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7

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

11 JACK VALLE,
12 Plaintiff,
13 v.

14 VALLEY FORGE INSURANCE
COMPANY, doing business as CNA
15 INSURANCE, and DOES 1 through 20,
inclusive,
16 Defendants.
17

Case No. 2:17-CV-01048-MCE-CKD
**STIPULATED PROTECTIVE
ORDER**

[Assigned to the Hon. Morrison C.
England, Jr., Courtroom 7]

18 **IT IS HEREBY STIPULATED** by and between the parties to the action
19 entitled *Jack Valle v. Valley Forge Insurance Company, et al.*, United States District
20 Court, Eastern District of California, Case No. 2:17-CV-01048-MCE-CKD, by and
21 through their respective counsel of record, as follows:

22 1. **PURPOSES AND LIMITATIONS**

23 Disclosure and discovery activity in this action are likely to involve production
24 of confidential, proprietary, or private information for which special protection from
25 public disclosure and from use for any purpose other than prosecuting and defending
26 this litigation may be warranted. Accordingly, the parties hereby stipulate to and
27 petition the court to enter the following Stipulated Protective Order. The parties
28 acknowledge that this Order does not confer blanket protections on all disclosures or

1 responses to discovery and that the protection it affords from public disclosure and
2 use extends only to the limited information or items that are entitled to confidential
3 treatment under the applicable legal principles. The parties further acknowledge, as
4 set forth in Section 12.3 below, that this Stipulated Protective Order does not entitle
5 them to file confidential information under seal; Eastern District of California, Local
6 Civil Rule (“Local Rule”) 141 sets forth the procedures that must be followed and the
7 standards that will be applied when a party seeks permission from the court to file
8 material under seal. *See also*, Local Rules 140 and 141.1.

9 **2. DEFINITIONS**

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation
11 of information or items under this Order.

12 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for protection
14 under Federal Rule of Civil Procedure Rule 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House
16 Counsel (as well as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this action.

27 2.7 House Counsel: attorneys who are employees of a party to this action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 2.8 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.9 Outside Counsel of Record: attorneys who are not employees of a party
5 to this action but are retained to represent or advise a party to this action and have
6 appeared in this action on behalf of that party or are affiliated with a law firm which
7 has appeared on behalf of that party.

8 2.10 Party: any party to this action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this action.

13 2.12 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is
18 designated as “CONFIDENTIAL.”

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 3. SCOPE

22 The protections conferred by this Stipulated Protective Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or
24 extracted from Protected Material; (2) all copies, excerpts, summaries, or
25 compilations of Protected Material; and (3) any testimony, conversations, or
26 presentations by Parties or their Counsel that might reveal Protected Material.
27 However, the protections conferred by this Stipulated Protective Order do not cover
28 the following information: (a) any information that is in the public domain at the time

1 of disclosure to a Receiving Party or becomes part of the public domain after its
2 disclosure to a Receiving Party as a result of publication not involving a violation of
3 this Order, including becoming part of the public record through trial or otherwise;
4 and (b) any information known to the Receiving Party prior to the disclosure or
5 obtained by the Receiving Party after the disclosure from a source who obtained the
6 information lawfully and under no obligation of confidentiality to the Designating
7 Party. Any use of Protected Material at trial shall be governed by a separate
8 agreement or order.

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, with
14 or without prejudice; and (2) final judgment herein after the completion and
15 exhaustion of all appeals, re-hearings, remands, trials, or reviews of this action,
16 including the time limits for filing any motions or applications for extension of time
17 pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

1 purpose (e.g., to unnecessarily encumber or retard the case development process or to
2 impose unnecessary expenses and burdens on other parties) expose the Designating
3 Party to sanctions. If it comes to a Designating Party's attention that information or
4 items that it designated for protection do not qualify for protection, that Designating
5 Party must promptly notify all other Parties that it is withdrawing the mistaken
6 designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
10 under this Order must be clearly so designated before or at the time that the material
11 is disclosed or produced. However, as provided in Section 5.3 below, as to any
12 qualified documents produced prior to execution of this Stipulated Protective Order,
13 the Designating Party may designate such qualified documents within thirty (30) days
14 of execution of this Order, to secure the full protection of this Order.

15 Designation in conformity with this Order requires:

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

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

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

6 (b) for testimony given in deposition or in other pretrial or trial proceedings,
7 that the Designating Party identify on the record, before the close of the deposition,
8 hearing, or other proceeding, all protected testimony.

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

15 5.3 Failure to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the
17 Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order. As to any qualified documents produced prior to execution of this Stipulated
21 Protective Order, the Designating Party may designate such qualified documents
22 within thirty (30) days of execution of this Order, to secure the full protection of this
23 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. Unless a prompt challenge to a
27 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
28 substantial unfairness, unnecessary economic burdens, or a significant disruption or

1 delay of the litigation, a Party does not waive its right to challenge a confidentiality
2 designation by electing not to mount a challenge promptly after the original
3 designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
5 resolution process by providing written notice of each designation it is challenging
6 and describing the basis for each challenge. To avoid ambiguity as to whether a
7 challenge has been made, the written notice must recite that the challenge to
8 confidentiality is being made in accordance with this specific paragraph of the
9 Stipulated Protective Order. The parties shall attempt to resolve each challenge in
10 good faith within 14 days of the date of service of notice. In conferring, the
11 Challenging Party must explain the basis for its belief that the confidentiality
12 designation was not proper and must give the Designating Party an opportunity to
13 review the designated material, to reconsider the circumstances, and, if no change in
14 designation is offered, to explain the basis for the chosen designation. A Challenging
15 Party may proceed to the next stage of the challenge process only if it has engaged in
16 this meet and confer process first or establishes that the Designating Party is unwilling
17 to participate in the meet and confer process in a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
19 court intervention, the Designating Party shall file and serve a motion to retain
20 confidentiality under Local Rules 130 -135, as applicable (and in compliance with
21 Local Rules 140 and 141, if applicable) within 21 days of the initial notice of
22 challenge or within 14 days of the parties agreeing that the meet and confer process
23 will not resolve their dispute, whichever is earlier. Each such motion must be
24 accompanied by a competent declaration affirming that the movant has complied with
25 the meet and confer requirements imposed in the preceding paragraph. Failure by the
26 Designating Party to make such a motion including the required declaration within 21
27 days (or 14 days, if applicable) shall automatically waive the confidentiality
28 designation for each challenged designation. In addition, the Challenging Party may

1 file a motion challenging a confidentiality designation at any time if there is good
2 cause for doing so, including a challenge to the designation of a deposition transcript
3 or any portions thereof. Any motion brought pursuant to this provision must be
4 accompanied by a competent declaration affirming that the movant has complied with
5 the meet and confer requirements imposed by the preceding paragraph.

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

28 (a) the Receiving Party's Outside Counsel of Record in this action, as well as

1 employees of said Outside Counsel of Record to whom it is reasonably necessary to
2 disclose the information for this litigation and who have signed the “Acknowledgment
3 and Agreement to Be Bound” that is attached hereto as Exhibit A;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and
6 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, mock
12 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
13 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
14 (Exhibit A);

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

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

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation
26 that compels disclosure of any information or items designated in this action as
27 “CONFIDENTIAL,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order;

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

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

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

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

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

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

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

1 a Non-Party;

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

5 (3) make the information requested available for inspection by the Non-
6 Party.

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

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 This Stipulated Protective Order is not intended to modify the rules and
27 procedures set forth in Federal Rule of Civil Procedure 26(b)(5)(B) and/or Federal
28 Rule of Evidence 502(d) and (e), and/or any agreement of the Parties or Counsel with

1 respect to the inadvertent production or disclosure of communications, information or
2 documents protected by the attorney-client privilege or work product doctrine.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order, no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the
12 Designating Party or a court order secured after appropriate notice to all interested
13 persons, a Party may not file in the public record in this action any Protected Material.
14 A Party that seeks to file under seal any Protected Material must comply with Local
15 Rules 140 and 141. Protected Material may only be filed under seal pursuant to a
16 court order authorizing the sealing of the specific Protected Material at issue.

17 13. FINAL DISPOSITION

18 Within 60 days after the final disposition of this action, as defined in paragraph
19 4, each Receiving Party must return all Protected Material to the Producing Party or
20 destroy such material. As used in this subdivision, “all Protected Material” includes
21 all copies, abstracts, compilations, summaries, and any other format reproducing or
22 capturing any of the Protected Material. Whether the Protected Material is returned
23 or destroyed, the Receiving Party must submit a written certification to the Producing
24 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
25 deadline that (1) identifies (by category, where appropriate) all the Protected Material
26 that was returned or destroyed and (2) affirms that the Receiving Party has not
27 retained any copies, abstracts, compilations, summaries or any other format
28 reproducing or capturing any of the Protected Material. Notwithstanding this

1 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
2 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and
4 expert work product, even if such materials contain Protected Material. Any such
5 archival copies that contain or constitute Protected Material remain subject to this
6 Protective Order as set forth in Section 4 (DURATION).
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8 **IT IS SO STIPULATED, BY AND THROUGH COUNSEL OF RECORD.**
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10 DATED: June 29, 2017 LAW OFFICE OF MICHAEL R. LOEWEN

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By: /s/ Michael R. Loewen
MICHAEL R. LOEWEN
Attorneys for Plaintiff JACK VALLE

16 DATED: June 29, 2017 BERKES CRANE ROBINSON &
17 SEAL LLP

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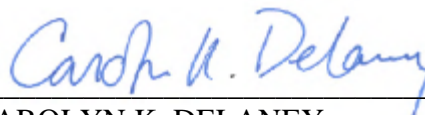
By: /s/ Steven M. Crane
STEVEN M. CRANE
STEVEN M. HASKELL
Attorneys for Defendant VALLEY FORGE
INSURANCE COMPANY

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ORDER

PURSUANT TO THE ABOVE STIPULATION, IT IS SO ORDERED.

Dated: September 12, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2
3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4
5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under penalty of
7 perjury that I have read in its entirety and understand the Stipulated Protective Order
8 that was issued by the United States District Court for the Eastern District of
9 California on _____, 2017 in the case of *Jack Valle v. Valley Forge*
10 *Insurance Company, et al.*, United States District Court, Eastern District of
11 California, Case No. 2:17-CV-01048- MCE-CKD. I agree to comply with and to
12 be bound by all the terms of this Stipulated Protective Order and I understand and
13 acknowledge that failure to so comply could expose me to sanctions and punishment
14 in the nature of contempt. I solemnly promise that I will not disclose in any manner
15 any information or item that is subject to this Stipulated Protective Order to any
16 person or entity except in strict compliance with the provisions of this Order.

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

5 I hereby appoint _____ [print or type full name] of
6 _____ [print or type full address and
7 telephone number] as my California agent for service of process in connection with
8 this action or any proceedings related to enforcement of this Stipulated Protective
9 Order.

10
11 Date: _____

12 City and State where sworn and signed: _____

13 Printed Name: _____

14 Signature: _____

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