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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PHILADELPHIA INDEMNITY  
INSURANCE COMPANY, a  
Pennsylvania corporation,  
  
Plaintiff,  
  
vs.  
  
GOTHAM MANAGEMENT, LLC, a  
New York corporation; and DOES 1  
through 10,  
  
Defendants.

CASE NO.: 16-CV-00673 NLS JMA  
  
**ORDER GRANTING JOINT  
MOTION FOR PROTECTIVE  
ORDER-CONFIDENTIAL  
DESIGNATION ONLY**  
  
[Dkt. No. 33]

AND RELATED COUNTER-ACTION

The Court, having read the Stipulation and Proposed Protective Order regarding Confidential Designation Only entered into by counsel for PHILADELPHIA INDEMNITY INSURANCE COMPANY and GOTHAM MANAGEMENT, LLC, cause appearing therefore,

IT IS HEREBY ORDERED:

The following stipulated protective order is approved and is hereby adopted as the Order of this Court:

1           **IT IS HEREBY STIPULATED** by and between the undersigned parties  
2 (collectively, the “Parties” or individually as a “Party”), by and through their  
3 respective counsel of record, that in order to facilitate the exchange of information  
4 and documents which may be subject to confidentiality limitations on disclosure due  
5 to federal laws, state laws, and privacy rights, the Parties stipulate as follows:

6           1.       In this Stipulation and Protective Order, the words set forth below shall  
7 have the following meanings:

8                   a.       “Proceeding” means the above-entitled proceeding, Case No. 16-  
9 CV-00673 NLS JMA.

10                   b.       “Court” means the Hon. Nita L. Stormes, or any other judge to  
11 which this Proceeding may be assigned, including Court staff participating in such  
12 proceedings.

13                   c.       “Confidential” means any information which is in the possession  
14 of a Designating Party who believes in good faith that such information is entitled to  
15 confidential treatment under applicable law.

16                   d.       “Confidential Materials” means any Documents, Testimony or  
17 Information as defined below designated as “Confidential” pursuant to the provisions  
18 of this Stipulation and Protective Order.

19                   e.       “Designating Party” means the Party that designates Materials as  
20 “Confidential.”

21                   f.       “Disclose” or “Disclosed” or “Disclosure” means to reveal,  
22 divulge, give, or make available Materials, or any part thereof, or any information  
23 contained therein.

24                   g.       “Documents” means (i) any “Writing,” “Original,” and  
25 “Duplicate” as those terms are defined by Federal Rules of Evidence, Rule 1001 (a)  
26 and Federal Rule of Civil Procedure 34, which have been produced in discovery in  
27 this Proceeding by any person, and (ii) any copies, reproductions, or summaries of all  
28 or any part of the foregoing.

1 h. “Information” means the content of Documents or Testimony.

2 i. “Testimony” means all depositions, declarations or other  
3 testimony taken or used in this Proceeding.

4 2. The Designating Party shall have the right to designate as  
5 “Confidential” any Documents, Testimony or Information that the Designating Party  
6 in good faith believes to contain non-public information that is entitled to  
7 confidential treatment under applicable law.

8 3. The entry of this Stipulation and Protective Order does not alter, waive,  
9 modify, or abridge any right, privilege or protection otherwise available to any Party  
10 with respect to the discovery of matters, including but not limited to any Party’s right  
11 to assert the attorney-client privilege, the attorney work product doctrine, or other  
12 privileges, or any Party’s right to contest any such assertion.

13 4. Any Documents, Testimony or Information to be designated as  
14 “Confidential” must be clearly so designated before the Document, Testimony or  
15 Information is Disclosed or produced. The parties may agree that the case name and  
16 number are to be part of the “Confidential” designation. The “Confidential”  
17 designation should not obscure or interfere with the legibility of the designated  
18 Information.

19 a. For Documents (apart from transcripts of depositions or other  
20 pretrial or trial proceedings), the Designating Party must affix the legend  
21 “Confidential” on each page of any Document containing such designated  
22 Confidential Material.

23 b. For Testimony given in depositions the Designating Party may  
24 either:

25 i. identify on the record, before the close of the deposition, all  
26 “Confidential” Testimony, by specifying all portions of the Testimony that qualify as  
27 “Confidential;” or  
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1                   ii.     designate the entirety of the Testimony at the deposition as  
2 “Confidential” (before the deposition is concluded) with the right to identify more  
3 specific portions of the Testimony as to which protection is sought within 30 days  
4 following receipt of the deposition transcript. In circumstances where portions of the  
5 deposition Testimony are designated for protection, the transcript pages containing  
6 “Confidential” Information may be separately bound by the court reporter, who must  
7 affix to the top of each page the legend “Confidential,” as instructed by the  
8 Designating Party.

9                   c.     For Information produced in some form other than Documents,  
10 and for any other tangible items, including, without limitation, compact discs or  
11 DVDs, the Designating Party must affix in a prominent place on the exterior of the  
12 container or containers in which the Information or item is stored the legend  
13 “Confidential.” If only portions of the Information or item warrant protection, the  
14 Designating Party, to the extent practicable, shall identify the “Confidential”  
15 portions.

16           5.     The inadvertent production by any of the undersigned Parties or non-  
17 Parties to the Proceedings of any Document, Testimony or Information during  
18 discovery in this Proceeding without a “Confidential” designation, shall be without  
19 prejudice to any claim that such item is “Confidential” and such Party shall not be  
20 held to have waived any rights by such inadvertent production. In the event that any  
21 Document, Testimony or Information that is subject to a “Confidential” designation  
22 is inadvertently produced without such designation, the Party that inadvertently  
23 produced the document shall give written notice of such inadvertent production  
24 within twenty (20) days of discovery of the inadvertent production, together with a  
25 further copy of the subject Document, Testimony or Information designated as  
26 “Confidential” (the “Inadvertent Production Notice”). Upon receipt of such  
27 Inadvertent Production Notice, the Party that received the inadvertently produced  
28 Document, Testimony or Information shall promptly destroy the inadvertently

1 produced Document, Testimony or Information and all copies thereof, or, at the  
2 expense of the producing Party, return such together with all copies of such  
3 Document, Testimony or Information to counsel for the producing Party and shall  
4 retain only the “Confidential” designated Materials. Should the receiving Party  
5 choose to destroy such inadvertently produced Document, Testimony or Information,  
6 the receiving Party shall notify the producing Party in writing of such destruction  
7 within ten (10) days of receipt of written notice of the inadvertent production. This  
8 provision is not intended to apply to any inadvertent production of any Information  
9 protected by attorney-client or work product privileges. In the event that this  
10 provision conflicts with any applicable law regarding waiver of confidentiality  
11 through the inadvertent production of Documents, Testimony or Information, such  
12 law shall govern.

13         6.       In the event that counsel for a Party receiving Documents, Testimony or  
14 Information in discovery designated as “Confidential” objects to such designation  
15 with respect to any or all of such items, said counsel shall advise counsel for the  
16 Designating Party, in writing, of such objections, the specific Documents, Testimony  
17 or Information to which each objection pertains, and the specific reasons and support  
18 for such objections (the “Designation Objections”). Counsel for the Designating  
19 Party shall have thirty (30) days from receipt of the written Designation Objections  
20 to either (a) agree in writing to de-designate Documents, Testimony or Information  
21 pursuant to any or all of the Designation Objections and/or (b) file a motion with the  
22 Court seeking to uphold any or all designations on Documents, Testimony or  
23 Information addressed by the Designation Objections (the “Designation Motion”).  
24 Pending a resolution of the Designation Motion by the Court, any and all existing  
25 designations on the Documents, Testimony or Information at issue in such Motion  
26 shall remain in place. The Designating Party shall have the burden on any  
27 Designation Motion of establishing the applicability of its “Confidential”  
28 designation. In the event that the Designation Objections are neither timely agreed to

1 nor timely addressed in the Designation Motion, then such Documents, Testimony or  
2 Information shall be de-designated in accordance with the Designation Objection  
3 applicable to such material.

4 7. Access to and/or Disclosure of Confidential Materials designated as  
5 “Confidential” shall be permitted only to the following persons:

6 a. the Court;

7 b. (1) Attorneys of record in the Proceedings and their affiliated  
8 attorneys, paralegals, clerical and secretarial staff employed by such attorneys who  
9 are actively involved in the Proceedings and are not employees of any Party. (2) In-  
10 house counsel to the undersigned Parties and the paralegal, clerical and secretarial  
11 staff employed by such counsel. Provided, however, that each non-lawyer given  
12 access to Confidential Materials shall be advised that such Materials are being  
13 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective  
14 Order and that they may not be Disclosed other than pursuant to its terms;

15 c. those officers, directors, partners, members, employees and  
16 agents of all non-designating Parties that counsel for such Parties deems necessary to  
17 aid counsel in the prosecution and defense of this Proceeding; provided, however,  
18 that prior to the Disclosure of Confidential Materials to any such officer, director,  
19 partner, member, employee or agent, counsel for the Party making the Disclosure  
20 shall deliver a copy of this Stipulation and Protective Order to such person, shall  
21 explain that such person is bound to follow the terms of such Order, and shall secure  
22 the signature of such person on a statement in the form attached hereto as Exhibit A;

23 d. court reporters in this Proceeding (whether at depositions,  
24 hearings, or any other proceeding);

25 e. any deposition, trial or hearing witness in the Proceeding who  
26 previously has had access to the Confidential Materials, or who is currently or was  
27 previously an officer, director, partner, member, employee or agent of an entity that  
28 has had access to the Confidential Materials;

1           f.       any deposition or non-trial hearing witness in the Proceeding who  
2 previously did not have access to the Confidential Materials; provided, however, that  
3 each such witness given access to Confidential Materials shall be advised that such  
4 Materials are being Disclosed pursuant to, and are subject to, the terms of this  
5 Stipulation and Protective Order and that they may not be Disclosed other than  
6 pursuant to its terms;

7           g.       mock jury participants, provided, however, that prior to the  
8 Disclosure of Confidential Materials to any such mock jury participant, counsel for  
9 the Party making the Disclosure shall deliver a copy of this Stipulation and  
10 Protective Order to such person, shall explain that such person is bound to follow the  
11 terms of such Order, and shall secure the signature of such person on a statement in  
12 the form attached hereto as Exhibit A.

13           h.       outside experts or expert consultants consulted by the  
14 undersigned Parties or their counsel in connection with the Proceeding, whether or  
15 not retained to testify at any oral hearing; provided, however, that prior to the  
16 Disclosure of Confidential Materials to any such expert or expert consultant, counsel  
17 for the Party making the Disclosure shall deliver a copy of this Stipulation and  
18 Protective Order to such person, shall explain its terms to such person, and shall  
19 secure the signature of such person on a statement in the form attached hereto as  
20 Exhibit A. It shall be the obligation of counsel, upon learning of any breach or  
21 threatened breach of this Stipulation and Protective Order by any such expert or  
22 expert consultant, to promptly notify counsel for the Designating Party of such  
23 breach or threatened breach; and

24           i.       any other person that the Designating Party agrees to in writing.

25       8.       Confidential Materials shall be used by the persons receiving them only  
26 for the purposes of preparing for, conducting, participating in the conduct of, and/or  
27 prosecuting and/or defending the Proceeding, and not for any business or other  
28 purpose whatsoever.

1           9. Any Party to the Proceeding (or other person subject to the terms of this  
2 Stipulation and Protective Order) may ask the Court, after appropriate notice to the  
3 other Parties to the Proceeding, to modify or grant relief from any provision of this  
4 Stipulation and Protective Order.

5           10. Entering into, agreeing to, and/or complying with the terms of this  
6 Stipulation and Protective Order shall not:

7           a. operate as an admission by any person that any particular  
8 Document, Testimony or Information marked “Confidential” contains or reflects  
9 trade secrets, proprietary, confidential or competitively sensitive business,  
10 commercial, financial or personal information; or

11           b. prejudice in any way the right of any Party (or any other person  
12 subject to the terms of this Stipulation and Protective Order):

13           i. to seek a determination by the Court of whether any  
14 particular Confidential Material should be subject to protection as “Confidential”  
15 under the terms of this Stipulation and Protective Order; or

16           ii. to seek relief from the Court on appropriate notice to all  
17 other Parties to the Proceeding from any provision(s) of this Stipulation and  
18 Protective Order, either generally or as to any particular Document, Material or  
19 Information.

20           11. Any Party to the Proceeding who has not executed this Stipulation and  
21 Protective Order as of the time it is presented to the Court for signature may  
22 thereafter become a Party to this Stipulation and Protective Order by its counsel’s  
23 signing and dating a copy thereof and filing the same with the Court, and serving  
24 copies of such signed and dated copy upon the other Parties to this Stipulation and  
25 Protective Order.

26           12. Any Information that may be produced by a non-Party witness in  
27 discovery in the Proceeding pursuant to subpoena or otherwise may be designated by  
28 such non-Party as “Confidential” under the terms of this Stipulation and Protective



1 Order, and any such designation by a non-Party shall have the same force and effect,  
2 and create the same duties and obligations, as if made by one of the undersigned  
3 Parties hereto. Any such designation shall also function as a consent by such  
4 producing Party to the authority of the Court in the Proceeding to resolve and  
5 conclusively determine any motion or other application made by any person or Party  
6 with respect to such designation, or any other matter otherwise arising under this  
7 Stipulation and Protective Order.

8 13. If any person subject to this Stipulation and Protective Order who has  
9 custody of any a subpoena or other process (“Subpoena”) from any government or  
10 other person or entity demanding production of Confidential Materials, the recipient  
11 of the Subpoena shall promptly give notice of the same by electronic mail  
12 transmission, followed by either express mail or overnight delivery to counsel of  
13 record for the Designating Party, and shall furnish such counsel with a copy of the  
14 Subpoena. Upon receipt of this notice, the Designating Party may, in its sole  
15 discretion and at its own cost, move to quash or limit the Subpoena, otherwise  
16 oppose production of the Confidential Materials, and/or seek to obtain confidential  
17 treatment of such Confidential Materials from the subpoenaing person or entity to the  
18 fullest extent available under law. The recipient of the Subpoena may not produce  
19 any Documents, Testimony or Information pursuant to the Subpoena prior to the date  
20 specified for production on the Subpoena.

21 14. Nothing in this Stipulation and Protective Order shall be construed to  
22 preclude either Party from asserting in good faith that certain Confidential Materials  
23 require additional protection. The Parties shall meet and confer to agree upon the  
24 terms of such additional protection.

25 15. If, after execution of this Stipulation and Protective Order, any  
26 Confidential Materials submitted by a Designating Party under the terms of this  
27 Stipulation and Protective Order is Disclosed by a non-Designating Party to any  
28 person other than in the manner authorized by this Stipulation and Protective Order,

1 the non-Designating Party responsible for the Disclosure shall bring all pertinent  
2 facts relating to the Disclosure of such Confidential Materials to the immediate  
3 attention of the Designating Party.

4 16. This Stipulation and Protective Order is entered into without prejudice  
5 to the right of any Party to knowingly waive the applicability of this Stipulation and  
6 Protective Order to any Confidential Materials designated by that Party. If the  
7 Designating Party uses Confidential Materials in a non-Confidential manner, then the  
8 Designating Party shall advise that the designation no longer applies.

9 17. Where any Confidential Materials, or Information derived from  
10 Confidential Materials, is included in any motion or other proceeding governed by  
11 Civil Local Rule 79.2, the party shall follow those rules. With respect to discovery  
12 motions or other proceedings not governed by Civil Local Rule 79.2, the following  
13 shall apply: If Confidential Materials or Information derived from Confidential  
14 Materials are submitted to or otherwise disclosed to the Court in connection with  
15 discovery motions and proceedings, the same shall be separately filed under seal with  
16 the clerk of the Court in an envelope marked: "CONFIDENTIAL – FILED UNDER  
17 SEAL PURSUANT TO PROTECTIVE ORDER AND WITHOUT ANY FURTHER  
18 SEALING ORDER REQUIRED."

19 18. The Parties shall meet and confer regarding the procedures for use of  
20 Confidential Materials at trial and shall move the Court for entry of an appropriate  
21 order.

22 19. Nothing in this Stipulation and Protective Order shall affect the  
23 admissibility into evidence of Confidential Materials, or abridge the rights of any  
24 person to seek judicial review or to pursue other appropriate judicial action with  
25 respect to any ruling made by the Court concerning the issue of the status of  
26 Protected Material.

27 20. This Stipulation and Protective Order shall continue to be binding after  
28 the conclusion of this Proceeding and all subsequent proceedings arising from this

1 Proceeding, except that a Party may seek the written permission of the Designating  
2 Party or may move the Court for relief from the provisions of this Stipulation and  
3 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction to  
4 enforce, modify, or reconsider this Stipulation and Protective Order, even after the  
5 Proceeding is terminated.

6 21. Upon written request made within thirty (30) days after the settlement or  
7 other termination of the Proceeding, the undersigned Parties shall have thirty (30)  
8 days to either (a) promptly return to counsel for each Designating Party all  
9 Confidential Materials and all copies thereof (except that counsel for each Party may  
10 maintain in its files, in continuing compliance with the terms of this Stipulation and  
11 Protective Order, all work product, and one copy of each pleading filed with the  
12 Court and one copy of each deposition together with the exhibits marked at the  
13 deposition, (b) agree with counsel for the Designating Party upon appropriate  
14 methods and certification of destruction or other disposition of such Confidential  
15 Materials, or (c) as to any Documents, Testimony or other Information not addressed  
16 by sub-paragraphs (a) and (b), file a motion seeking a Court order regarding proper  
17 preservation of such Materials. To the extent permitted by law the Court shall retain  
18 continuing jurisdiction to review and rule upon the motion referred to in sub-  
19 paragraph (c) herein.

20 22. After this Stipulation and Protective Order has been signed by counsel  
21 for all Parties, it shall be presented to the Court for entry. Counsel agree to be bound  
22 by the terms set forth herein with regard to any Confidential Materials that have been  
23 produced before the Court signs this Stipulation and Protective Order.

24 23. The Parties and all signatories to the Certification attached hereto as  
25 Exhibit A agree to be bound by this Stipulation and Protective Order pending its  
26 approval and entry by the Court. In the event that the Court modifies this Stipulation  
27 and Protective Order, or in the event that the Court enters a different Protective  
28 Order, the Parties agree to be bound by this Stipulation and Protective Order until

1 such time as the Court may enter such a different Order. It is the Parties' intent to be  
2 bound by the terms of this Stipulation and Protective Order pending its entry so as to  
3 allow for immediate production of Confidential Materials under the terms herein.


4 24. Finally, pursuant to Magistrate Judge Storme's Civil Case Procedures,  
5 the parties agree to the following two mandatory provisions:

6 a. **Filing Under Seal.** Nothing shall be filed under seal, and the  
7 Court shall not be required to take any action, without separate prior order by the  
8 Judge before whom the hearing or proceeding will take place, after application by the  
9 affected party with appropriate notice to opposing counsel. The parties shall follow  
10 and abide by applicable law, including Civ.L.R. 79.2, ECF Administrative Policies  
11 and Procedures, Section II.j, and the chambers' rules, with respect to filing  
12 documents under seal.

13 b. **Modifications.** The Court may modify the protective order in the  
14 interests of justice or for public policy reasons.

15 This Stipulation and Protective Order may be executed in counterparts.

16 Dated: April 5, 2017

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19 Hon. Nita L. Stormes  
20 United States 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 Southern District of California  
on [date] in the case of \_\_\_\_\_ [insert formal name of the case and the number  
and initials assigned to it by the court]. 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 Southern District of  
California for 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: \_\_\_\_\_