

1 Order does not entitle them to file confidential information under seal; Civil
2 Local Rule 79-5 sets forth the procedures that must be followed and the standards
3 that will be applied when a party seeks permission from the court to file material
4 under seal.

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve trade secrets, customer and pricing lists
7 and other valuable research, development, commercial, financial, technical
8 and/or proprietary information for which special protection from public
9 disclosure and from use for any purpose other than prosecution of this action is
10 warranted. Documents have already been requested that include trade secret,
11 confidential and proprietary information from Defendant.

12 Specifically, the scope of the material requested by Plaintiff encompasses
13 defendant's Special Investigation Unit's file materials, which contain confidential
14 and proprietary information regarding Defendant's practices and procedures for the
15 investigation of suspected fraudulent claims. Public disclosure of such information
16 is contrary to public policy, as set forth in Ins. Code fraud investigation and
17 reporting statutes, such as sections 1871.4 and 1872 *et seq.*, and CA Fair Claims
18 Settlement Practices Regulation 2695.7, which provide for the confidentiality of
19 defendant's fraud investigation practices. Disclosure of such practices and
20 procedures to the general public would only serve to educate would-be criminals
21 on how to effectively "beat the system" by revealing the type of facts considered
22 by defendant in determining whether a claim merits SIU involvement or
23 investigation, as well as defendant's SIU investigation practices and procedures.

24 Additionally, the scope of discovery requested by Plaintiff includes
25 underwriting material that may encompass rating calculations, broker
26 compensation, organizational information, and other confidential business records
27 that reflect confidential and proprietary information from which Defendant may
28 derive an economic or competitive advantage from maintaining its privacy.

1 Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately
3 protect information the parties are entitled to keep confidential, to ensure that the
4 parties are permitted reasonable necessary uses of such material in preparation
5 for and in the conduct of trial, to address their handling at the end of the
6 litigation, and serve the ends of justice, a protective order for such information is
7 justified in this matter. It is the intent of the parties that information will not be
8 designated as confidential for tactical reasons and that nothing be so designated
9 without a good faith belief that it has been maintained in a confidential, non-
10 public manner, and there is good cause why it should not be part of the public
11 record of this case.

12 **2. DEFINITIONS**

13 2.1 Action: *Dry & Clean, Inc. dba Sears Air Duct Clean v. Property and*
14 *Casualty Insurance Company of Hartford*, U.S. District Court, Central District of
15 California, Case No. 2:18-cv-01449-VAP-AS.

16 2.2 Challenging Party: A Party or Non-Party that challenges the
17 designation of information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: Information (regardless
19 of how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c), and as specified above
21 in the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
23 their support staff).

24 2.5 Designating Party: A Party or Non-Party that designates information
25 or items that it produces in disclosures or in responses to discovery as
26 “CONFIDENTIAL.”

27 2.6 Disclosure or Discovery Material: All items or information,
28 regardless of the medium or manner in which it is generated, stored, or

1 maintained (including, among other things, testimony, transcripts, and tangible
2 things), that are produced or generated in disclosures or responses to discovery in
3 this matter.

4 2.7 Expert: A person with specialized knowledge or experience in a
5 matter pertinent to the litigation who has been retained by a Party or its counsel to
6 serve as an expert witness or as a consultant in this Action.

7 2.8 House Counsel: Attorneys who are employees of a party to this
8 Action. House Counsel does not include Outside Counsel of Record or any
9 other outside counsel.

10 2.9 Non-Party: Any natural person, partnership, corporation, association,
11 or other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: Attorneys who are not employees of
13 a party to this Action but are retained to represent or advise a party to this Action
14 and have appeared in this Action on behalf of that party or are affiliated with a
15 law firm which has appeared on behalf of that party, and includes support staff.

16 2.11 Party: Any party to this Action, including all of its officers,
17 directors, employees, consultants, retained experts, and Outside Counsel of
18 Record (and their support staffs).

19 2.12 Producing Party: A Party or Non-Party that produces Disclosure
20 or Discovery Material in this Action.

21 2.13 Professional Vendors: Persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits
23 or demonstrations, and organizing, storing, or retrieving data in any form or
24 medium) and their employees and subcontractors.

25 2.14 Protected Material: Any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL.”

27 2.15 Receiving Party: A Party that receives Disclosure or Discovery
28 Material from a Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of
8 the trial judge. This Order does not govern the use of Protected Material at trial.

9 **4. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations
11 imposed by this Order shall remain in effect until a Designating Party agrees
12 otherwise in writing or a court order otherwise directs. Final disposition shall be
13 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
14 with or without prejudice; and (2) final judgment herein after the completion
15 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
16 Action, including the time limits for filing any motions or applications for
17 extension of time pursuant to applicable law.

18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for
20 Protection. Each Party or Non-Party that designates information or items for
21 protection under this Order must take care to limit any such designation to
22 specific material that qualifies under the appropriate standards. The Designating
23 Party must designate for protection only those parts of material, documents,
24 items, or oral or written communications that qualify so that other portions of
25 the material, documents, items, or communications for which protection is not
26 warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited.
28 Designations that are shown to be clearly unjustified or that have been made

1 for an improper purpose (e.g., to unnecessarily encumber the case development
2 process or to impose unnecessary expenses and burdens on other parties) may
3 expose the Designating Party to sanctions.

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in
9 this Order (see, e.g., second paragraph of section 5.2(a) below), or as
10 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
11 for protection under this Order must be clearly so designated before the material
12 is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix at a minimum, the legend
17 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
18 contains protected material. If only a portion or portions of the material on a
19 page qualifies for protection, the Producing Party also must clearly identify the
20 protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

5 (b) for testimony given in depositions such designation shall be
6 made on the record whenever possible, but a Designating Party may designate
7 portions of depositions as containing “CONFIDENTIAL” information after
8 transcription of the proceedings; the Designating Party shall have until fifteen (15)
9 days after receipt of the deposition transcript to inform the Receiving Party or
10 parties to the action of the portions of the transcript designated
11 “CONFIDENTIAL”.

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

18 63 Inadvertent Failures to Designate. If timely corrected, an
19 inadvertent failure to designate qualified information or items does not, standing
20 alone, waive the Designating Party’s right to secure protection under this Order
21 for such material. Upon timely correction of a designation, the Receiving Party
22 must make reasonable efforts to assure that the material is treated in accordance
23 with the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.

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1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be
4 on the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the
7 Designating Party has waived or withdrawn the confidentiality designation, all
8 parties shall continue to afford the material in question the level of protection
9 to which it is entitled under the Producing Party’s designation until the Court
10 rules on the challenge.

11 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 Basic Principles. A Receiving Party may use Protected Material that
13 is disclosed or produced by another Party or by a Non-Party in connection with
14 this Action only for prosecuting, defending, or attempting to settle this Action.
15 Such Protected Material may be disclosed only to the categories of persons and
16 under the conditions described in this Order. When the Action has been
17 terminated, a Receiving Party must comply with the provisions of section 13
18 below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at
20 a location and in a secure manner that ensures that access is limited to the
21 persons authorized under this Order.

22 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party,
24 a Receiving Party may disclose any information or item designated
25 “CONFIDENTIAL” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this
27 Action, as well as employees of said Outside Counsel of Record to whom it
28 is reasonably necessary to disclose the information for this Action;

1 (b) the officers, directors, and employees (including House
2 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
3 this Action;

4 (c) Experts (as defined in this Order) of the Receiving Party to
5 whom disclosure is reasonably necessary for this Action and who have signed
6 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and
10 Professional Vendors to whom disclosure is reasonably necessary for this Action
11 and who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A);

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

16 (h) during their depositions, witnesses, and attorneys for witnesses
17 in the Action, to whom disclosure is reasonably necessary provided: (1) the
18 deposing party requests that the witness sign the form attached as Exhibit A
19 hereto; and (2) they will not be permitted to keep any confidential information
20 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
21 A), unless otherwise agreed by the Designating Party or ordered by the court.

22 Pages of transcribed deposition testimony or exhibits to depositions that reveal
23 Protected Material may be separately bound by the court reporter and may not be
24 disclosed to anyone except as permitted under this Stipulated Protective Order; and

25 (i) any mediator or settlement officer, and their supporting
26 personnel, mutually agreed upon by any of the parties engaged in settlement
27 discussions.

28

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

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

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

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

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served
15 with the subpoena or court order shall not produce any information designated
16 in this action as “CONFIDENTIAL” before a determination by the court from
17 which the subpoena or order issued, unless the Party has obtained the
18 Designating Party’s permission. The Designating Party shall bear the burden
19 and expense of seeking protection in that court of its confidential material and
20 nothing in these provisions should be construed as authorizing or encouraging a
21 Receiving Party in this Action to disobey a lawful directive from another court.

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

24 (a) The terms of this Order are applicable to information
25 produced by a Non-Party in this Action and designated as “CONFIDENTIAL.”
26 Such information produced by Non-Parties in connection with this litigation is
27 protected by the remedies and relief provided by this Order. Nothing in these
28

1 provisions should be construed as prohibiting a Non-Party from seeking additional
2 protections.

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

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

10 (2) promptly provide the Non-Party with a copy of the
11 Stipulated Protective Order in this Action, the relevant discovery request(s), and
12 a reasonably specific description of the information requested; and

13 (3) make the information requested available for
14 inspection by the Non-Party, if requested.

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

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately
28 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use

1 its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
2 inform the person or persons to whom unauthorized disclosures were made of all
3 the terms of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
5 A.

6 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
7 **OTHERWISE PROTECTED MATERIAL**

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

18 **12. MISCELLANEOUS**

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of
20 any person to seek its modification by the Court in the future.

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

27 12.3 Filing Protected Material. A Party that seeks to file under seal
28 any Protected Material must comply with Civil Local Rule 79-5. Protected

1 Material may only be filed under seal pursuant to a court order authorizing
2 the sealing of the specific Protected Material at issue. If a Party's request to
3 file Protected Material under seal is denied by the court, then the Receiving Party
4 may file the information in the public record unless otherwise instructed by the
5 court.

6 **13. FINAL DISPOSITION**

7 After the final disposition of this Action, as defined in paragraph 4, within
8 60 days of a written request by the Designating Party, each Receiving Party must
9 return all Protected Material to the Producing Party or destroy such material. As
10 used in this subdivision, "all Protected Material" includes all copies, abstracts,
11 compilations, summaries, and any other format reproducing or capturing any
12 of the Protected Material. Whether the Protected Material is returned or
13 destroyed, the Receiving Party must submit a written certification to the
14 Producing Party (and, if not the same person or entity, to the Designating Party)
15 by the 60 day deadline that (1) identifies (by category, where appropriate) all
16 the Protected Material that was returned or destroyed and (2) affirms that the
17 Receiving Party has not retained any copies, abstracts, compilations, summaries
18 or any other format reproducing or capturing any of the Protected Material.
19 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
20 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
21 memoranda, correspondence, deposition and trial exhibits, expert reports,
22 attorney work product, and consultant and expert work product, even if such
23 materials contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order as set forth
25 in Section 4 (DURATION).

26 Any violation of this Order may be punished by any and all
27 appropriate measures including, without limitation, contempt proceedings and/or
28 monetary sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 PLEASE TAKE NOTICE that the parties required to sign this document
3 have agreed that their electronic signatures can be affixed to this document.

4 DATED: June 1, 2018 LAW OFFICES OF LEON SMALL

5
6 By: /s/Leon Small
Leon Small
7 Attorney for Plaintiff
8 Dry & Clean Inc. dba Sears Air Duct
Clean

9 DATED: June 1, 2018 JOHNSTON | SMITH, ALC

10 By: /s/Ted A. Smith
11 Ted A. Smith
tsmith@jo-sm.com
12 Attorneys for Defendant
13 Property and Casualty Insurance
Company of Hartford

14 **FILER'S ATTESTATION**

15 Pursuant to Local Rule 5-4.3.4, the undersigned attests that all other
16 signatories listed and on whose behalf the filing is submitted concur in the filing's
17 content and have authorized the filing.

18 DATED: June 1, 2018 JOHNSTON | SMITH, ALC

19 By: /s/Ted A. Smith
20 Ted A. Smith
tsmith@jo-sm.com
21 Attorneys for Defendant
22 Property and Casualty Insurance
Company of Hartford

23
24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: June 4, 2018

26 / s /
27 _____
28 Honorable Alka Sagar
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District of
California on [date] in the case of *Dry & Clean, Inc. dba Sears Air Duct Clean v.*
Property and Casualty Insurance Company of Hartford, U.S. District Court,
Central District of California, Case No. 2:18-cv-01449-VAP (ASx). I agree to
comply with and to be bound by all the terms of this Stipulated 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 Stipulated
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 Stipulated Protective Order, even if such enforcement
proceedings occur after termination of this action. I hereby appoint _____
_____ [print or type full name] of _____ [print
or type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____