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7 ATAIN SPECIALTY INSURANCE  
COMPANY f/k/a USF INSURANCE  
8 COMPANY

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11 SACRAMENTO DIVISION

12  
13 ATAIN SPECIALTY INSURANCE  
COMPANY f/k/a USF INSURANCE  
14 COMPANY, a Michigan corporation,

15 Plaintiff,

16 v.

17 SIERRA PACIFIC MANAGEMENT  
COMPANY, a California corporation;  
18 CALIFORNIA CAPITAL INSURANCE  
COMPANY, a California corporation

19 Defendants.  
20

21 CALIFORNIA CAPITAL INSURANCE  
COMPANY, a California corporation

22 Counterclaimant,  
23

24 v.

25 ATAIN SPECIALTY INSURANCE  
COMPANY f/k/a USF INSURANCE  
COMPANY, a Michigan corporation

26 Counterdefendant.  
27  
28

No. 2:14-cv-00609-TLN-DAD

**STIPULATION AND ORDER  
REGARDING RESOLUTION OF  
DISCOVERY DISPUTE BETWEEN  
PLAINTIFF ATAIN SPECIALTY  
INSURANCE COMPANY AND  
DEFENDANT CALIFORNIA CAPITAL  
INSURANCE COMPANY**

1 CALIFORNIA CAPITAL INSURANCE  
2 COMPANY, a California corporation

3 Third Party Plaintiff,

4 v.

5 JERRY LEE and BETTY LEE,

6 Third Party Defendants.  
7

8 Plaintiff and Counter-Defendant ATAIN SPECIALTY INSURANCE COMPANY f/k/a  
9 USF INSURANCE COMPANY (“Atain”) and Defendant/Counterclaimant CALIFORNIA  
10 CAPITAL INSURANCE COMPANY (“California Capital”), and Third Party Defendants  
11 JERRY LEE and BETTY LEE (the “Lees”), through their respective counsel of record, hereby  
12 enter the following stipulation regarding the resolution of a discovery dispute, and agree as  
13 follows:

14 **WHEREAS**, Atain and California Capital have had a discovery dispute concerning  
15 certain partially-redacted or withheld documents identified on Atain’s privilege logs provided in  
16 connection with Atain’s responses to California Capital’s requests for production of documents  
17 in this action;

18 **WHEREAS**, Atain withheld or partially-redacted the documents at issue on the grounds  
19 that they were attorney-client privileged communications with Atain or protected attorney work  
20 product regarding the filing and prosecution of this Declaratory Judgment action, and did not  
21 constitute the coverage advice provided to Atain with respect to the underlying *Dailey* Action;

22 **WHEREAS**, on July 1, 2015, California Capital filed a motion to compel the production  
23 of these documents (Docket No. 31), which is set to be heard by this Court on July 31, 2015;

24 **WHEREAS**, Atain and California Capital continue to dispute whether Atain has any  
25 obligation to produce the documents at issue or submit them for *in camera* review, as sought in  
26 California Capital’s motion to compel;

27 **WHEREAS**, Atain believes that all documents that are the subject of California Capital’s  
28

1 motion to compel and identified on Atain's privilege logs were properly withheld or redacted on  
2 the grounds of attorney-client privilege and the attorney work product doctrine;

3 **WHEREAS**, after meeting and conferring regarding their dispute, in an effort to avoid  
4 expending further time and resources on this dispute, and to preserve the resources of the Court,  
5 Atain and California Capital have agreed to resolve the instant discovery dispute according to the  
6 following terms, in lieu of proceeding with California Capital's motion to compel.

7 **STIPULATION**

8 Atain, California Capital, and the Lees hereby agree to and stipulate to each of the  
9 following:

10 1. Although Atain continues to maintain that the following documents constitute  
11 protected attorney-client privileged communications, in order to permanently resolve the issues  
12 raised in California Capital's motion to compel Atain will produce unredacted versions of  
13 communications between Atain and its coverage counsel, GailAnn Y. Stargardter, that occurred  
14 *on or before* March 5, 2014, the date on which Atain filed its Complaint for Declaratory  
15 Judgment in this action. The documents that Atain will produce in unredacted form reflecting  
16 communications between Atain and its coverage counsel were previously identified on Atain's  
17 privilege logs, and are specifically identified on **Exhibit A** attached hereto.

18 2. Atain is not required to produce, and will not produce documents reflecting either  
19 Ms. Stargardter's or Andrew J. King's work product or litigation strategy during the time they  
20 drafted the Complaint for Declaratory Judgment.

21 3. Atain is not required to produce, and will not produce, any documents reflecting  
22 communications between Atain and its counsel that occurred *after* March 5, 2014, the date on  
23 which Atain filed its Complaint for Declaratory Judgment in this action. Atain may withhold the  
24 production of any and all such communications because they are protected under the attorney-  
25 client privilege and the work product doctrine.

26 4. Atain is not required to produce, and will not produce documents reflecting either  
27 Ms. Stargardter's or Mr. King's work product or litigation strategy during the time they drafted  
28 the Complaint for Declaratory Judgment or after the Declaratory Judgment Action was filed.

1 Atain may withhold the production of any and all such documents because they are protected by  
2 the work product doctrine.

3 5. The production of the pre-Declaratory Judgment action communications identified  
4 in paragraph 1., above, does not waive, and shall not be deemed to waive, the protections afforded  
5 by the attorney-client privilege and the work product doctrine as to any and all communications  
6 between Atain and its counsel that occurred at any time after March 5, 2014.

7 6. Atain is not required to produce, and will not produce any internal  
8 communications between and among its trial and coverage counsel or other employees at Archer  
9 Norris that occurred on or before March 5, 2014, which were previously identified on Atain's  
10 privilege logs, based upon Atain's affirmative representation that none of these communications  
11 concern the coverage advice provided by Archer Norris to Atain. Instead, these communications  
12 concern the drafting, preparation, and filing of the Complaint for Declaratory Judgment, and  
13 remain protected under the work product doctrine.

14 7. Atain is not required to produce, and will not produce, any internal  
15 communications between and among its trial and coverage counsel or other employees at Archer  
16 Norris that occurred after March 5, 2014. Any such materials will not be produced as they are  
17 protected under the work product doctrine.

18 8. Atain is not required to prepare a privilege log identifying communications  
19 between Atain and its trial counsel that occurred after March 5, 2014, the date on which Atain  
20 filed its Complaint for Declaratory Judgment in this action.

21 9. California Capital hereby withdraws its pending motion to compel (Docket No.  
22 31), presently set to be heard by this Court on July 31, 2015, and requests that said motion be  
23 taken off calendar;

24 10. Upon production of the documents identified in paragraph 1., above, all fact  
25 discovery in this action is closed, consistent with the terms of the Pretrial Scheduling Order  
26 (Docket No. 27), with the exception that California Capital reserves the right to conduct a further  
27 deposition of GailAnn Y. Stargardter limited to the pre-March 5, 2014 communications that are to  
28 be produced pursuant to this Stipulation.

1           **IT IS SO STIPULATED**, by and between Atain, California Capital, and the Lees, by  
2 and through their respective counsel.

3  
4 Dated: July 22, 2015

ARCHER NORRIS

/s/ Andrew J. King

GailAnn Y. Stargardter

Andrew J. King

*Attorneys for* Plaintiff and Counterdefendant

ATAIN SPECIALTY INSURANCE COMPANY

f/k/a USF INSURANCE COMPANY

8  
9 Dated: July 22, 2015

GRANT, GENOVESE & BARATTA, LLP

/s/ Lance D. Orloff (as authorized on 7/22/15)

James M. Baratta

Lance D. Orloff

*Attorneys for* Defendant/Counterclaimant

CALIFORNIA CAPITAL INSURANCE

COMPANY

13  
14 Dated: July 22, 2015

SPINELLI, DONALD & NOTT

/s/ Sean M. Patrick (as authorized on 7/22/15)

Ross R. Nott

Sean M. Patrick

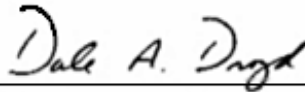
Counsel for Third Party Defendants Jerry Lee and

Betty Lee

18           **ORDER**

19           Pursuant to the parties' stipulation, **IT IS SO ORDERED.**

20 Dated: July 23, 2015

21 

22 DALE A. DROZD

UNITED STATES MAGISTRATE JUDGE

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