

1 JASON R. BENDEL (State Bar No. 212774)

2 BENDEL LAW GROUP

3 11620 Wilshire Blvd., Suite 900

4 Los Angeles, CA 90025

5 Telephone: 310.362.6110

6 Facsimile: 310.317.7855

7 Email: jbendel@bendellaw.com

8 Attorneys for Plaintiffs

9 Pet Sit Pros Long Beach LLC, Jason Goldfischer, and Fernando Goldfischer

10 SHERMAN C. LEE (State Bar No. 145765)

11 CNA COVERAGE LITIGATION GROUP

12 555 – 12th Street

13 Suite 600

14 Oakland, CA 94607

15 Telephone: 510.645.2300

16 Facsimile: 510.645.2323

17 E-Mail: sherman.lee@cna.com

NOTE CHANGES MADE BY THE COURT

18 Attorneys for Defendant

19 Continental Casualty Company

20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA

22 PET SIT PROS LONG BEACH LLC; a  
23 limited liability company; JASON  
24 GOLDFISCHER, an individual;  
25 FERNANDO GOLDFISCHER, an  
26 individual;

27 Plaintiffs,

28 vs.

CONTINENTAL CASUALTY  
COMPANY; and DOES 1-30, inclusive,

Defendants.

Case No. 2:17-cv-07460-FMO-AGR

~~PROPOSED~~ PROTECTIVE  
ORDER

Judge: Hon. Fernando M. Olguin

NOTE CHANGES MADE BY THE COURT

1 1. PURPOSES AND LIMITATIONS

2 1.1 Purpose: Disclosure and discovery in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than prosecuting  
5 this litigation may be warranted. Accordingly, plaintiffs Pet Sit Pros Long Beach  
6 LLC, Jason Goldfischer and Fernando Goldfischer; and defendant Continental  
7 Casualty Company hereby stipulate to and petition the Court to enter the following  
8 Stipulated Protective Order (“Protective Order”).

9 1.2 Good Cause Statement: The parties to this action respectfully request  
10 the Court to enter this Protective Order to prevent public disclosure of their  
11 confidential proprietary business information. This action is likely to involve trade  
12 secrets, customer and pricing lists and other valuable research, development,  
13 commercial, financial, technical and/or proprietary information for which special  
14 protection from public disclosure and from use for any purpose other than prosecution  
15 of this action is warranted. Such confidential and proprietary materials and  
16 information consist of, among other things, confidential business or financial  
17 information, information regarding confidential business practices, or other  
18 confidential research, development, or commercial information (including information  
19 implicating privacy rights of third parties), information otherwise generally  
20 unavailable to the public, or which may be privileged or otherwise protected from  
21 disclosure.

22 To expedite the flow of information, to facilitate the prompt resolution of  
23 disputes over confidentiality of discovery materials, to adequately protect information  
24 the parties are entitled to keep confidential, to ensure that the parties are permitted  
25 reasonable necessary uses of such material in preparation for and in the conduct of  
26 trial, to address their handling at the end of the litigation, and to serve the ends of  
27 justice, a protective order for such information is justified in this matter. It is the  
28

1 intent of the parties that information will not be designated as confidential for tactical  
2 reasons and that nothing be so designated without a good faith belief that it has been  
3 maintained in a confidential, non-public manner, and there is good cause why it  
4 should not be part of the public record of this case.

5 2. DEFINITIONS

6 2.1 Challenging Party: A Party or Non-Party that challenges the designation  
7 of information or items under this Protective Order.

8 2.2 “Confidential” Information or Items: Information (regardless of how it is  
9 generated, stored or maintained) or tangible things the party designating or producing  
10 it reasonably believes contains or reflects information subject to protection, including  
11 without limitation: (1) information in the nature of a trade secret or other research,  
12 investigation, development, commercial or operational information of a confidential  
13 or proprietary nature; (2) financial, marketing, planning, strategic, investigative, or  
14 other internal information, data, analyses, or specifications of a proprietary,  
15 confidential or competitive nature; (3) information deemed confidential or non-public  
16 by any regulatory body; (4) information otherwise protected by law from disclosure;  
17 and/or (5) any other information with respect to which there is a compelling need for  
18 confidentiality. Documents designated as “CONFIDENTIAL-SUBJECT TO  
19 PROTECTIVE ORDER” shall be limited to documents that have not been made  
20 public, which the disclosing party in good faith believes will, if disclosed, have the  
21 effect of causing harm to its business or competitive position; or in the case of  
22 individuals, shall be limited to documents that reveal personal information, such as  
23 contact information, social security numbers, or Protected Health Information (as  
24 defined in 45 CFR § 160.103).

25 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
26 Counsel (as well as their support staff).

27  
28

1           2.4 Designating Party: A Party or Non-Party that designates information or  
2 items that it produces in disclosures or in responses to discovery as  
3 “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER.”

4           2.5 Disclosure or Discovery Material: All items or information, regardless of  
5 the medium or manner in which it is generated, stored, or maintained (including,  
6 among other things, testimony, transcripts, and tangible things), that are produced or  
7 generated in disclosures or responses to discovery in this matter.

8           2.6 Expert: A person with specialized knowledge or experience in a matter  
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
10 expert witness or as a consultant in this action.

11           2.7 House Counsel: Attorneys who are employees of a party to this action.  
12 House Counsel does not include Outside Counsel of Record or any other outside  
13 counsel.

14           2.8 Non-Party: Any natural person, partnership, corporation, association, or  
15 other legal entity not named as a Party to this action.

16           2.9 Outside Counsel of Record: Attorneys who are not employees of a party  
17 to this action but are retained to represent or advise a party to this action and have  
18 appeared in this action on behalf of that party or are affiliated with a law firm which  
19 has appeared on behalf of that party.

20           2.10 Party: Any party to this action, including all of its officers, directors,  
21 employees, consultants, retained experts, and Outside Counsel of Record (and their  
22 support staffs).

23           2.11 Producing Party: A Party or Non-Party that produces Disclosure or  
24 Discovery Material in this action.

25           2.12 Protected Material: Any Disclosure or Discovery Material that is  
26 designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER.”  
27  
28

1           2.14 Receiving Party: A Party that receives Disclosure or Discovery Material  
2 from a Producing Party.

3           3.     SCOPE

4           The protections conferred by this Protective Order cover not only Protected  
5 Material (as defined above), but also (1) any information copied or extracted from  
6 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
7 Material; and (3) any testimony, conversations, or presentations by Parties or their  
8 Counsel that might reveal Protected Material. However, the protections conferred by  
9 this Protective Order do not cover the following information: (a) any information that  
10 is in the public domain at the time of disclosure to a Receiving Party or becomes part  
11 of the public domain after its disclosure to a Receiving Party as a result of publication  
12 not involving a violation of this Protective Order, including becoming part of the  
13 public record through trial or otherwise; and (b) any information known to the  
14 Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
15 disclosure from a source who obtained the information lawfully and under no  
16 obligation of confidentiality to the Designating Party. Any use of Protected Material  
17 at trial shall be governed by a separate agreement or order.

18           4.     DURATION

19           Final disposition shall be deemed (1) dismissal of all claims and defenses in this  
20 action, with or without prejudice; or (2) if there is a trial, after completion of post-trial  
21 briefing, final determination of all appeals, and entry of final judgment.

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 designates information or items for protection under this  
25 Order must take care to limit any such designation to specific material that qualifies  
26 under the appropriate standards. The Designating Party must designate for protection  
27 only those parts of material, documents, items, or oral or written communications that  
28

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

4 If it comes to a Designating Party's attention that information or items that it  
5 designated for protection do not qualify for protection, that Designating Party must  
6 promptly notify all other Parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in  
8 this Protective Order, or as otherwise stipulated or ordered, Disclosure or Discovery  
9 Material that qualifies for protection under this Protective Order must be clearly so  
10 designated before the material is disclosed or produced.

11 Designation in conformity with this Protective Order requires:

12 (a) For information in documentary form (*e.g.*, paper or electronic  
13 documents, including discovery responses, but excluding transcripts of depositions or  
14 other pretrial or trial proceedings), that the Producing Party affix the legend  
15 "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" to each page that  
16 contains protected material. If only a portion or portions of the material on a page  
17 qualifies for protection, the Producing Party also must clearly identify the protected  
18 portion(s) (*e.g.*, by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents or materials available for  
20 inspection need not designate them for protection until after the inspecting Party has  
21 indicated which material it would like copied and produced. During the inspection  
22 and before the designation, all of the material made available for inspection shall be  
23 deemed "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER." After the  
24 inspecting Party has identified the documents it wants copied and produced, the  
25 Producing Party must determine which documents, or portions thereof qualify for  
26 protection under this Order. Then, before producing the specified documents, the  
27 Producing Party must affix the "CONFIDENTIALSUBJECT TO PROTECTIVE  
28

1 ORDER” legend to each page that contains Protected Material. If only a portion or  
2 portions of the material on a page qualifies for protection, the Producing Party also  
3 must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
4 the margins).

5 (b) For testimony given in deposition ~~or in other pretrial or trial~~  
6 ~~proceedings~~, that the Designating Party either: (i) identify the protected testimony on  
7 the record, before the close of the deposition, ~~hearing, or other proceeding~~; or (ii) send  
8 a letter to all counsel within the time permitted for the review and signing of the  
9 deposition by the witness (in the event of a deposition) ~~or within 45 days of receipt of~~  
10 ~~the transcript of the hearing (in the event of a hearing)~~ identifying the protected  
11 testimony.

AGR

12 (c) For information produced in some form other than documentary  
13 and for any other tangible items, that the Producing Party affix in a prominent place  
14 on the exterior of the container or containers in which the information or item is stored  
15 the legend “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER.” If only a  
16 portion or portions of the information or item warrant protection, the Producing Party,  
17 to the extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
19 failure to designate qualified information or items does not, standing alone, waive the  
20 Designating Party’s right to secure protection under this Protective Order for such  
21 material. Upon timely correction of a designation, the Receiving Party must make  
22 reasonable efforts to assure that the material is treated in accordance with the  
23 provisions of this Protective Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
26 designation of confidentiality but must do so within the discovery period set by the  
27 Court. Unless a prompt challenge to a Designating Party’s confidentiality designation  
28

1 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
2 burdens, or a significant disruption or delay of the litigation, a Party does not waive its  
3 right to challenge a confidentiality designation by electing not to mount a challenge  
4 promptly after the original designation is disclosed.

5       6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
6 resolution process by providing written notice of each designation it is challenging  
7 and describing the basis for each challenge. To avoid ambiguity as to whether a  
8 challenge has been made, the written notice must recite that the challenge to  
9 confidentiality is being made in accordance with this specific paragraph of this  
10 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
11 must begin the process by conferring directly (in voice to voice dialogue; other forms  
12 of communication are not sufficient). In conferring, the Challenging Party must  
13 explain the basis for its belief that the confidentiality designation was not proper and  
14 must give the Designating Party an opportunity to review the designated material, to  
15 reconsider the circumstances, and, if no change in designation is offered, to explain  
16 the basis for the chosen designation. A Challenging Party may proceed to the next  
17 stage of the challenge process only if it has engaged in this meet and confer process  
18 first or establishes that the Designating Party is unwilling to participate in the meet  
19 and confer process in a timely manner.

20       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
21 court intervention, the Parties shall file and serve a Joint Stipulation following the  
22 procedure set forth in Local Rule 37. The Stipulation must be accompanied by a  
23 competent declaration affirming that the Parties complied with the meet and confer  
24 requirements imposed in the preceding paragraph.

25       The burden of proof in any such challenge proceeding shall be on the  
26 Designating Party. Frivolous challenges, and those made for an improper purpose  
27  
28



1 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
2 expose the Challenging Party to sanctions.

3 If the Parties need to file the Joint Stipulation under Local Rule 37 under seal,  
4 the Parties may file a stipulation to that effect or the moving party may file an ex parte  
5 application making the appropriate request. The Parties must ~~set forth good cause in~~ <sup>make a sufficient showing</sup> in  
6 the stipulation or ex parte application as to why the Joint Stipulation or portions  
7 thereof should be filed under seal.

AGP

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may only use Protected Material  
10 that is disclosed or produced by another Party or by a Non-Party in connection with  
11 this case for prosecuting, defending, or attempting to settle this litigation. Protected  
12 Material may not be used for any other purpose whatsoever. Protected Material may  
13 be disclosed only to the categories of persons and under the conditions described in  
14 this Protective Order. When the litigation has been terminated, a Receiving Party  
15 must comply with the provisions of section 13 below (FINAL DISPOSITION).  
16 Protected Material must be stored and maintained by a Receiving Party at a location  
17 and in a secure manner that ensures that access is limited to the persons authorized  
18 under this Protective Order.

19 7.2 Disclosure of "CONFIDENTIAL-SUBJECT TO PROTECTIVE  
20 ORDER" Information or Items. Unless otherwise ordered by the Court or permitted in

21 writing by the Designating Party, a Receiving Party may disclose any information or  
22 item designated "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" only to:

23 (a) The Receiving Party's Counsel in this action, as well as employees  
24 of said Counsel to whom it is reasonably necessary to disclose the information for this  
25 litigation;

26 (b) The officers, directors, and employees (including House Counsel)  
27 of the Receiving Party to whom disclosure is reasonably necessary for this litigation;

28

1 (c) Experts (as defined in this Protective Order) of the Receiving Party  
2 to whom disclosure is reasonably necessary for this litigation and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) The Court and its personnel;

5 (e) Court reporters and their staff, professional jury or trial  
6 consultants, mock jurors, professional vendors, and persons or entities that provide  
7 litigation support services to whom disclosure is reasonably necessary for this  
8 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
9 (Exhibit A);

10 (f) During their depositions, witnesses in the action to whom  
11 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
12 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating  
13 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to  
14 depositions that reveal Protected Material must be separately bound by the court  
15 reporter and may not be disclosed to anyone except as permitted under this Protective  
16 Order.

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

19 7.3 Court Hearings. If any Party or Non-Party bound by this Protective  
20 Order intends to disclose, discuss or otherwise refer to any Protected Material in open  
21 court at any <sup>discovery</sup> ~~hearing or trial~~, that person must notify ~~the Court~~ the party that  
22 designated the Protected Material, and all other parties in the action of its intention to  
23 do so.

24 7.4 Filings with the Court. If confidential material is included in any papers  
25 to be filed in Court, such papers shall be accompanied by an application to file the  
26 papers (or the confidential portion thereof) under seal, and the application must  
27 demonstrate <sup>a sufficient showing</sup> ~~good cause~~ for the under seal filing.

1 8. PROTECTED MATERIAL SUBPOENAED OR  
2 ORDERED PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation  
4 that compels disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER,” that Party must:

6 (a) Promptly notify in writing the Designating Party. Such notification shall  
7 include a copy of the subpoena or court order;

8 (b) Promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or  
10 order is subject to this Protective Order. Such notification shall include a copy of this  
11 Protective Order; and

12 (c) Cooperate with respect to all reasonable procedures sought to be pursued  
13 by the Designating Party whose Protected Material may be affected. If the  
14 Designating Party timely seeks a protective order, the Party served with the subpoena  
15 or court order shall not produce any information designated in this action as  
16 “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” before a determination  
17 by the court from which the subpoena or order issued, unless the Party has obtained  
18 the Designating Party's permission. The Designating Party shall bear the burden and  
19 expense of seeking protection in that court of its confidential material, and nothing in  
20 these provisions should be construed as authorizing or encouraging a Receiving Party  
21 in this action to disobey a lawful directive from another court.

22 9. A NON-PARTY'S PROTECTED MATERIAL  
23 SOUGHT TO BE PRODUCED IN THIS LITIGATION

24 (a) The terms of this Protective Order are applicable to information produced  
25 by a Non-Party in this action and designated as “CONFIDENTIAL SUBJECT TO  
26 PROTECTIVE ORDER.” Such information produced by Non-Parties in connection  
27 with this litigation is protected by the remedies and relief provided by this Protective  
28

1 Order. Nothing in these provisions should be construed as prohibiting a Non-Party  
2 from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
4 produce a Non-Party's confidential information in its possession, and the Party is  
5 subject to an agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

7 (1) Promptly notify in writing the Requesting Party and the Non-Party  
8 that some or all of the information requested is subject to a confidentiality agreement  
9 with a Non-Party;

10 (2) Promptly provide the Non-Party with a copy of the Stipulated  
11 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
12 specific description of the information requested; and (3) make the information  
13 requested available for inspection by the Non-Party.

14 (c) If the Non-Party fails to object or seek a protective order from this court  
15 within 14 days of receiving the notice and accompanying information, the Receiving  
16 Party may produce the Non-Party's confidential information responsive to the  
17 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
18 Party shall not produce any information in its possession or control that is subject to  
19 the confidentiality agreement with the Non-Party before a determination by the court.  
20 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
21 of seeking protection in this court of its Protected Material.

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
24 Protected Material to any person or in any circumstance not authorized under this  
25 Protective Order, the Receiving Party must immediately (a) notify in writing the  
26 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
27 unauthorized copies of the Protected Material, (c) inform the person or persons to  
28

1 whom unauthorized disclosures were made of all the terms of this Protective Order,  
2 and (d) request such person or persons to execute the “Acknowledgment and  
3 Agreement to Be Bound” that is attached hereto as Exhibit A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED  
5 OR OTHERWISE PROTECTED MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain  
7 inadvertently produced material is subject to a claim of privilege or other protection,  
8 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
10 may be established in an e-discovery order that provides for production without prior  
11 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
12 Parties reach an agreement on the effect of disclosure of a communication or  
13 information covered by the attorney-client privilege or work product protection, the  
14 Parties may incorporate their agreement in the stipulated protective order submitted to  
15 the Court.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Protective Order limits or affects  
18 the right of any Party to seek its modification by the Court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
20 Protective Order, no Party waives any right it otherwise would have to object to  
21 disclosing or producing any information or item on any ground not addressed in this  
22 Protective Order. Similarly, no Party waives any right to object on any ground to use  
23 in evidence of any of the material covered by this Protective Order.

24 13. FINAL DISPOSITION

25 Within 30 days after the final disposition of this action, as defined in paragraph  
26 4 or the entry of a final judgment, each Receiving Party must return all Protected  
27 Material to the Producing Party or destroy such material. As used in this subsection,  
28 “all Protected Material” includes all copies, abstracts, compilations, summaries, and

1 any other format reproducing or capturing any of the Protected Material. Whether the  
2 Protected Material is returned or destroyed, the Receiving Party must submit a written  
3 certification to the Producing Party (and, if not the same person or entity, to the  
4 Designating Party) by the 30 day deadline that (1) identifies (by category, where  
5 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
6 that the Receiving Party has not retained any copies, abstracts, compilations,  
7 summaries or any other format reproducing or capturing any of the Protected Material.  
8 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
9 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
10 correspondence, deposition and trial exhibits, expert reports, attorney work product,  
11 and consultant and expert work product, even if such materials contain Protected  
12 Material. Any such archival copies that contain or constitute Protected Material  
13 remain subject to this Protective Order.

14 14. VIOLATION

15 Any violation of this Order may be punished by appropriate measures  
16 including, without limitation, contempt proceedings and/or monetary sanctions.

17  
18 **IT IS SO ORDERED.**

19  
20 Dated: February 14, 2018

  
\_\_\_\_\_  
21 THE HONORABLE FERNANDO M. OLGUIN

**EXHIBIT A**

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, of \_\_\_\_\_ [address], declare under penalty of perjury under the laws of the State of California that I have read in its entirety and understand this Protective Order issued by the United States District Court for the Central District of California in the case of Pet-Sit Pros Long Beach, LLC v. Continental Casualty Co., case no. 2:17-cv-07460-FMO-AGR.

I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

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

City and State where signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

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