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8
 9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

BERGER KAHN
 A Law Corporation
 300 Tamal Plaza, Suite 215
 Corte Madera, CA 94925

12 HARRY ALLEN, an individual,
 13 Plaintiff,
 14 vs.
 15 HARTFORD CASUALTY
 16 INSURANCE COMPANY, a
 Connecticut corporation, and DOES
 17 1 through 100,
 18 Defendants.

CASE NO. 5:17-cv-02395-JGB-SPx
~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER
 DATE ACTION FILED: 10/10/2017
 TRIAL DATE: None

19 _____
 20 HARTFORD CASUALTY
 INSURANCE COMPANY,
 21 Counterclaim Plaintiff,
 22 vs.
 23 HARRY ALLEN, ROES 1 – 30,
 24 inclusive
 25 Counterclaim Defendants.

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1 **1. A. PURPOSES AND LIMITATIONS**

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

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, commercial, financial, and/or
18 proprietary information for which special protection from public disclosure
19 and from use for any purpose other than prosecution of this action is warranted.
20 Discovery has already been propounded which seeks trade secret, confidential and
21 proprietary information from Defendant.

22 Specifically, the scope of the discovery requested by plaintiff encompasses
23 defendant's claim guidelines pertaining to defendant's internal guidelines for
24 handling claims, underwriting file materials regarding defendant's evaluation and
25 rating of potential risks, and documents regarding training of Defendant's
26 personnel. These documents contain confidential and proprietary information
27 regarding defendant's practices and procedures for the investigation and handling
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1 of claims, and rating and risk evaluation information which could be misused by a
2 business competitor.

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

15 **2. DEFINITIONS**

16 2.1 Action: *Harry Allen v. Hartford Casualty Insurance Company*, US
17 District Court, Central District of California, Case No. 5:17-cv-02395-JGB-SPx.

18 2.2 Challenging Party: a Party or Non-Party that challenges the
19 designation of information or items under this Order.

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

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
25 their support staff).

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

1 2.6 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner in which it is generated, stored, or
3 maintained (including, among other things, testimony, transcripts, and tangible
4 things), that are produced or generated in disclosures or responses to discovery in
5 this matter.

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

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

12 2.9 Non-Party: any natural person, partnership, corporation, association,
13 or other legal entity not named as a Party to this action.

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

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

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

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

27 2.14 Protected Material: any Disclosure or Discovery Material that is
28 designated as “CONFIDENTIAL.”

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 **3. SCOPE**

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

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

11 **4. DURATION**

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

20 **5. DESIGNATING PROTECTED MATERIAL**

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

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

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

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

15 Designation in conformity with this Order requires:

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

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

1 must determine which documents, or portions thereof, qualify for protection under
2 this Order. Then, before producing the specified documents, the Producing Party
3 must affix the “CONFIDENTIAL legend” to each page that contains Protected
4 Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s)
6 (e.g., by making appropriate markings in the margins).

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

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

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

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1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq.

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

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

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

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party,
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1 a Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

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

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

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

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

18 (g) the author or recipient of a document containing the
19 information or a custodian or other person who otherwise possessed or knew the
20 information;

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

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

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

6 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
7 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **12. MISCELLANEOUS**

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of
27 any person to seek its modification by the Court in the future.
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1 12.2 Right to Assert Other Objections. By stipulating to the entry of
2 this Protective Order no Party waives any right it otherwise would have to
3 object to disclosing or producing any information or item on any ground not
4 addressed in this Stipulated Protective Order. Similarly, no Party waives any
5 right to object on any ground to use in evidence of any of the material covered by
6 this Protective Order.

7 12.3 Filing Protected Material. A Party that seeks to file under seal
8 any Protected Material must comply with Civil Local Rule 79-5. Protected
9 Material may only be filed under seal pursuant to a court order authorizing
10 the sealing of the specific Protected Material at issue. If a Party's request to
11 file Protected Material under seal is denied by the court, then the Receiving Party
12 may file the information in the public record unless otherwise instructed by the
13 court.

14 **13. FINAL DISPOSITION**

15 After the final disposition of this Action, as defined in paragraph 4, within
16 60 days of a written request by the Designating Party, each Receiving Party must
17 return all Protected Material to the Producing Party or destroy such material. As
18 used in this subdivision, "all Protected Material" includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any
20 of the Protected Material. Whether the Protected Material is returned or
21 destroyed, the Receiving Party must submit a written certification to the
22 Producing Party (and, if not the same person or entity, to the Designating Party)
23 by the 60 day deadline that (1) identifies (by category, where appropriate) all
24 the Protected Material that was returned or destroyed and (2) affirms that the
25 Receiving Party has not retained any copies, abstracts, compilations, summaries
26 or any other format reproducing or capturing any of the Protected Material.
27 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
28 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal

1 memoranda, correspondence, deposition and trial exhibits, expert reports,
2 attorney work product, and consultant and expert work product, even if such
3 materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth
5 in Section 4 (DURATION).

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

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10 IT IS SO ORDERED.

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12 DATED: March 26, 2018

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15 Honorable Sheri Pym
16 United States District Magistrate Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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 *Harry Allen v. Hartford Casualty Insurance*
Company, US District Court, Central District of California, Case No. 5:17-cv-
02395-JGB-SPx. 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: _____