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NATIONWIDE MUTUAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WILLIE THOMAS,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE  
COMPANY, an Ohio corporation,

Defendant.

CASE NO. 2:21-cv-06296-  
MWF-MAR

Judge: Hon. Michael W.  
Fitzgerald  
Magistrate Judge: Hon. Margo A.  
Rocconi

**STIPULATED PROTECTIVE  
ORDER**

Complaint Filed: 8/4/2021

Gordon Rees Scully Mansukhani, LLP  
101 W. Broadway, Suite 2000  
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1 **1. INTRODUCTION**

2 **A. PURPOSES AND LIMITATIONS**

3 Discovery in this action is likely to involve production of confidential,  
4 proprietary, or private information for which special protection from public  
5 disclosure and from use for any purpose other than prosecuting this litigation may  
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
7 enter the following Stipulated Protective Order. The parties acknowledge that this  
8 Order does not confer blanket protections on all disclosures or responses to  
9 discovery and that the protection it affords from public disclosure and use extends  
10 only to the limited information or items that are entitled to confidential treatment  
11 under the applicable legal principles. The parties further acknowledge, as set forth  
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
14 procedures that must be followed and the standards that will be applied when a party  
15 seeks permission from the court to file material under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve confidential, proprietary, and competitive  
18 business information for which special protection from public disclosure and from  
19 use for any purpose other than prosecution of this action is warranted. Such  
20 confidential and proprietary materials and information consist of, among other things,  
21 confidential medical information, confidential business or financial information,  
22 information regarding confidential business practices, or other confidential research,  
23 development, or commercial information (including information implicating privacy  
24 rights of third parties), information otherwise generally unavailable to the public, or  
25 which may be privileged or otherwise protected from disclosure under state or federal  
26 statutes, court rules, case decisions, or common law. Accordingly, to expedite the  
27 flow of information, to facilitate the prompt resolution of disputes over  
28 confidentiality of discovery materials, to adequately protect information the parties

are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

## **2. DEFINITIONS**

2.1. Action: *Thomas v. Nationwide Mutual Insurance Company*, Case No. 2:21-cv-06296-MWF-MAR.

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

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

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

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

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

2.7. Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as

an expert witness or as a consultant in this Action.

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

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

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

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

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

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

2.14. Protected Material: Any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

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

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

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

4 **4. DURATION**

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

13 **5. DESIGNATING PROTECTED MATERIAL**

14 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

15 Each Party or Non-Party that designates information or items for protection under  
16 this Order must take care to limit any such designation to specific material that  
17 qualifies under the appropriate standards. The Designating Party must designate for  
18 protection only those parts of material, documents, items, or oral or written items, or  
19 communications for which protection is not warranted are not swept unjustifiably  
20 within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations  
22 that are shown to be clearly unjustified or that have been made for an improper  
23 purpose (e.g., to unnecessarily encumber the case development process or to impose  
24 unnecessary expenses and burdens on other parties) may expose the Designating  
25 Party to sanctions.

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

1           5.2   Manner and Timing of Designations. Except as otherwise provided in  
2 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise  
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
4 under this Order must be clearly so designated before the material is disclosed or  
5 produced.

6           Designation in conformity with this Order requires:

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

14           A Party or Non-Party that makes original documents available for inspection  
15 need not designate them for protection until after the inspecting Party has indicated  
16 which documents it would like copied and produced. During the inspection and  
17 before the designation, all of the material made available for inspection shall be  
18 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
19 documents it wants copied and produced, the Producing Party must determine which  
20 documents, or portions thereof, qualify for protection under this Order. Then, before  
21 producing the specified documents, the Producing Party must affix the  
22 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a  
23 portion or portions of the material on a page qualifies for protection, the Producing  
24 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
25 markings in the margins).

26           (b) for testimony given in depositions that the Designating Party identify  
27 the Disclosure or Discovery Material on the record, before the close of the deposition  
28 all protected testimony.

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

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

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

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



1     **7. ACCESS TO USE OF PROTECTED MATERIAL**

2             7.1     Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a Non-Party in connection with this  
4 Action only for prosecuting, defending, or attempting to settle this Action. Such  
5 Protected Material may be disclosed only to the categories of persons and under the  
6 conditions described in this Order. When the Action has been terminated, a  
7 Receiving Party must comply with the provisions of Section 13 below.

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

11            7.2     Disclosure of "CONFIDENTIAL" information or Items. Unless  
12 otherwise ordered by the court or permitted in writing by the Designated Party, a  
13 Receiving Party may disclose any information or item designated  
14 "CONFIDENTIAL" only to:

15            (a)     the Receiving Party's Outside Counsel of Record in this Action, as well  
16 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
17 to disclose the information for this Action;

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

20            (c)     Experts (as defined in this Order) of the Receiving Party to whom  
21 disclosure is reasonably necessary for this Action and who have signed the  
22 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23            (d)     the court and its personnel;

24            (e)     court reporters and their staff;

25            (f)     professional jury or trial consultants, mock jurors, and Professional  
26 Vendors to whom disclosure is reasonably necessary for this Action and who have  
27 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28            (g)     the author or recipient of a document containing the information or a



1 custodian or other person who otherwise possessed or knew the information;

2 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
3 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
4 requests that the witness sign the form attached as Exhibit A hereto; and (2) they  
5 will not be permitted to keep any confidential information unless they sign the  
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise  
7 agreed by the Designating Party or ordered by the court. Pages of transcribed  
8 deposition testimony or exhibits to depositions that reveal Protected Material may  
9 be separately bound by the court reporter and may not be disclosed to anyone except  
10 as permitted under this Stipulated Protective Order; and

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

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

15 If a Party is served with a subpoena or a court order issued in other litigation  
16 that compels disclosure of any information or items designated in this Action as  
17 "CONFIDENTIAL," that Party must:

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

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

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

26 If the Designating Party timely seeks a protective order, the Party served with  
27 the subpoena or court order shall not produce any information designated in this  
28 action as "CONFIDENTIAL" before a determination by the court from which the

subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

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

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

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

- (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- (3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall

not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

**10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” attached hereto as Exhibit A.

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

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

**12. MISCELLANEOUS**

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

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

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

### 13. FINAL DISPOSITION

After the final disposition of this Action, as defined in Section 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or

constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

**14. VIOLATION**

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

**IT IS HEREBY STIPULATED AND AGREED.**

Dated: November 15, 2021 GAVRILOV & BROOKS

By: s / Hannah Fernandez  
Ognian Gavrilo  
Hannah Fernandez  
Attorneys for Plaintiff  
WILLIE THOMAS

Dated: November 15, 2021 GORDON REES SCULLY MANSUKHANI,  
LLP

By: /s/ Michelle R. Bernard  
Michelle R. Bernard  
Jessica L. Meyer  
Attorneys for Defendant  
NATIONWIDE MUTUAL INSURANCE  
COMPANY

**FOR GOOD CAUSE SHOWN, IT IS SO ORDERED**

Dated: 11/19/21



Hon. Margo A. Rocconi  
UNITED STATES MAGISTRATE JUDGE

**SIGNATURE CERTIFICATION**

I hereby certify that the content of this document is acceptable to Hannah Fernandez, counsel for Plaintiff, and that I have obtained Ms. Fernandez's authorization to affix her electronic signature to this document.

/s/ Michelle R. Bernard  
Michelle R. Bernard

**Exhibit A**

**Acknowledgment and Agreement to Be Bound**

I, \_\_\_\_\_, do solemnly swear that I am fully familiar with the terms of the Protective Order Concerning Confidential Information entered in Thomas v. Nationwide Mutual Insurance Company, et al., United States District Court for the Central District of California, Civil Action No. 2:21-cv-06296-MWF-MAR, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of the Court. I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I hereby consent to the jurisdiction of the Court for purposes of enforcing this agreement.

Dated:

\_\_\_\_\_  
[Name of Signator Typed]

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