was provided do the same, and provide a written certification to the producing party that the
21 receiving party has followed such procedures. The receiving party has the responsibility to take
22 reasonable steps to ensure that any third party to which it provided documents produced in this
23 litigation which a producing party later claims are Protected Material are destroyed or returned as
24 outlined in this paragraph. If the receiving party wishes to challenge the producing party's claim of
25 protection as to the Protected Material, the receiving party may file a motion with this Court to
26 compel production of such Protected Material.

27 30. The parties agree, and the Court hereby orders, that production of Protected Material
28 cannot provide a basis for any third party to seek disclosure or production of the material viewed

1 based on waiver, abandonment, estoppel, prior disclosure, or any other theory, claim, or argument.
2 The production of Protected Material shall not waive any claim of privilege or protection in any
3 other federal or State proceeding.

4 31. This Protective Order may be executed in counterparts.

5 32. In the event any provision of this Protective Order shall be held to be illegal,
6 unenforceable, or inoperative as a matter of law, the remaining provisions shall remain in full force
7 and effect unless such construction shall substantially frustrate the purpose and intent of this
8 Protective Order.

9 33. In the event of breach of this Protective Order, the parties expressly acknowledge that
10 the non-breaching party shall be entitled to specific performance of the terms of this Protective
11 Order or other injunctive relief. The parties expressly stipulate, agree, and acknowledge that an
12 unauthorized release of the Confidential Information, is a breach of this Protective Order, and that
13 damages arising from such a breach are not adequately relieved through pecuniary compensation, are
14 not reasonably quantifiable, and are immediately irreparable.

15 IT IS SO STIPULATED.

16 Dated this 3rd day of June, 2015

Dated this 3rd day of June, 2015

17 LAW OFFICE OF JAMES J. REAM

ARMSTRONG TEASDALE LLP

18 By: /s/ James J. Ream

By: /s/ Michelle D. Alarie

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21 *Attorney for Plaintiff*

Attorneys for Defendants

22
23
24 **ORDER**

25 **IT IS SO ORDERED.**

26
27 UNITED STATES MAGISTRATE JUDGE

28 DATE: June 4, 2015

EXHIBIT “A”

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

ROSALIND SEARCY,
Plaintiff,

Case No.: 2:15-cv-00047-APG-NJK

vs.

ESURANCE INSURANCE COMPANY, and
DOES I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,
Defendants.

ACKNOWLEDGEMENT OF PROTECTIVE ORDER

This undersigned represents that he/she, along with his or her support personnel, as applicable: (a) has received a copy of the Court’s Confidentiality and Protective Order (“Protective Order”) in the above-captioned case; (b) has read the Protective Order and understands its provisions; (c) agrees to be bound by the terms of the Protective Order; and (d) agrees to be subject to the jurisdiction of the United States District Court for the District of Nevada for the purposes of any proceedings related to the enforcement of the Protective Order.

Date:

Signature