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The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
AT SEATTLE

REVERSE NOW VII, LLC,

Plaintiff,

vs.

OREGON MUTUAL INSURANCE
COMPANY

Defendant.

Cause No. 2:16-CV-00209 MJP

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: privileged attorney client communications, without waiver
4 of any claims of privilege relating to these communications.

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.

11 However, the protections conferred by this agreement do not cover information that is
12 in the public domain or becomes part of the public domain through trial or otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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

21 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the designating party, a receiving party may
23 disclose any confidential material only to:

1 (a) the receiving party's counsel of record in this action, as well as
2 employees of counsel to whom it is reasonably necessary to disclose the information for this
3 litigation;

4 (b) the officers, directors, and employees (including in house counsel) of the
5 receiving party to whom disclosure is reasonably necessary for this litigation,

6 (c) experts and consultants to whom disclosure is reasonably necessary for
7 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
8 (Exhibit A);

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

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

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

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

22 4.3 Filing Confidential Material. Before filing confidential material or discussing or
23 referencing such material in court filings, the filing party shall confer with the designating party

1 to determine whether the designating party will remove the confidential designation, whether
2 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
3 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
4 standards that will be applied when a party seeks permission from the court to file material
5 under seal. Should the Designating party refuse to withdraw the confidential designation, it
6 shall be the responsibility of the Designating party to identify what material under rule 5(g) is
7 confidential, and make all appropriate motions to seal or redact whatever documents or
8 information the designating party wants sealed or redacted

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
11 party or non-party that designates information or items for protection under this agreement
12 must take care to limit any such designation to specific material that qualifies under the
13 appropriate standards. The designating party must designate for protection only those parts of
14 material, documents, items, or oral or written communications that qualify, so that other
15 portions of the material, documents, items, or communications for which protection is not
16 warranted are not swept unjustifiably within the ambit of this agreement.

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

21 If it comes to a designating party's attention that information or items that it designated
22 for protection do not qualify for protection, the designating party must promptly notify all other
23 parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, disclosure or discovery material that qualifies for protection under this agreement must
4 be clearly so designated before or when the material is disclosed or produced.

5 (a) Information in documentary form: (*e.g.*, paper or electronic documents
6 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
8 contains confidential material. If the confidential information is privileged, the designating
9 party must affix the term “PRIVILEGE NOT WAIVED” to each page that contains privileged
10 communications and the privilege is not waived with the production of the information. If only
11 a portion or portions of the material on a page qualifies for protection, the producing party also
12 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
13 margins).

14 (b) Testimony given in deposition or in other pretrial proceedings: the
15 designating party must identify on the record, during the deposition or other pretrial
16 proceeding, all protected testimony, without prejudice to their right to so designate other
17 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
18 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
19 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
20 confidential information at trial, the issue should be addressed during the pre-trial conference.

21 (c) Other tangible items: the producing party must affix in a prominent place
22 on the exterior of the container or containers in which the information or item is stored the
23 word “CONFIDENTIAL.” If the confidential information is privileged, and the privilege is not

1 waived, the designating party must also affix the term “PRIVILEGE NOT WAIVED” to the
2 exterior of the container or containers in which the information or item is stored. If only a
3 portion or portions of the information or item warrant protection, the producing party, to the
4 extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is
9 treated in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY OR PRIVILEGE NOT WAIVED
11 DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
13 confidentiality or non-waiver of privilege at any time. Unless a prompt challenge to a
14 designating party’s confidentiality or non-waiver of privilege designation is necessary to avoid
15 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption
16 or delay of the litigation, a party does not waive its right to challenge a confidentiality or non-
17 waiver of privilege designation by electing not to mount a challenge promptly after the original
18 designation is disclosed.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
20 regarding confidential or non-waiver of privilege designations without court involvement. Any
21 motion regarding confidential or non-waiver of privilege designations or for a protective order
22 must include a certification, in the motion or in a declaration or affidavit, that the movant has
23 engaged in a good faith meet and confer conference with other affected parties in an effort to

1 resolve the dispute without court action. The certification must list the date, manner, and
2 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a
3 telephone conference.

4 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
5 intervention, the designating party may file and serve a motion to retain confidentiality or
6 privilege under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if
7 applicable). The burden of persuasion in any such motion shall be on the designating party.
8 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
9 unnecessary expenses and burdens on other parties) may expose the challenging party to
10 sanctions. All parties shall continue to maintain the material in question as confidential and/or
11 privileged until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that
15 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
16 or “PRIVILEGE NOT WAIVED,” that party must:

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

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

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the designating party whose confidential or privileged material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 9. INADVERTENT PRODUCTION OF PRIVILEGE OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. The parties
16 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,

1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
2 work product, even if such materials contain confidential or privileged material.

3 The obligations imposed by this agreement shall remain in effect until the designating
4 party agrees otherwise in writing or the court orders otherwise.

5
6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 DATED this 18th day of March, 2018.

DATED this 20th day of March, 2018.

9 TAYLOR & TAPPER

SOHA & LANG, P.S.

10
11 By: /s/ Clinton Tapper per email authorization
Clinton Tapper, WSBA #49718
12 Email address Clinton@taylortapper.com
Taylor & Tapper, Attorneys
13 541.485.1511 Fax: 541.246.2424
1100 Dexter Avenue North, Suite 100
14 Seattle, WA 98109

By: s/Jennifer P. Dinning
R. Lind Stapley, WSBA # 19512
15 Email address stapley@sohalang.com
Jennifer P. Dinning, WSBA #38236
16 Email address dinning@sohalang.com
Soha & Lang, P.S.
1325 Fourth Avenue, Suite 2000
17 Seattle, WA 98101-2570
Telephone: 206-624-1800
18 Facsimile: 206-624-3585
Attorneys for Defendant Oregon Mutual
19 Insurance Company

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED: March 21, 2018

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9 

10 Marsha J. Pechman
11 United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Western District of Washington on [date]
7 in the case of *Reverse Now VII, LLC v. Oregon Mutual Insurance Company*, Case No: 2:16-
8 CV-209-MJP. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me
10 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
12 Order to 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
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____