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Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTEBAN MARROQUIN, SR.,

Plaintiff,

vs.

SAFECO INSURANCE COMPANY OF
AMERICA,

Defendant.

No. 2:19-cv-01308-RAJ-MAT
~~PROPOSED~~ ORDER GRANTING
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 whether handwritten or mechanically prepared in paper documents, microfilms, microfiche,
4 computer tapes, computer disks (hard disks, floppy disks, and CD ROM disks), computer
5 printouts, or any other computer storage facility or system, audio or video tapes, which contain
6 trade secret information and/or confidential business information which provides the owner with
7 a competitive advantage in the marketplace and is treated by the owner in ways to prevent public
8 disclosure, or which contain attorney-client privilege, or work product protected information,
9 produced or otherwise exchanged:

- 10 • Defendant’s internal policies and practices;
- 11 • Information relating to Defendant’s underwriting procedures, including pricing and
12 rating;
- 13 • Internal claim analysis;
- 14 • Claims handling guidelines;
- 15 • Reserving guidelines;
- 16 • Reserve and/or reinsurance information;
- 17 • Other insureds claims files or underwriting files; and
- 18 • Any and all outside business consulting reports or communications not related to
19 the particular claim at issue in this action.

20 There may be other categories of documents, and this list may be expanded or narrowed as
21 discovery progresses by Court order or agreement of the parties.

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1 3. SCOPE

2 This Order governs the handling of all documents, testimony and all other information,
3 including copies, excerpts, quotations and summaries thereof (collectively Material) produced by
4 the parties in this action. Certain information to be produced in this case involves documents that
5 a party believes contains proprietary information and/or trade secrets or protected by the attorney-
6 client privilege or work product doctrine.

7 The protections conferred by this agreement cover not only designated Confidential
8 Material (as defined above), but also (1) any information copied or extracted from Confidential
9 Material which contains trade secret and/or confidential business information, attorney-client
10 privilege, or work product information; (2) all copies, excerpts, summaries, or compilations of
11 Confidential Material which contains trade secret and/or confidential business information,
12 attorney-client privilege, or work product information; and (3) any testimony, conversations, or
13 presentations by parties or their counsel that might reveal Confidential Material.

14 However, the protections conferred by this agreement do not cover information that is in
15 the public domain or becomes part of the public domain through trial or otherwise, or which does
16 not qualify as trade secret, attorney-client privilege, or work product information. The party
17 designating material as confidential must perform a good-faith search to determine whether the
18 material it seeks to designate as confidential has been previously produced or otherwise become
19 part of the public domain.

20 Interrogatory answers, responses to requests for production, responses to requests for
21 admission, deposition transcripts or exhibits, pleadings, motions, affidavits, briefs and summaries
22 of confidential information or documents that quote, summarize, or contain materials entitled to
23 protection may be accorded status as stamped confidential documents, but to the extent feasible,

1 shall be prepared in such a manner that the confidential information is bound separately from that
2 not entitled to protection. “Confidential Material” shall mean all such “Material” designated by
3 any party as “Confidential – Subject to Protective Order.”

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use Confidential Material that is disclosed
6 or produced by another party or by a non-party in connection with this case only for prosecuting,
7 defending, or attempting to settle this litigation. Confidential Material may be disclosed only to
8 the categories of persons and under the conditions described in this agreement. Confidential
9 Material shall not be used for any business or any other purpose whatsoever, and shall not be given,
10 shown, made available, or communicated in any way to anyone except those specified in this
11 agreement, below in subparagraph 4.2, and Confidential Material may be disclosed only to the
12 categories of persons and under the conditions described in this agreement.

13 Confidential Material must be stored and maintained by a receiving party at a location and
14 in a secure manner that ensures that access is limited to the persons authorized under this
15 agreement.

16 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
17 by the court or permitted in writing by the designating party, a receiving party may disclose any
18 Confidential Material only to:

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

21 (b) the officers, directors, and employees (including in house counsel) of the
22 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
23

1 agree that a particular document or material produced is for Attorney's Eyes Only and is so
2 designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary for this
4 litigation and who have been provided with a copy of the agreement and have agreed to maintain
5 the confidentiality of the Confidential Material;

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

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

11 (f) during their depositions or court proceedings, witnesses in the action to
12 whom disclosure is reasonably necessary and who have agreed not to disclose any Confidential
13 Material to third parties. Pages of transcribed deposition testimony or exhibits to depositions that
14 reveal Confidential Material must be separately bound by the court reporter and may not be
15 disclosed to anyone except as permitted under this agreement;

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

18 (h) court reporters who take and transcribe testimony for use in this lawsuit;

19 (i) persons or entities to whom a party has a contractual, legal, or regulatory
20 obligation to provide Confidential Material, including insurers, reinsurers, reinsurance
21 intermediaries, retrocessionaries, regulators, retrocessionary accountants, and auditors of any
22 Party; and

23 (j) any person agreed to in writing by all parties or allowed by the Court.

1 4.3 Filing Confidential Material.

2 (a) Documents containing Confidential Material of any party shall not be filed
3 with the Court unless necessary for purposes of trial or substantive motions, including without
4 limitation, motions for preliminary injunction or summary judgment, or other Court matters.

5 (b) Before filing Confidential Material or discussing or referencing such
6 material in court filings, the filing party shall confer with the designating party, in accordance with
7 Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the
8 confidential designation, whether the document can be redacted, or whether a motion to seal or
9 stipulation and proposed order is warranted. During the meet and confer process, the designating
10 party must identify the basis for sealing the specific confidential information at issue, and provide
11 a written statement of the basis to seal for inclusion in a motion to seal, and the filing party shall
12 include this basis in its motion to seal, along with any objection to sealing the information at issue.
13 Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the court to file material under seal. A party who
15 seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil
16 Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this
17 requirement will result in the motion to seal being denied, in accordance with the strong
18 presumption of public access to the Court's files.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
21 or non-party that designates information or items for protection under this agreement must take
22 care to limit any such designation to specific material that qualifies under the appropriate
23 standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the
2 material, documents, items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this agreement.

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

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

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

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

21 (b) Testimony given in deposition or in other pretrial proceedings: the parties
22 and any participating non-parties must identify on the record, during the deposition or other pretrial
23 proceeding, all protected testimony, without prejudice to their right to so designate other testimony

1 after reviewing the transcript. Any party or non-party may, within fifteen (15) days after receiving
2 the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
3 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
4 at trial, the issue should be addressed during the pre-trial conference.

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

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

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
22 regarding confidential designations without court involvement. Any motion regarding confidential
23 designations or for a protective order must include a certification, in the motion or in a declaration

1 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
2 affected parties in an effort to resolve the dispute without court action. The certification must list
3 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
4 to-face meeting or a telephone conference.

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

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

15 If a party is served with a subpoena or a court order issued in other litigation that compels
16 disclosure of any information or items designated in this action as “CONFIDENTIAL
17 MATERIAL,” that party must:

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

20 (b) promptly notify in writing the party who caused the subpoena or order to
21 issue in the other litigation that some or all the material covered by the subpoena or order is subject
22 to this agreement. Such notification shall include a copy of this agreement; and
23

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

3 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

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

19 10. NON TERMINATION

20 The parties and their attorneys agree that Confidential Material shall be protected even
21 after the resolution of this matter. Confidential Material retained by attorneys shall continue to be
22 held in confidence. Confidential Material provided to the parties shall be returned to the producing
23 party, disposed of via secure shredding, or provided to counsel for secure storage or disposal.

1 Attorney Work Product including summaries of Confidential Material and Attorney-Client
2 Privilege Communications which include information obtained via Confidential Material shall
3 continue to be protected from disclosure by this agreement until securely destroyed or deleted.

4 The confidentiality obligations imposed by this agreement shall remain in effect until a
5 designating party agrees otherwise in writing or a Court orders otherwise.

6 PURSUANT TO THE STIPULATED PROTECTIVE ORDER, IT IS SO ORDERED

7 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
8 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
9 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
10 documents, including the attorney-client privilege, attorney work-product protection, or any other
11 privilege or protection recognized by law.

12 DATED: May 21, 2020

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15 Mary Alice Theiler
16 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of
6 perjury that I have read in its entirety and understand the stipulated protective order that was
7 entered by the United States District Court, Western District of Washington on
8 _____ in the case of *Esteban Marroquin, Sr. v. Safeco Insurance Company of*
9 *America*, Case No. 2:19-cv-01308-RAJ-MAT. I agree to comply with and to be bound by all the
10 terms of this stipulated protective order and I understand and acknowledge that failure to so comply
11 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
12 will not disclose in any manner any information or item that is subject to this stipulated protective
13 order to any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court, Western
15 District of Washington for the purpose of enforcing the terms of this stipulated protective order,
16 even if such enforcement proceedings occur after termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____