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

10 FILM ALLMAN, LLC, a Georgia
11 limited liability company,

12 Plaintiff,

13 vs.

14 NEW YORK MARINE and
15 GENERAL INSURANCE
16 COMPANY, INC., a New York
17 corporation, and DOES 1-10,

18 Defendants.

CASE NO. 2:14-cv-07069-ODW (KLS)

**STIPULATED PROTECTIVE
ORDER**

19 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and
20 based on the parties' Stipulated Protective Order ("Stipulation") filed on
21 October 6, 2015, the terms of the protective order to which the parties have
22 agreed are adopted as a protective order of this Court (which generally shall
23 govern the pretrial phase of this action) except to the extent, as set forth
24 below, that those terms have been modified by the Court's amendment of
25 paragraphs 1, 2, 5, 9, 12, and 18 of the Stipulation.

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1 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED**
2 **AND MODIFIED BY THE COURT**¹
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4 1. The parties ~~requested that the Court issue a protective order and they~~
5 agree that good cause exists for **a protective** order because it would allow them to
6 exchange privileged and otherwise confidential information in a manner that will
7 ensure that it maintains its privileged status and will not be filed in the public
8 record without appropriate protections. The parties further agree that good cause
9 for such an order exists because, in the absence of a protective order in this action,
10 the parties may not be able to obtain relevant information and documents from
11 third-parties who are subject to confidentiality agreements entered in and/or
12 protective orders issued in other actions. The request was made on the grounds
13 that:

14 a. The First Amended Complaint asserts claims relating to several
15 insurance claims that Plaintiff submitted to Defendant relating to third-party claims
16 filed against Plaintiff (the “underlying claims”). Various documents and other
17 information relevant to the issues in those underlying claims involve and/or relate
18 to information protected by the attorney-client privilege and work product
19 doctrines with respect to parties asserting the underlying claims and others, but,
20 because of the tri-partite relationship between an insurer, defense counsel, and an
21 insured, that may not be privileged with respect to the parties to this action; and

22 b. Defendant recently took the deposition of a third-party who
23 advised the parties that certain information and documents potentially relevant to
24 this action are subject to a confidentiality agreement and/or protective order in a
25 separate action previously filed against Plaintiff and, therefore, the third-party

26 _____
27 ¹ The Court’s additions to the agreed terms of the Protective Order are generally indicated in
28 bold typeface, and the Court’s deletions are indicated by lines through the text being deleted.

1 could not provide that information unless it were produced pursuant to an equally
2 strong protective order entered in this action.

3 2. The terms of the stipulated protective order requested by the parties
4 here shall govern the production, use and dissemination by all parties to this action
5 of: (1) any “Confidential Information” produced by a party during **discovery in**
6 this action; (2) any “Confidential Information” produced by a third-party witness
7 **during discovery in this action**; and (3) any “Confidential Information” produced
8 to or received by any consulting and/or expert witnesses **during discovery in this**
9 **action**.

10 3. For purposes of this protective order, “Confidential Information”
11 means information of any type, kind or character that is designated as
12 “Confidential” and/or “Attorneys’ Eyes Only” by the producing or receiving
13 parties, including any third party (“Designating Party” or “Designating Parties”),
14 whether it be a document, information contained in a document, information
15 revealed during a deposition, information revealed in a written discovery response
16 or otherwise.

17 4. Any person may designate as “Confidential Information” any material
18 produced in the course of discovery proceedings only when: (1) such designating
19 person in good faith believes that such material contains information that is
20 privileged under the attorney-client privilege and/or work product doctrines as set
21 forth in Paragraph 1(a); or (2) such designating person in good faith believes that
22 such material contains information that is subject to a confidentiality agreement
23 entered and/or protective order issued in another action. A Designating Party will
24 make only such designation as to that information that it in good faith believes
25 contains Confidential Information. If any party objects to the designation of
26 discovery material as Confidential and the objection cannot be resolved by
27 agreement of counsel, the discovery material shall be treated as designated and
28 subject to this protective order unless otherwise ordered by the Court upon motion

1 made by the objecting party in accordance with the provisions of Local Rules 37-1,
2 et seq. The Designating Party shall bear the burden of proof on any such motion.

3 5. Any person may also designate as “CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” any material produced in the course of discovery
5 proceedings herein when such designating person in good faith believes that such
6 material is subject to a similar “Attorneys’ Eyes Only” provision set forth in a
7 protective order issued in another action. Any material designated as
8 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be treated as if it were
9 Confidential Information and receive all the protections otherwise afforded to
10 Confidential Information under the terms of this order. In addition to such
11 protections, material designated as “CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY” shall not be disclosed by the recipient to anyone other than the attorneys
13 of record in this action, **the court and court personnel**, the paralegals and staff of
14 the attorneys of record in this action, and any consulting or testifying experts
15 retained by the parties and whose engagement might require review of such
16 material. If a Designating Party designates any material as “CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” as described above, any other party may challenge
18 such designation if they have a reasonable basis for doing so. If such designation is
19 challenged, the Designating Party shall have the burden of demonstrating that such
20 designation is necessary to protect an important privacy interest that is not
21 otherwise protected by the documents designation as “Confidential.”

22 6. However, nothing shall be regarded as Confidential Information or
23 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if it is information that:

24 a. Is in the public domain at the time of designation, including,
25 without limitation, as evidenced by a written document;

26 b. Becomes part of the public domain through no fault of any
27 party receiving the Confidential Information, including, without limitation,
28 as evidenced by a written document; or

1 c. Any party receiving the Confidential Information lawfully
2 receives such information at a later date from a third party without
3 restriction as to disclosure, provided such third party has the right to make
4 the disclosure to the receiving party.

5 7. This order is intended to provide a mechanism by which any party
6 may elect to provide information regarded as confidential. Nothing herein shall be
7 construed as requiring any party to produce information regarded as confidential
8 and any party may elect (in lieu of or in addition to utilizing the terms of this order)
9 to object to the production of any confidential information or to exercise any other
10 appropriate remedies with respect to a request for production of such information.

11 8. Nothing herein shall: (1) preclude a producing party from seeking
12 and obtaining, on an appropriate showing, such additional protection with respect
13 to the confidentiality of documents or information as it may deem appropriate; (2)
14 preclude any party from objecting to the discoverability of any documents or
15 information on appropriate grounds; (3) preclude any party from objecting to the
16 admissibility of any documents or information; (4) limit a party's use of its own
17 documents or any documents obtained outside the discovery process in this action;
18 or (5) limit a party's use of public information.

19 9. Any Confidential Information produced that is not marked
20 "ATTORNEYS' EYES ONLY" by a party or third-party witness shall be
21 disclosed only to: (a) the Court **and its personnel** ~~under seal, pursuant to the~~
22 ~~procedures mandated by Local Rule 79-5.1 and the Court's procedures~~; (b) the
23 parties and their respective outside counsel of record (including support staff as
24 reasonably necessary); (c) outside stenographic court reporters and language
25 translators (including support staff as reasonably necessary), and (d) the additional
26 individuals listed in items (i) through (vii) below, provided that such additional
27 individuals have read this Protective Order and signed an Undertaking in the form
28 attached hereto as Exhibit 1, which shall be retained in the files of outside

1 counsel:

- 2 (i) in-house attorneys (including support staff as reasonably necessary) of
3 the parties who are responsible for and/or are working directly in
4 defense of this action.
- 5 (ii) corporate representatives of the parties (i.e., the officers, directors, or
6 employees of the parties) who have been charged with the
7 responsibility for making business decisions dealing directly with the
8 litigation of this action);
- 9 (iii) technical personnel of each side who needs to be consulted by outside
10 counsel, in the discretion of such counsel, in preparation for
11 proceedings in this action;
- 12 (iv) outside experts and outside consultants retained in this action;
- 13 (v) a deponent or other witness in this action who authored, received or
14 saw a document or thing marked "CONFIDENTIAL," or who is
15 otherwise familiar with the Confidential Information, but only to the
16 extent of the person's familiarity with the Confidential Information;
- 17 (vi) paralegals, stenographic, clerical employees and translators associated
18 with the individuals enumerated in (i)- (v) above, but only as party of
19 a disclosure to said individuals in accordance with this Protective
20 Order; and
- 21 (vii) such other individuals as the parties may stipulate or as may be
22 ordered by the Court .

23 10. Confidential Information shall be revealed by the parties only to the
24 persons permitted access to it pursuant to paragraph 9 above and shall not be
25 disclosed by any party to persons other than those specified in paragraph 9. All
26 Confidential Information shall be used by the parties solely for the purposes of this
27 action.
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1 **USE OF CONFIDENTIAL INFORMATION AT DEPOSITIONS**

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3 11. Confidential Information shall be used in deposition only in a manner

4 calculated to preserve the confidentiality of such documents or information and in

5 accordance with the following procedures:

- 6 a. This order shall be made an exhibit to any deposition during
- 7 which Confidential Information is used or discussed;
- 8 b. If any Confidential Information is to be marked as an exhibit,
- 9 such exhibit shall be marked "CONFIDENTIAL
- 10 INFORMATION – SUBJECT TO PROTECTIVE ORDER" by
- 11 the Court Reporter and attached under seal;
- 12 c. If any document designated as "CONFIDENTIAL –
- 13 ATTORNEYS' EYES ONLY" is marked as an exhibit, all such
- 14 documents shall be separately compiled by the Court reporter
- 15 and shall be delivered to counsel in a separately bound volume
- 16 marked "EXHIBITS - CONFIDENTIAL – ATTORNEYS'
- 17 EYES ONLY";
- 18 d. Unless permission is elsewhere granted in this order, no
- 19 deponent shall be permitted to retain copies of Confidential
- 20 Information;
- 21 e. Unless otherwise agreed by counsel at the time a deposition is
- 22 taken, deposition testimony and transcripts shall be treated as
- 23 though designated Confidential in their entirety until the
- 24 expiration of 30 days after receipt of the transcript, by which
- 25 time specific designations, if any, must be made;
- 26 f. Any Court Reporter or other person taking or preparing
- 27 transcripts of any deposition during which Confidential
- 28 Information was introduced or disclosed shall be advised of the

1 terms of this order and agree to be bound thereby.

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3 **FILING OF CONFIDENTIAL INFORMATION**
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5 12. Any pleadings, motions, briefs, declarations, stipulations, exhibits or
6 other written submissions to the Court in this litigation that contain, reflect,
7 incorporate or refer to any discovery material that has been designated as
8 “Confidential” or “ATTORNEYS’ EYES ONLY” shall be submitted for filing
9 **with an application, in accordance with the requirements of Local Rule 79-5**
10 **and the presiding judge’s separate provisions, that provides the requisite**
11 **showing, based on competent evidence, of “good cause” or “compelling**
12 **reasons,” for a Court order to seal.** ~~The party seeking to file the unredacted~~
13 ~~discovery material designated as “Confidential” or “ATTORNEYS’ EYES~~
14 ~~ONLY” shall submit an application, along with a proposed order, seeking the~~
15 ~~Court’s permission to file the documents containing the discovery material under~~
16 ~~seal in accordance with the foregoing provisions.~~

17 13. Should a need arise during the trial or any hearing before the Court for
18 a party to cause Confidential Information to be disclosed, it may do so only after
19 appropriate *in camera* inspection or other safeguards are requested of the Court or
20 are otherwise ordered by the Court.

21 14. This protective order is without prejudice to the right of any party or
22 third-party witness to move for an order further restricting disclosure or use of any
23 Confidential Information.

24 15. In the event of any accidental or inadvertent disclosure of Confidential
25 Information by a party other than in a manner authorized by this protective order,
26 counsel shall immediately notify opposing counsel of all of the pertinent facts and
27 make every effort to further prevent unauthorized disclosure including, retrieving
28 all copies of Confidential Information from the recipients thereof and securing the

1 agreement of those recipients not to further disseminate the Confidential
2 Information in any form. Compliance with the foregoing shall not prevent a party
3 from seeking further relief from the Court. Inadvertent production of material
4 subject to the attorney-client privilege, work product immunity or other applicable
5 privilege or immunity shall not constitute waiver of any privilege or immunity
6 provided that the producing party notifies the receiving party in writing promptly
7 after discovery of such inadvertent production. Such inadvertently produced
8 material shall be returned to the producing party upon request. No use shall be
9 made of such material during deposition or at trial, nor shall such material be
10 shown to anyone who has not already been given access to it subsequent to the
11 request for its return.

12 16. The parties shall maintain any Confidential Information in a secure
13 and safe place and exercise at least the same degree of care in handling the
14 Confidential Information as is exercised by a party with respect to its own
15 confidential information of a similar nature, but in no event less than due care.

16 17. This protective order is valid throughout the course of this action
17 (defined to include all proceedings herein, appeals and/or remands) and shall
18 survive the termination of the action. Upon final termination of the action, all
19 copies of documents containing Confidential Information shall be destroyed within
20 sixty (60) days, with the exception of one archival copy of pleadings,
21 correspondence, work product, discovery responses, depositions, deposition
22 exhibits, Court exhibits and documents included in submissions to the Court that
23 may be retained by outside counsel.

24 18. This protective order shall not prevent either party from moving for an
25 order that Confidential Information is not, in fact, confidential, provided that, prior
26 to making such a motion, the parties shall meet and confer to attempt to resolve
27 any differences over the designation. On such a motion, the party asserting
28 confidentiality shall **bear the burden and expense** of proving that the Confidential

1 Information in question is protected under Fed. R. Civ. P. 26(c) or on some other
2 basis or, as the case may be, is necessary under the circumstances. A party shall
3 not be obligated to challenge the propriety of a designation of Confidential
4 Information at the time made, and failure to do so shall not preclude subsequent
5 challenge.

6 19. Nothing in this protective order shall preclude either party from
7 disclosing or using, in any manner or for any purpose, any information that either
8 was lawfully in its possession prior to being designated Confidential Information in
9 this action or was obtained from a third party having the apparent right to disclose
10 such information.

11 20. This protective order does not create any contractual obligations
12 between the parties.

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14 IT IS SO ORDERED:

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16 Dated: October 20, 2015

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19 KAREN L. STEVENSON
20 UNITED STATES MAGISTRATE JUDGE
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“EXHIBIT 1”

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FILM ALLMAN, LLC, a Georgia
limited liability company,

Plaintiff,

vs.

NEW YORK MARINE and
GENERAL INSURANCE
COMPANY, INC., a New York
corporation, and DOES 1-10,

Defendants.

CASE NO. 2:14-cv-07069-ODW-RZ

**CONFIDENTIALITY AGREEMENT
PURSUANT TO A PROTECTIVE
ORDER**

I am authorized by _____ [party name] to review Confidential
Information as that term is used in the Protective Order dated _____,
2015, and hereby request access to that Confidential Information for use in this
litigation.

I have been provided with a copy of the Protective Order dated
_____, 2015 in the above-captioned proceeding. I have read that Protective
Order and hereby agree to be bound by all of the limitations regarding disclosure
of Confidential Information in that Protective Order.

I understand that failure to comply with the terms of that Protective Order
may be punishable by contempt of Court and may result in civil liability to any
party or person damaged thereby.

I consent to the United States District Court for the Central District of
California exercising jurisdiction over me for the purpose of enforcing that

1 Protective Order or for any contempt proceedings against me arising out of my
2 failure to comply with the terms of that Protective Order.

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4 Dated: October ___, 2015.

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Signature of Person Requesting Access to
Confidential Information

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Typed Name of Person Requesting Access
to Confidential Information

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