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6 *American Family Mutual Insurance Company*

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

9 ROBERT and MYRNA DANGANAN,

10 Plaintiffs,

11 vs.

12 AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY, a Wisconsin  
13 Insurance Corporation,

14 Defendant.

CASE NO.: 2:17-cv-02786-RFB-PAL

**STIPULATED PROTECTIVE  
ORDER**

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16  
17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action involves production of confidential, proprietary, or private  
19 information for which special protection is be warranted. Accordingly, the parties hereby  
20 stipulate to and petition the court to enter the following Stipulated Protective Order. It does not  
21 confer blanket protection on all disclosures or responses to discovery, the protection it affords  
22 from public disclosure and use extends only to the limited information or items that are entitled  
23 to confidential treatment under the applicable legal principles, and it does not presumptively  
24 entitle parties to file confidential information under seal.

25 2. "CONFIDENTIAL" MATERIAL

26 "Confidential" material shall include the following documents and tangible things  
27 produced or otherwise exchanged:

- 28 • American Family's claim manuals identified and requested in Exhibit B by  
Plaintiffs' in their 30(b)(6) deposition notice.

- 1 • Any other documents so designated by counsel in response to later requests for
- 2 production.

3 Defendant American Family reserves the right to supplement this list as discovery  
4 continues. Additional identified materials will be subject to this Stipulated Protective Order.

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential material (as  
7 defined above), but also (1) any information copied or extracted from confidential material; (2)  
8 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
9 conversations, or presentations by parties or their counsel that might reveal confidential  
10 material. However, the protections conferred by this agreement do not cover information that is  
11 in the public domain or becomes part of the public domain through trial or otherwise.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that is  
14 disclosed or produced by another party or by a non-party in connection with this case only for  
15 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
16 disclosed only to the categories of persons and under the conditions described in this  
17 agreement. Confidential material must be stored and maintained by a receiving party at a  
18 location and in a secure manner that ensures that access is limited to the persons authorized  
19 under this agreement.

20 4.2 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  
22 disclose any confidential material only to:

- 23 (a) the receiving party's counsel of record in this action, as well as employees of
- 24 counsel to whom it is reasonably necessary to disclose the information for this litigation;
- 25 (b) the officers, directors, and employees (including in house counsel) of the
- 26 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
- 27 agree that a particular document or material produced is for Attorney's Eyes Only and is so
- 28 designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this  
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
3 A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the duplication of  
6 confidential material, provided that counsel for the party retaining the copy or imaging service  
7 instructs the service not to disclose any confidential material to third parties and to immediately  
8 return all originals and copies of any confidential material;

9 (f) during their depositions, witnesses in the action to whom disclosure is  
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
11 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
12 transcribed deposition testimony or exhibits to depositions that reveal confidential material  
13 must be separately bound by the court reporter and may not be disclosed to anyone except as  
14 permitted under this agreement;

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

17 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
18 referencing such material in court filings, the filing party shall confer with the designating party  
19 to determine whether the designating party will remove the confidential designation, whether  
20 the document can be redacted, or whether a motion to seal or stipulation and proposed order is  
21 warranted.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each party or non-party that designated information or items for protection under this  
25 agreement must take care to limit any such designation to specific material that qualifies under  
26 the appropriate standards. The designating party must designate for protection only those parts  
27 of material, documents, items, or oral or written communications that qualify, so that other  
28 portions of the material, documents, items, or communications for which protection is not

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1 warranted are not swept unjustifiably within the ambit of this agreement.

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

6 If it comes to a designating party’s attention that information or items that it designated  
7 for protection do no qualify for protection, the designating party must promptly notify all other  
8 parties that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
10 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
11 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
12 be clearly so designated before or when the material is disclosed or produced.

13 (a) Information in documentary form: (e.g., paper or electronic documents  
14 and depositions exhibits, but excluding transcripts of depositions or other pretrial or trial  
15 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that  
16 contains confidential material. If only a portion or portions of the material on a page qualifies  
17 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
18 making appropriate markings in the margins).

19 (b) Testimony given in deposition or in other pretrial or trial proceedings: the  
20 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
21 protected testimony, without prejudice to their right to so designate other testimony after  
22 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
23 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

24 (c) Other tangible items: the producing party must affix in a prominent place  
25 on the exterior of the container or containers in which the information or item is stored the  
26 word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
27 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

1 designate qualified information or items does not, standing alone, waive the designating party's  
2 right to secure protection under this agreement for such material. Upon timely correction of a  
3 designation, the receiving party must make reasonable efforts to ensure that the material is  
4 treated in accordance with the provisions of this agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
7 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
8 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
9 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
10 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
11 original designation is disclosed.

12 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
13 regarding confidential designations or for a protective order must include a certification, in the  
14 motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and  
15 confer conference with other affected parties in an effort to resolve the dispute without court  
16 action. The certification must list the date, manner, and participants to the conference. A good  
17 faith effort to confer requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
19 intervention, the designating party may file and serve a motion to retain the confidentiality of  
20 the designated documents. The burden of persuasion in any such motion shall be on the  
21 designating party. Frivolous challenges, and those made for an improper purpose (e.g., to  
22 harass or impose unnecessary expenses and burdens on other parties) may expose the  
23 challenging party to sanctions. All parties shall continue to maintain the material in question as  
24 confidential until the court rules on the challenge.

25 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
26 LITIGATION

27 If a party is served with a subpoena or a court order issued in other litigation that  
28 compels disclosure of any information or items designated in this action as

1 “CONFIDENTIAL,” that party must:

2 (a) promptly notify the designating party in writing and include a copy of the  
3 subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
5 the other litigation that some or all of the material covered by the subpoena or order is subject  
6 to this agreement. Such notification shall include a copy of this agreement; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
8 designating party whose confidential material may be affected.

9 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a receiving party learns that, by inadvertence or otherwise, it had disclosed  
11 confidential material to any person or in any circumstance not authorized under this agreement,  
12 the receiving party must immediately (a) notify in writing the designating party of the  
13 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
14 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
15 made of all the terms of this agreement, and (d) request that such person or persons execute the  
16 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

17 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
18 MATERIAL

19 When a producing party gives notice to receiving parties that certain inadvertently  
20 produced material is subject to a claim of privilege or other protection, the receiving party must  
21 promptly return or destroy the specified information and any copies it has; must not use or  
22 disclose the information; must take reasonable steps to retrieve the information if the party  
23 disclosed it before being notified; and may promptly present the information to the court under  
24 seal for a determination of the claim. The producing party must preserve the information until  
25 the claim is resolved.

26 This provision is not intended to modify whatever procedure may be established in an e-  
27 discovery order or agreement that provides for production without prior privilege review.  
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1    10.    NON TERMINATION AND RETURN OF DOCUMENTS

2            Within 60 days after the termination of this action, including all appeals, each receiving  
3 party must return all confidential material to the producing party, including all copies, extracts  
4 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
5 destruction.

6            Notwithstanding this provision, counsel are entitle to retain one archival copy of all  
7 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
8 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
9 work product, even if such materials contain confidential material.

10           The confidentiality obligation imposed by this agreement shall remain in effect until a  
11 designating party agrees otherwise in writing or a court orders otherwise.

12    11.    ADDITIONAL PROVISIONS.

13           Nonwaiver: This stipulation is not, and shall not be interpreted as, a waiver by Plaintiff  
14 of any discovery rights or right to compel further production of documents. This stipulation is  
15 not, and shall not be interpreted as, a waiver by American Family to claim in this lawsuit or  
16 otherwise that the confidential materials described herein are privileged or otherwise  
17 nondiscoverable, or inadmissible.

18           Violation or Order: Upon an alleged violation of this stipulated protective order, the  
19 Court on its own motion or on the motion of any party, may grant relief as it deems appropriate  
20 in law or equity. Should any provision of this stipulation or protective order be stricken or held  
21 invalid by any Court of competent jurisdiction, all remaining provisions shall remain in full  
22 force and effect.

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**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

Dated this 9<sup>th</sup> day of July, 2018.

Dated this 9<sup>th</sup> day of July, 2018.

HUTCHISON & STEFFEN, PLLC

MERLIN LAW GROUP, P.A.

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/s/ Kesha A. Hodge  
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**ORDER**

IT IS SO ORDERED.

DATED this 16th day of July, 2018.

PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE

Submitted by:

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EXHIBIT A

AGREEMENT CONCERNING MATERIAL COVERED BY A PROTECTIVE ORDER AND ORDER ENTERED IN THE UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA

I, the undersigned, hereby acknowledge that I have read the Stipulated Protective Order entered in the United States District Court, District of Nevada in Case No. 2:17-cv-02786-RFB-PAL and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive such "Confidential Information," pursuant to the terms of said Stipulated Protective Order, any document or any information designated as "Confidential Information" or any copies of extracts or information derived therefrom, which have been disclosed to me. I further agree to use any information disclosed to me in connection with the above-mentioned case solely for the purpose of this case and for no other purposes.

The undersigned hereby irrevocably submits his/her person to the jurisdiction of the United States District Court, District of Nevada for the purpose of enforcing said Stipulated Protective Order:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Type or print name: \_\_\_\_\_