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7

8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

11 METROPOLITAN PROPERTY  
12 AND CASUALTY INSURANCE  
COMPANY,

13 Plaintiff,

14 v.

15 SARAH MARIE HEDLUND,  
16 SCOTT MAGNUSON, DANIEL SAH,

17 Defendants

Case No. 2:16-cv-00352-MCE-KJN

*Magistrate Judge Kendall J. Newman  
Courtroom 25*

**PLAINTIFF METROPOLITAN  
PROPERTY & CASUALTY  
INSURANCE COMPANY'S  
NOTICE OF MOTION AND  
MOTION FOR PROTECTIVE  
ORDER**

**DATE: June 30, 2016**  
**TIME: 10:00 a.m.**  
**CTRM: 25 – 8<sup>th</sup> Floor**

21 **TO ALL PARTIES AND COUNSEL OF RECORD:**

22 **NOTICE IS HEREBY GIVEN** that on June 30, 2016 at 10:00 a.m. in  
23 Courtroom 25 of the United States District Court, the Eastern District of California,  
24 located at 501 I Street, No. 4-200, Sacramento, California 95814, or as soon as  
25 counsel may be heard, pursuant to Federal Rule of Civil Procedure 26 and 37 and  
26 Eastern District Local Rule 251, Plaintiff Metropolitan Property and Casualty  
27 Insurance Company (“Plaintiff” or “Met P&C”) hereby moves for a Protective  
28 Order regarding document requests within Defendant Scott Magnuson’s

Ropers Majeski Kohn & Bentley  
A Professional Corporation  
Redwood City

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A Professional Corporation  
Redwood City

1 (“Magnuson”) Notice of Taking Deposition of Person Most Qualified at Met P&C  
2 and Deposition Subpoena issued to Stephen Erigero and requests that the Court  
3 issue an order limiting the scope of Met P&C’s production of claims file documents  
4 for the claim made under Met P&C Auto policy number 408563594-0 to pre-  
5 December 1, 2012 documents.

6 This Motion for Protective Order is made on the grounds that all post-  
7 December 1, 2012 documents are irrelevant to this action as framed by the  
8 pleadings. The sole issue to be resolved in this action is whether Met P&C’s failure  
9 to disclose its policy limits within the time frame requested by Magnuson  
10 constitutes bad faith such that the “lid” on Met P&C’s insurance policy limits is off.  
11 No post-December 1, 2012 documents are necessary for this determination.

12 Counsel has met and conferred on this issue pursuant to Eastern District  
13 Local Rule 251 and court intervention is necessary to resolve the dispute. Counsel  
14 for Met P&C will continue to work with counsel for Magnuson to obtain a Joint  
15 Statement of Discovery Disagreement (Declaration of Stephen Shaner, ¶¶ 9-10).

16 This Motion is based upon this Notice of Motion and Motion, the  
17 Memorandum of Points and Authorities in support, the Declaration of Stephen  
18 Shaner, as well as the papers and records on file herein, and upon such oral and  
19 documentary evidence as may be presented at the hearing on this Motion.

20 DATED: May 27, 2016

ROPERS, MAJESKI, KOHN & BENTLEY

21  
22 By: /s/ Stephen J. Erigero

23 STEPHEN J. ERIGERO  
24 STEPHEN M. SHANER  
25 Attorneys for Plaintiff  
26 METROPOLITAN PROPERTY AND  
27 CASUALTY INSURANCE COMPANY  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a declaratory relief action wherein the parties dispute the extent of  
4 Met P&C’s insurance coverage under a policy covering defendants Sarah Marie  
5 Hedlund (“Hedlund”) and Daniel Sah (“Sah”). Defendants contend that Met P&C’s  
6 failure to comply with a time demand enumerated in an October 2012 letter from  
7 defendant Scott Magnuson (“Magnuson,” together with Hedlund and Sah,  
8 “Defendants.”) has removed the “lid” from Met P&C’s policy such that Met P&C is  
9 liable for any judgment against Hedlund and Sah in an underlying action brought  
10 by Magnuson. Met P&C contends that its duty to indemnify under its policy is  
11 limited to the policy limits because the claim was properly handled.

12 As part of a settlement agreement in the underlying action, the parties agreed  
13 – among other things – to *jointly* draft the declaratory relief complaint in this  
14 action. Within the complaint, the issue to be decided by the court is limited to a  
15 single question: whether Met P&C’s alleged actions or omissions between October  
16 5, 2012 (the date Met P&C received Magnuson’s letter) and, at the latest,  
17 November 29, 2012 (the date of Magnuson’s complaint against Hedlund and Sah)  
18 remove the “lid” from its policy.

19 Met P&C has produced all relevant claims file material up to mid-December,  
20 2012. Nevertheless, Magnuson has persisted in seeking all non-privileged claims  
21 file material, in spite of it being utterly irrelevant to the action. The parties have  
22 attempted to resolve this dispute informally, but have been unable to reach an  
23 agreement. Therefore, Met P&C seeks a protective order from this Court for all  
24 non-produced claims file material after December 1, 2012.

25 **II. STATEMENT OF FACTS**

26 **A. Underlying Case Background**

27 This case arises from a coverage dispute between Met P&C on one hand, and  
28 Defendants on the other hand. Defendant Sah is the named insured on a Met P&C

1 Auto policy number 408563594-0 (the “Policy”). In September 2012, the  
2 automobile covered under the Policy – and driven by defendant Hedlund as a  
3 permissive user – was involved in a collision wherein defendant Magnuson  
4 sustained serious injuries.

5 Magnuson issued an undated letter to Met P&C’s claims department, which  
6 was received on October 5, 2012 demanding Met P&C disclose the available Policy  
7 limits within 15 days. On October 15, 2012, a Met P&C claims adjuster responded  
8 that due to California’s Insurance Privacy Protection Act (Section 791.13), Met  
9 P&C was unable to disclose its policy limits without a signed disclosure form from  
10 its insured. The letter further noted that upon receipt of a signed disclosure form  
11 from the insured that Met P&C will comply with Magnuson’s request. Met P&C  
12 ultimately received signed permission to disclose policy limits on November 2,  
13 2012, and disclosed the Policy limits via November 7, 2012 letter.

14 Meanwhile, Magnuson’s counsel sent a November 6, 2012 letter to Met P&C  
15 advising that because Met P&C failed to disclose the Policy limits within  
16 Magnuson’s requested time frame, he would be seeking full compensation without  
17 regard to the Policy limits. On November 29, 2012, Magnuson filed suit against  
18 Hedlund and Sah in Superior Court of California, County of Placer, in a suit  
19 entitled *Scott Magnuson v. Sarah Marie Hedlund, Daniel Sah Kwanyoung, and*  
20 *DOES 1 through 10, inclusive*, case number SCV0032169 (the “Underlying  
21 Action”).

22 In October 2015, Met P&C, Hedlund, Sah, and Magnuson agreed to a non-  
23 collusive stipulated judgment in favor of Magnuson in the Underlying Action in the  
24 amount of \$5,000,000. As part of the agreement, the parties were to file a  
25 declaratory relief action setting forth the coverage issues to be resolved by the  
26 court. Further, ***the parties agreed that they must all approve any language in the***  
27 ***declaratory relief complaint prior to filing.***  
28

**B. Magnuson Issues Discovery Seeking All Claim File Materials**

On March 24, 2016, Magnuson commenced issuing discovery centered on seeking the entire claim file for the underlying claim made on the Policy. This consisted of a deposition subpoena for production of records issued to Met P&C counsel Stephen Erigero (Shaner Decl., Ex. A.) and a notice of taking deposition of the Person Most Qualified to speak on behalf of Met P&C which included requests for documents, including the entire claim file for the claim made under the Policy (Shaner Decl., Ex. B.). On April 7, Met P&C objected to both the subpoena issued to Stephen Erigero and the notice of taking deposition of the Person Most Qualified primarily on the grounds that any claim file material after December 1, 2012 was irrelevant.<sup>1</sup> (Shaner Decl., Ex. C-D.)

On April 15, 2016, counsel for Magnuson Robert Buccola (“Buccola”) sent a meet-and-confer letter explaining his belief that he is entitled to the entire claims file. He argued, among other things, that “the insureds are obligated to have received, at some point, the benefit of an objective coverage analysis . . .” (Shaner Decl., Ex. E.) After a May 11, 2016, phone call between counsel, on May 19, 2016, counsel for Met P&C sent a letter explaining that, after conferring, they believe court intervention is necessary to determine whether the entire claims file is discoverable. (Shaner Decl., Ex. F.)

**III. ARGUMENT****A. The Court May Issue a Protective Order.**

The Court, upon a showing of good cause, “may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense.” Fed. R. Civ. Proc. 26(c). The Court may grant a protective order providing that the discovery at issue “not be had,” or that it be conducted “only by a method of discovery other than that selected by the party

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<sup>1</sup> Met P&C has agreed to produce a Person Most Qualified, so the production of a witness is not at issue.

1 seeking discovery.” Id. “The district court has considerable latitude under Fed. R.  
 2 Civ. Pro. 26(c) to craft protective orders during discovery,” *Gray v. First Winthrop*  
 3 *Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990), including “limiting the scope of  
 4 disclosure or discovery to certain matters.” Fed. R. Civ. P. 26(c)(1)(D); *Ginena v.*  
 5 *Alaska Airlines, Inc.*, No. 2:04-cv-01304-RCJ-CWH, 2011 WL 4749104, at \*2 (D.  
 6 Nev. Oct. 6, 2011) (“Production of information that is not relevant is an inherently  
 7 undue burden.”)

8 **B. Only Relevant Information is Discoverable.**

9 FRCP Rule 26(b)(1) provides that “the scope of discovery is as follows:  
 10 Parties may obtain discovery regarding any nonprivileged matter that is relevant to  
 11 any party's *claim or defense* .... For good cause, the court may order discovery of  
 12 any matter relevant to the subject matter involved in the action.” (emphasis added.)

13 Thus, in the absence of a court order, only information relevant to a  
 14 parties' *claims or defenses* is discoverable. A court may broaden the scope of  
 15 discovery to encompass matter relevant to “the subject matter involved in the  
 16 action.” *In Re: REMEC, Inc. Sec. Litig.*, 2008 U.S. Dist. LEXIS 47412, \*6 (S.D.  
 17 Cal. 2008) (“Pursuant to Rule 26 of the Federal Rules of Civil Procedure...the more  
 18 narrow claim or defense standard applies unless good cause is shown by the party  
 19 seeking the discovery to broaden the scope of discovery to the former subject  
 20 matter standard”); *In Re: Ashworth, Inc. Sec. Litig.*, 2002 U.S. Dist. LEXIS 27991,  
 21 \*8-9 (S.D. Cal. 2002) (“Based on the amendments made to the Federal Rules...the  
 22 focus of discovery has shifted to a more narrow ‘claim or defense’ standard unless  
 23 good cause is shown to broaden the scope of discovery to the former ‘subject  
 24 matter’ standard.”) However, the party seeking the discovery has the burden of  
 25 establishing “good cause” for this broader scope. *In re Cooper Tire & Rubber Co.*,  
 26 568 F.3d 1180, 1192 (10th Cir. 2009) (citing 8 Charles Alan Wright, Et.  
 27 *Al., Federal Practice And Procedure* § 2008 (2d ed. 2008).)  
 28

1 As indicated above, a court may limit the extent of discovery by issuing a  
2 protective order. Fed. R. Civ. P. 26(c). A protective order is to be issued for “good  
3 cause shown”. *Id.* “Good cause” has been held to include irrelevance. *See*  
4 *e.g., McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D.C. Kan.  
5 2008) (enacting protective order to bar irrelevant inquiry into labor unions and  
6 collection of labor dues in suit involving employment discrimination). If the  
7 relevance of a category is not apparent on its face, the party seeking the discovery  
8 has the burden of demonstrating how such information would be relevant. *See,*  
9 *Tracchia v. Tilton*, 2008 U.S. Dist. LEXIS 105721 (E.D. Cal. 2008) (holding that  
10 motion for protective order precluding discovery of irrelevant discovery requests  
11 “is well taken.”); *Harper v. UNUM Life Ins. Co. of Am.*, 2007 U.S. Dist. LEXIS  
12 47533 (E.D. Cal. 2007) (granting protective order for discovery of information  
13 “related to a challenge to the decision made by Defendant [insurer],” where such  
14 information was not relevant to the court's evaluation of the challenge to the  
15 insurer's denial of coverage under ERISA.)

16 In *Molski v. Franklin*, 222 F.R.D. 433, 438 (S.D. Cal. 2004), an action  
17 alleging noncompliance with the Americans With Disabilities Act (“ADA”), the  
18 defendants sought information regarding settlement amounts in prior cases brought  
19 by the plaintiff under the ADA, arguing that it was relevant to their theory that the  
20 plaintiff had no standing because he was actually benefiting from non-compliance  
21 by receiving monetary settlements from facilities that failed to comply with the  
22 ADA. The court sided with the plaintiff, granting his motion for a protective order  
23 as to his private financial information. *Id.* The court noted that although the  
24 defendants had a legitimate interest in the information, ***it was irrelevant because it***  
25 ***did not help to establish any defense*** to an action under the ADA where the  
26 plaintiff has established a prima facie showing of harm. *Id.* fn. 6. See also *Potomac*  
27 *Electric Power Co. v. California Union Ins. Co.*, 136 F.R.D. 1, 3 (D.D.C.  
28 1990) (Noting that request of reinsurance information when irrelevant to claim was

1 no more than a “fishing expedition” not reasonably calculated to lead to the  
2 discovery of admissible evidence.)

3 Here, Defendants are going on a similar “fishing expedition” that courts have  
4 established are not permitted when they cannot establish any claim or defense.  
5 Notably, the parties *jointly* drafted the pleadings, and have framed the issue only in  
6 the context of Met P&C’s alleged actions (or omissions) in its handling of  
7 Magnuson’s October 2012 letter. By the time Magunson filed suit in November  
8 2012, all facts relevant to this action had already taken place. Hence, Magnuson’s  
9 dogged pursuit of post-December 2012 claims file information is fruitless: it will  
10 yield nothing to aid in his case. Hence, this Court should grant Met P&C’s motion  
11 for protective order.

12 **C. An Entire Claim File is Not Discoverable if it is Not Relevant to**  
13 **the Action.**

14 Moreover, courts have regularly ruled that entire claim files are not  
15 discoverable. In *Am. Prot. Ins. Co. v. Helm Concentrates, Inc.*, 140 F.R.D. 448, 450  
16 (E.D. Cal. 1991) (“*Helm Concentrates*”), an insurer filed a declaratory relief action  
17 seeking a declaration that its policy did not provide coverage for claimed losses. On  
18 a motion to compel discovery, declaratory relief defendant Helm Concentrates, Inc.  
19 (“Helm”) sought to discovery information related to reserves established on the  
20 claims at issue. The court denied Helm’s motion, reasoning that the issue at hand  
21 was whether a first-party claimed loss was covered under a policy, and discovery  
22 into whether a reserve was established was considered “marginally relevant at  
23 best.” *Id.* See also *Milinzazo v. State Farm Ins. Co.*, 247 F.R.D. 691 (S.D.  
24 Fla.2007) (an insurer was not required to produce entire claim file, since  
25 communications were relevant to breach of contract claim by assignee of insureds’  
26 rights and interest in any cause of action against insurer for failure to defend,  
27 indemnify, and/or settle claim for insureds’ accident rear-ending assignee's  
28 vehicle.)



1 Here, Magnuson's claimed reasoning for discovery of Met P&C's entire  
2 claim file mirrors the overreach of Helm in *Helm Concentrates*. According to  
3 Magnuson's counsel, the insureds are entitled to an evaluation of coverage. For  
4 what purpose? Defendants contentions, as drafted by Defendants themselves in the  
5 complaint, are as follows:

6 Defendants contend that the MAGNUSON letter, Exhibit 1, advised  
7 Plaintiff of the underlying claimant's (Mr. MAGNUSON's)  
8 willingness to settle for an amount not to exceed Defendant's  
9 unknown policy limits provided that said limits were conveyed to  
10 claimant within the time frame noted in claimant's letter, and that in  
11 furtherance of Plaintiff's obligation to attempt to effectuate a  
12 settlement within Defendant's policy limits, Plaintiff was required to  
13 fully advise Defendants of the content and terms of claimant's letter,  
14 but failed to do so. Notably, Defendants contend that Plaintiff failed  
15 to advise Defendants of the time limits nature of the demand as well  
16 as of claimant's intentions to go to judgment to recover all of his  
17 damages in the event of non-compliance. Additionally, Defendants  
18 contend that Plaintiff failed to advise Defendants of the reality that the  
19 claim could likely never be settled without Plaintiff revealing the  
20 limits and that said information was required to be disclosed, upon  
21 request, in the event claimant filed a lawsuit. Additionally,  
22 Defendants contend that Plaintiff should have treated this request with  
23 urgency, and at a minimum, requested of claimant an extension of  
24 time to respond to claimant's request for the limits, but it failed to do  
25 so. All of this is alleged to have constituted a breach of good faith and  
26 fair dealing by Plaintiff. Therefore, Met P&C and Defendants seek a  
27 determination of its rights and duties under the Policy, and Met P&C  
28 seeks a judgment in its favor that its duty to indemnify HEDLUND

1 and SAH is limited to the enumerated policy limits.

2 (See Shaner Declaration, Ex. G, Complaint, ¶26.)

3 All of Defendants' contentions revolve around one issue: Met P&C's alleged  
4 failure to treat Magnuson's October 2012 letter with any sense of urgency.

5 Nowhere is there any indication of a subsequent coverage dispute such that  
6 discovery of post-December 2012 claim file information is anything other than a  
7 burdensome request of Met P&C. If Met P&C must produce the entire claim file, it  
8 will likely only lead to a multitude of additional documents which will dilute the  
9 court's evaluation of the sole issue: whether Met P&C's alleged actions and/or  
10 omissions between October 2012 and November 2012 constitute bad faith such that  
11 the "lid" is off the Policy. No additional documents will aid in this determination.

12 **IV. CONCLUSION**

13 For the reasons stated above, this Court should grant a Protective Order  
14 limiting the production of Met P&C's claim file for the Underlying Claim to  
15 documents before December 1, 2012.

16  
17 DATED: May 27, 2016

ROPERS, MAJESKI, KOHN &  
BENTLEY

18  
19 By: */s/ Stephen J. Erigero*

20 STEPHEN J. ERIGERO  
21 STEPHEN M. SHANER  
22 Attorneys for Plaintiff  
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