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8  
 9 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

11 **SARAH PEREZ;**  
 12 **MICHELLE LACKNEY;**  
**RACHEL STEWART;**  
 13 **RACHEL HARDYCK**

CASE NO. CO6-1962 JW (PVT)

14 on behalf of themselves  
and all others similarly situated;

15 Plaintiffs,

16 v.

17 **STATE FARM MUTUAL AUTOMOBILE**  
 an Illinois corporation;

**ADMINISTRATIVE REQUEST**  
**FOR ENTRY OF STIPULATED**  
**PROTECTIVE ORDER,**  
**PURSUANT TO L.R. 7-11**

18 **ALLSTATE INDEMNITY CO.,** an Illinois  
 corporation;

19 **GEICO GENERAL INSURANCE,** a Maryland  
 20 corporation;

21 **CERTIFIED AUTOMOTIVE PARTS ASS'N**  
 doing business in Washington, D.C.;

22 **LIBERTY MUTUAL FIRE INS. CO.,** a  
 23 Massachusetts corporation; and

24 **UN-NAMED INSURANCE CONSPIRATORS**

25 Defendants.

1 On behalf of all the parties, Plaintiffs, SARAH PEREZ; MICHELLE LACKNEY;  
2 RACHEL STEWART; and RACHEL HARDYCK, respectfully ask the Court to enter the  
3 attached Stipulated [Proposed] Protective Order (the "proposed Order").

4 The parties have met and conferred and have agreed to the form of the attached proposed  
5 Order, and as shown by the parties' signatures, each party has so stipulated to its entry through  
6 their/its attorneys of record.

7 Should the proposed Order meet with the Court's approval, the parties request the Court  
8 to enter it forthwith.

9 Dated: January 5, 2011

MORGAN DUFFY-SMITH & TIDALGO LLP

11 By: \_\_\_\_\_ /s/ \_\_\_\_\_

12 Colleen Duffy-Smith, Esq.

14 **ORDER**

15 The Administrative Request for Entry of Stipulated [Proposed] Protective Order is  
16 granted, and the Court shall enter the Stipulated Protective Order forthwith.

20 \_\_\_\_\_  
21 Patricia V. Trumbull  
22 United States District Magistrate Judge

1 **On Behalf of All Plaintiffs**

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ALLSTATE INDEMNITY COMPANY  
11

12  
13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION  
16

17 SARAH PEREZ; MICHELLE LACKNEY;  
RACHEL STEWART; RACHEL  
18 HARDYCK, on behalf of themselves and  
all others similarly situated

19 Plaintiffs,

20 v.

21 STATE FARM MUT. AUTO. INS. CO., an  
22 Illinois corporation; ALLSTATE INS. CO.,  
an Illinois corporation; GEICO, a Maryland  
23 corporation; CERTIFIED AUTO. PARTS  
ASS'N, doing business in Washington,  
24 D.C.; LIBERTY MUT. INS. CO., a  
Massachusetts corporation; and UN  
25 NAMED INSURANCE CONSPIRATORS,

26 Defendants.  
27  
28

Case No. C06-01962 (JW) (PVT)

**STIPULATED PROTECTIVE ORDER**

1           WHEREAS, the parties are engaged in discovery under the Federal Rules of Civil  
2 Procedure and the Local Rules of this Court, which will involve, among other things, the  
3 production or disclosure of information deemed confidential, including proprietary commercial  
4 information. This proposed Stipulated Protective Order (“Order”) applies to Material produced  
5 in discovery in the above-captioned action (the “Action”) and to all Confidential and Highly  
6 Confidential information produced by a party in the Action, whether revealed in a document,  
7 deposition, an interrogatory answer or otherwise. All Material exchanged in this case may be  
8 used for purposes of this litigation only and may not be provided to any third parties, except  
9 under the terms and conditions set forth in this Order.

10           WHEREFORE, the following is hereby stipulated by the parties and ORDERED BY  
11 THE COURT:

12           1.    **DEFINITIONS:**

13                   1.1    “Material” refers to any document, data compilation, testimony,  
14 recordings, electronically stored data, or other information in any form produced or disclosed  
15 in this action, whether voluntarily or through any means of discovery, and whether by a party  
16 or non-party to this action.

17                   1.2    Material may be deemed “Confidential” if it contains or reveals trade  
18 secrets or other non-public, financial, personal, proprietary, or competitively sensitive  
19 information.

20                   1.3    Material may be deemed “Highly Confidential” if good cause exists to  
21 permit disclosure of the confidential Material only to the attorneys for the parties (including in-  
22 house counsel), their experts, and the Court, and not to any other person or entity, including the  
23 parties themselves.

24                   1.4    “Disclosing Party” refers to a party or non-party to this action who  
25 produces Material.

26                   1.5    “Designating Party” refers to a party or non-party to this action who  
27 designates Material as Confidential or Highly Confidential.

28                   1.6    “Requesting Party” refers to a party who has made a discovery request.

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1.7 “Receiving Party” refers to a party who receives Material.

2. **SCOPE OF PROTECTIVE ORDER**

2.1 To be subject to the particular confidentiality protections of this Order, Material must (1) be Confidential or Highly Confidential within the meaning of Sections 1.2 and 1.3 of this Order; and (2) be designated Confidential or Highly Confidential pursuant to Section 3 of this Order. Confidentiality designations shall be made in good faith.

2.2 The protections of this Order shall not apply to Material that, prior to disclosure in this action, was within the actual possession or knowledge of a Receiving Party or was actually public knowledge, provided that the Material did not become public knowledge through an act or omission of a Receiving Party.

3. **DESIGNATION OF MATERIAL AS CONFIDENTIAL OR HIGHLY CONFIDENTIAL**

3.1 **Methods of Designation**

3.1.1 A Disclosing or Designating Party may designate Material as Confidential by placing or affixing on the Material in a manner that will not interfere with its legibility the word “CONFIDENTIAL.” A Disclosing or Designating Party may designate Material as Highly Confidential by placing or affixing on the Material in a manner that will not interfere with its legibility the words “HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY.”

3.1.2 If an interrogatory or other discovery request calls for Confidential or Highly Confidential Material, the confidential or highly confidential portion of the response shall be provided in a separate document appended to the main body of the responses and incorporated by reference therein. In the main body of the response to the interrogatory or written discovery request, the response shall state:

“Requests information that is restricted from disclosure; see response contained in addendum, which response is incorporated herein by reference.”

3.1.3 Transcripts of any depositions in this action shall be treated as Highly Confidential until the expiration of 20 days after the court reporter delivers the



1 transcript of the deposition to all counsel who request a copy (or within 20 days after the entry  
2 of this Order for any deposition transcripts delivered before the effective date of this Order.) If  
3 counsel for any party believes that the deposition transcript or a portion thereof is Confidential  
4 or Highly Confidential pursuant to Sections 1.2 or 1.3, counsel shall, within the 20-day period,  
5 designate in writing the specific pages and lines deemed Confidential or Highly Confidential,  
6 and shall notify all parties and the court reporter. Portions of testimony taken during  
7 depositions may also be designated Confidential or Highly Confidential by counsel so stating  
8 on the record during the deposition, and in such event no further action need be taken to  
9 preserve the confidentiality of that portion (or portions) of the transcript. In the event an  
10 attorney designates testimony as Confidential or Highly Confidential during the course of a  
11 deposition, the parties, attorneys, witnesses, court reporters, and anyone else present at the  
12 deposition shall take appropriate measures to protect the confidentiality of the testimony to be  
13 given, including, e.g., removing parties or persons not authorized to hear the testimony.

14 3.1.4 When Confidential or Highly Confidential Material is supplied or  
15 stored on an electronic, digital, or magnetic medium, the confidentiality designation shall be  
16 made, to the extent physically possible, on the medium itself (such as on a label attached to a  
17 disk), on the sleeve, envelope, box, or other container of the medium, and within the medium  
18 itself in a manner that immediately and consistently informs those person who access the  
19 medium that they have accessed Material that is Confidential or Highly Confidential.

20 3.1.5 The parties may designate Material as Confidential or Highly  
21 Confidential after providing access thereto to the Receiving Party without waiving the right to  
22 make such designations, so long as such designations are made within 10 days or such other  
23 time period as may be agreed upon by the Disclosing and Receiving Parties at the time of  
24 production (the "Interim Period"), in the manner prescribed herein, after such Material is  
25 reviewed by the Receiving Party. During the Interim Period, the Receiving Party shall treat all  
26 Material as Highly Confidential.

27 3.2 Challenges to Confidentiality Designations  
28

1                   3.2.1 A Receiving Party may challenge the confidentiality designation of  
2 the Designating Party by making an appropriate motion. Once a Receiving Party challenges  
3 the confidentiality designation of a Designating Party, the Designating Party shall bear the  
4 burden of proving that the Material at issue is Confidential or Highly Confidential, pursuant to  
5 Sections 1.2 or 1.3, depending on the designation. The parties shall meet and confer in a good  
6 faith attempt to resolve any issues before engaging in motion practice pursuant to this section.

7                   3.2.2 Pending ruling on a motion under Section 3.2.1, the Material in  
8 question shall be treated as Confidential or Highly Confidential, according to the designation,  
9 and subject to the protections of this Order.

10                  3.2.3 No party shall be obligated to challenge the propriety of a  
11 Confidential or Highly Confidential designation, and a failure to do so shall not preclude a  
12 subsequent challenge to the propriety of such a designation.

13                  3.2.4 Prior to bringing any motion challenging the propriety of a  
14 Confidential or Highly Confidential designation pursuant to Section 3.2.1, the Receiving Party  
15 shall notify the Disclosing Party in writing of its objections to any Confidential or Highly  
16 Confidential designation, specifying the Material to which the designations pertain and the  
17 basis for the Receiving Party's objection. The parties shall confer either in person or  
18 telephonically within 14 days after such notification, and attempt to resolve any differences in  
19 good faith. No motion under Section 3.2.1 shall be filed until after the parties have conferred  
20 and have been unable to resolve their differences in accordance with this section.  
21

22                  4.    **DISCLOSURE, USE, AND HANDLING OF MATERIAL DESIGNATED**  
23 **AS CONFIDENTIAL OR HIGHLY CONFIDENTIAL**

24                  4.1    Use and Handling of Confidential and Highly Confidential Material

25                  4.1.1 Material designated as Confidential or Highly Confidential by a  
26 Designating Party shall not be used or disclosed by any Receiving Party or its counsel for any  
27 purpose other than the prosecution or defense of this action, including appeals. This Order's  
28 restrictions on the disclosure of Confidential or Highly Confidential Material applies to all

1 disclosures or publication of Material whatsoever, including, without limitation, court filings or  
2 other disclosures in the public record, as well as any portion of any brief, pleading, exhibit,  
3 transcript, or other document that contains or reveals such Confidential or Highly Confidential  
4 Material, whether in these proceedings or any other proceedings.

5 4.1.2 To the extent that any party wishes to file Materials with the Court,  
6 including pleadings, exhibits, hearing or trial transcripts, answers to interrogatories, transcripts  
7 of deposition, and responses to requests for admissions, that contain or reveal Confidential or  
8 Highly Confidential Material, such Materials shall be filed with the Court under seal in  
9 accordance with the procedures set forth in Local Rule 79-5 and General Order No. 62 and  
10 subject to further orders of the Court. Courtesy copies of such Materials shall be delivered to  
11 the Court's chambers in a sealed envelope marked with the case name and cause number and  
12 prominently labeled: CONFIDENTIAL (or HIGHLY CONFIDENTIAL) MATERIALS  
13 PURSUANT TO PROTECTIVE ORDER. The first or cover page of any such Materials  
14 submitted to the Court's chambers also shall bear the same prominent confidentiality  
15 designation.

16 4.1.3 All pages of all copies, duplicates, extracts, summaries, or  
17 descriptions (collectively, "copies") of Materials designated as Confidential or Highly  
18 Confidential, or any portion thereof, shall immediately be affixed with the appropriate  
19 confidentiality designation under Section 3.1.1, if those words do not already appear on the  
20 copies.

21 4.1.4 Nothing in this Order shall prohibit parties or their counsel from  
22 transmitting Confidential or Highly Confidential materials through the mail, by other common  
23 carrier, or by non-public telephonic transmission, including directed internet (i.e., non-  
24 broadcast email), so long as the transmission is for purposes of this litigation. However, under  
25 no circumstances may material designated as Confidential or Highly Confidential be posted on  
26 a publicly available internet web site.

27 4.1.5 Material designated as Confidential or Highly Confidential shall  
28 not lose its protected status through disclosure, either intentionally or inadvertently, by a

1 Disclosing Party or Receiving Party. In the event of such a disclosure, the parties shall take all  
2 steps reasonably required to assure the continued confidentiality of the Material.

3 4.1.6 Within 90 days of final adjudication, including but not limited to  
4 final adjudication of any appeals or petitions or extraordinary writs, all Material designated as  
5 Confidential or Highly Confidential under this Order and not received in evidence or contained  
6 in pleadings filed with the Court shall be returned to the Disclosing Party at the Disclosing  
7 Party's expense. If the Disclosing Party agrees in writing, the Material may be destroyed by  
8 the Receiving Party.

9 4.2 Permitted Disclosures

10 Other than as provided in Sections 2.2 and 4.1.4, disclosure of Material designated as  
11 Confidential or Highly Confidential may be made only in the following circumstances:

12 4.2.1 Unless otherwise prohibited by this Order, Confidential Material  
13 may be disclosed only to named parties to this litigation, to their counsel of record, and to the  
14 employees of counsel who have direct working responsibilities in connection with this  
15 litigation, present or former officers, directors, partners and employees of a party to this  
16 litigation, including in-house counsel for the parties, who are required to provide assistance in  
17 the conduct of this litigation; and non-party consultants, investigators, experts or opinion  
18 witnesses (collectively "experts") employed by counsel for the parties to assist in the  
19 preparation and trial of the lawsuit, provided that such experts are first advised of, and agree to  
20 be bound by, the provisions of this Order, and sign a Confidentiality Declaration in the form  
21 attached hereto as Exhibit A. If any individual is shown to have violated the terms of this  
22 Order at any time, he or she is subject to being held in contempt by this Court.

23 4.2.2 Highly Confidential material may be disclosed to: counsel of  
24 record in this litigation; the employees of counsel who have direct working responsibilities in  
25 connection with this litigation, and non-party consultants, investigators, experts or opinion  
26 witnesses (collectively "experts") employed by counsel for the parties to assist in the  
27 preparation and trial of this lawsuit, provided that any such expert is first advised of, and  
28 agrees to be bound by, the provisions of this Order and signs a Confidentiality Declaration in

1 the form attached hereto as Exhibit A. This Order does not prohibit disclosure of Highly  
2 Confidential material to in-house counsel for any party who has direct working responsibilities  
3 in connection with this litigation, and for the sole purpose of work on this litigation, so long as  
4 such material is not further disclosed by such in-house counsel except in compliance with this  
5 Order. If any individual is shown to have violated the terms of this Order at any time, he or  
6 she is subject to being held in contempt by this Court.

7 4.2.3 Nothing in this Order shall prohibit the use of Material designated  
8 as Confidential or Highly Confidential during depositions of corporate designees from the  
9 Designating Party. However, any document designated as Highly Confidential by the  
10 Designating Party may only be utilized by the attorneys of record and in-house counsel for any  
11 party in compliance with 4.2.2 above and may not in anyway be disseminated or transferred to  
12 their respective clients.

13 4.2.4 Confidential or Highly Confidential Material may be disclosed to:  
14 (a) the Court, and to court personnel in accordance with 4.1.2 above; (b) to court reporters  
15 engaged for depositions in this litigation and (c) to those persons, if any, specifically engaged  
16 for the limited purpose of making copies of Materials, provided that persons described in  
17 subparagraphs (b) and (c) above must first be advised of, and agree to be bound by, the  
18 provisions of this Order and sign a Confidentiality Declaration in the form attached hereto as  
19 Exhibit A.

20 4.2.5 If any third party (i.e., someone who is not a party to this litigation)  
21 demands by subpoena the production of Confidential or Highly Confidential Material from a  
22 Receiving Party, the Receiving Party served with the third-party subpoena must notify all other  
23 parties to this litigation within five days of receipt of the subpoena (or as much in advance of  
24 the subpoena return date as possible if the subpoena purports to demand production on less  
25 than five days notice). Each Disclosing Party that produced the Material shall have the right to  
26 either object or move to quash the subpoena. If the Disclosing Party objects or moves to quash  
27 within the applicable response time, the Receiving Party shall not produce the Material until  
28 the objection or motion to quash is resolved by the Court.

1                   4.2.6 Nothing in this Order shall limit or otherwise govern the use a  
2 party may make of its own Confidential or Highly Confidential Material, including without  
3 limitation, party's right to disclose its own Confidential or Highly Confidential Material to its  
4 own officers, directors and employees.

5                   5.     **OTHER PROVISIONS**

6                   5.1     No Material may be withheld from discovery on the ground that the  
7 Material to be disclosed requires protection greater than that afforded by this Order, unless the  
8 party claiming a need for greater protection moves the Court for an order providing such  
9 special protection before the date production is due.

10                  5.2     Any third party producing Materials in this action may be included in this  
11 Order by endorsing a copy of this Order and delivering it to the Requesting Party, who, in turn,  
12 shall file it with the Court and serve it upon counsel for the other parties.

13                  5.3     This Order shall not prevent any party from applying to the Court for  
14 further or additional protective orders, or from agreeing with the other parties to modify this  
15 Order, subject to the approval of the Court, including, but not limited to such other or further  
16 protection as may be required at trial or in connection with any public hearings in this matter.

17                  5.4     This Order shall not preclude any party from enforcing its rights against  
18 any other party, or any non-party, believed to be violating its rights under this Order.

19                  5.5     In addition to such other remedies as may be available at law or in equity,  
20 violation of the terms of this Order may constitute a contempt of this Court, which may result  
21 in the imposition of sanctions, including, inter alia, an award of damages, costs, attorneys' fees,  
22 fines and/or jail time.

23                  5.6     Until such time as this Order has been entered by the Court, the parties  
24 agree that, upon and after execution by the parties, it will be treated as though it has been  
25 entered by the Court.

26                  5.7     The provisions of this Order, including the limitations on the use and  
27 disclosure of Confidential or Highly Confidential Material, shall continue in force and effect  
28 after the conclusion of this litigation.



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EXHIBIT A

I hereby acknowledge that I have received and read a copy of the Stipulated Protective Order in the action entitled *Perez v. State Farm Mutual Auto. Ins. Co. et al.*, United States District Court for the Northern District of California, Case No. C06-01962 (JW) (PVT).

I agree to be bound by the provisions of the Stipulated Protective Order with respect to any Confidential or Highly Confidential Material disclosed to me, and I specifically agree that I will not reveal, communicate, or use any Confidential or Highly Confidential Material except in accordance with the terms of the Stipulated Protective Order. I further agree to return any Confidential or Highly Confidential Material and all copies thereof provided to me to the party or counsel who provided such Confidential or Highly Confidential Material to me.

I hereby submit to the jurisdiction and venue of the United States District Court for the Northern District of California for all purposes relating to the enforcement of the provisions of the Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011, at \_\_\_\_\_.

(city, state)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name