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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
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12 WAWGD, INC. DBA FORESIGHT
13 SPORTS, a California Corporation,
14 Plaintiff,
15 v.
16 SENTINEL INS. COMPANY, LTD., a
17 Connecticut corporation, and DOES 1-
18 100, inclusive,
19 Defendants.

Case No.: 16cv2917 CAB (BGS)

**ORDER GRANTING THIRD JOINT
MOTION FOR STIPULATED
PROTECTIVE ORDER RE:
CONFIDENTIAL DOCUMENTS**

[ECF No. 19]

20 On July 14, 2017, the parties submitted a Third Joint Motion for Stipulated
21 Protective Order Re: Confidential Documents. (ECF No. 19.) The Court previously denied
22 two prior joint motions for stipulated protective orders due to failure to comply with the
23 Court's Chambers' Rules. (ECF Nos. 16, 18.)

24 Having reviewed and considered the instant motion, and good cause appearing, the
25 Court **GRANTS** the Third Joint Motion for Stipulated Protective Order Re: Confidential
26 Documents (ECF No. 19) as follows:

27 **1. PURPOSES AND LIMITATIONS**

28 Pursuant to the Parties' Stipulation, discovery in this action is likely to involve

1 production of confidential, proprietary, or private information for which special protection
2 from public disclosure and from use for any purpose other than prosecuting this litigation
3 may be warranted. As the parties acknowledge, the Court notes that this Order does not
4 confer blanket protections on all disclosures or responses to discovery and that the
5 protection it affords from public disclosure and use extends only to the limited information
6 or items that are entitled to confidential treatment under the applicable legal principles. The
7 Court further notes, as set forth in Section 13.3, below, that this Stipulated Protective Order
8 does not entitle the Parties to file confidential information under seal; instead, the Civil
9 Local Rules sets forth the procedures that must be followed and the standards that will be
10 applied when a party seeks permission from the court to file material under seal.

11 **2. GOOD CAUSE STATEMENT**

12 Pursuant to the Parties' Stipulation and counsel's representations to the Court
13 therein, this action is likely to involve the discovery of confidential, proprietary, and trade
14 secret policies, procedures, manuals, guidelines, and/or standards regarding the handling
15 of insurance claims for which special protection from public disclosure and from use for
16 any purpose other than prosecution of this action is warranted. Such confidential and
17 proprietary materials and information consist of, among other things, confidential business
18 information, information regarding confidential business practices, or other confidential
19 commercial information, information otherwise generally unavailable to the public, or
20 which may be privileged or otherwise protected from disclosure under state or federal
21 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of
22 information, to facilitate the prompt resolution of disputes over confidentiality of discovery
23 materials, to adequately protect information the parties are entitled to keep confidential, to
24 ensure that the parties are permitted reasonable necessary uses of such material in
25 preparation for and in the conduct of trial, to address their handling at the end of the
26 litigation, and serve the ends of justice, a protective order for such information is justified
27 in this matter. It is the intent of the parties that information will not be designated as
28 confidential for tactical reasons and that nothing be so designated without a good faith

1 belief that it has been maintained in a confidential, non-public manner, and there is good
2 cause why it should not be part of the public record of this case.

3 **3. DEFINITIONS**

4 3.1 Action: WAWGD, Inc. v. Sentinel Ins. Co. Ltd., S.D. Cal., Case No. 3:16-cv-
5 02917-CAB-BGS.

6 3.2 Challenging Party: a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 3.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
9 is generated, stored or maintained) or tangible things that qualify for protection under
10 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

11 3.4 Counsel: Outside Counsel of Record (as well as their support staff).

12 3.5 Designating Party: a Party or Non-Party that designates information or items
13 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

14 3.6 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other
16 things, testimony, transcripts, and tangible things), that are produced or generated in
17 disclosures or responses to discovery in this matter.

18 3.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
20 expert witness or as a consultant in this Action.

21 3.8 Non-Party: any natural person, partnership, corporation, association, or other
22 legal entity not named as a Party to this action.

23 3.9 Outside Counsel of Record: attorneys who are not employees of a party to
24 this Action but are retained to represent or advise a party to this Action and have appeared
25 in this Action on behalf of that party or are affiliated with a law firm that has appeared on
26 behalf of that party, including support staff.

1 3.10 Party: any party to this Action, including all of its officers, directors,
2 employees, representatives, consultants, retained experts, and Outside Counsel of Record
3 (and their support staffs).

4 3.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this Action.

6 3.12 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
9 their employees and subcontractors.

10 3.13 Protected Material: any Disclosure or Discovery Material that is designated
11 as “CONFIDENTIAL.”

12 3.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
13 a Producing Party.

14 **4. SCOPE**

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

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

22 **5. DURATION**

23 Once a case proceeds to trial, all of the court-filed information to be introduced that
24 was previously designated as confidential or maintained pursuant to this protective order
25 becomes public and will be presumptively available to all members of the public, including
26 the press, unless compelling reasons supported by specific factual findings to proceed
27 otherwise are made to the trial judge in advance of the trial. See Kamakana v. City and
28 County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”

1 showing for sealing documents produced in discovery from “compelling reasons” standard
2 when merits-related documents are part of court record). Accordingly, the terms of this
3 protective order do not extend beyond the commencement of the trial.

4 **6. DESIGNATING PROTECTED MATERIAL**

5 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each
6 Party or Non-Party that designates information or items for protection under this Order
7 must take care to limit any such designation to specific material that qualifies under the
8 appropriate standards. The Designating Party must designate for protection only those parts
9 of material, documents, items, or oral or written communications that qualify so that other
10 portions of the material, documents, items, or communications for which protection is not
11 warranted are not swept unjustifiably within the ambit of this Order.

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

16 If it comes to a Designating Party’s attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must
18 promptly notify all other Parties that it is withdrawing the inapplicable designation.

19 6.2 Manner and Timing of Designations. Except as otherwise provided in this
20 Order (see, e.g., second paragraph of section 6.2(a) below), or as otherwise stipulated or
21 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
22 must be clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
26 Producing Party affix, at a minimum, the legend “CONFIDENTIAL”, along with the name
27 and case number of this case (hereinafter “CONFIDENTIAL legend”), to each page that
28 contains protected material. If only a portion or portions of the material on a page qualifies

1 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
2 by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection need
4 not designate them for protection until after the inspecting Party has indicated which
5 documents it would like copied and produced. During the inspection and before the
6 designation, all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or portions
9 thereof, qualify for protection under this Order. Then, before producing the specified
10 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
11 that contains Protected Material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 (b) for testimony given in depositions that the Designating Party identify the
15 Disclosure or Discovery Material on the record, before the close of the deposition.

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

21 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
22 to designate qualified information or items does not, standing alone, waive the Designating
23 Party’s right to secure protection under this Order for such material. Upon timely correction
24 of a designation, the Receiving Party must make reasonable efforts to assure that the
25 material is treated in accordance with the provisions of this Order.

26 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

27 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
28 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

1 7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process under the Civil Local Rules and Hon. Judge Skomal’s Chambers Rules. Any
3 discovery motion must strictly comply with said procedures.

4 7.3 Burden. The burden of persuasion in any such challenge proceeding shall be
5 on the Designating Party. Frivolous challenges, and those made for an improper purpose
6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose
7 the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
8 the confidentiality designation, all parties shall continue to afford the material in question
9 the level of protection to which it is entitled under the Producing Party’s designation until
10 the Court rules on the challenge.

11 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 8.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this Action
14 only for prosecuting, defending, or attempting to settle this Action. Such Protected Material
15 may be disclosed only to the categories of persons and under the conditions described in
16 this Order. When the Action has been terminated, a Receiving Party must comply with the
17 provisions of section 14 below (FINAL DISPOSITION).

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

21 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
22 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
23 may disclose any information or item designated “CONFIDENTIAL” only to:

24 (a) any Receiving Party who has signed the “Acknowledgment and Agreement
25 to Be Bound” (Exhibit A to Parties’ Stipulation);

26 (b) the Receiving Party’s Outside Counsel of Record in this Action, as well as
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to
28 disclose the information for this Action;

1 (c) the officers, directors, and employees of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action;

3 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure
4 is reasonably necessary for this Action and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A to Parties’ Stipulation);

6 (e) the Court and its personnel;

7 (f) court reporters and their staff;

8 (g) professional jury or trial consultants, mock jurors, and Professional Vendors
9 to whom disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A to Parties’ Stipulation);

11 (h) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information;

13 (i) during their depositions, witnesses, and attorneys for witnesses, in the Action
14 to whom disclosure is reasonably necessary provided: (1) the deposing party requests that
15 the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted
16 to keep any confidential information unless they sign the “Acknowledgment and
17 Agreement to Be Bound” (Exhibit A to Parties’ Stipulation), unless otherwise agreed by
18 the Designating Party or ordered by the Court. Pages of transcribed deposition testimony
19 or exhibits to depositions that reveal Protected Material may be separately bound by the
20 court reporter and may not be disclosed to anyone except as permitted under this Stipulated
21 Protective Order; and

22 (j) any mediator or settlement officer, and their supporting personnel, mutually
23 agreed upon by any of the parties engaged in settlement discussions.

24 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
25 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

17 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
18 **PRODUCED IN THIS LITIGATION**

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

24 (b) In the event that a Party is required, by a valid discovery request, to produce
25 a Non-Party’s confidential information in its possession, and the Party is subject to an
26 agreement with the Non-Party not to produce the Non-Party’s confidential information,
27 then the Party shall:
28

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

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

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

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

17 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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1 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

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

12 **13. MISCELLANEOUS**

13 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person
14 to seek its modification by the Court in the future.

15 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order, no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Stipulated
18 Protective Order. Similarly, no Party waives any right to object on any ground to use in
19 evidence of any of the material covered by this Protective Order.

20 13.3 Filing Protected Material. A Party that seeks to file under seal any Protected
21 Material must comply with the Civil Local Rules. Protected Material may only be filed
22 under seal pursuant to a court order authorizing the sealing of the specific Protected
23 Material at issue; good cause must be shown in the request to file under seal. If a Party's
24 request to file Protected Material under seal is denied by the Court, then the Receiving
25 Party may file the information in the public record unless otherwise instructed by the Court.

26 **14. FINAL DISPOSITION**

27 14.1 After the final disposition of this Action, within 60 days of a written request
28 by the Designating Party, each Receiving Party must return all Protected Material to the

1 Producing Party or destroy such material. As used in this subdivision, “all Protected
2 Material” includes all copies, abstracts, compilations, summaries, and any other format
3 reproducing or capturing any of the Protected Material. Whether the Protected Material is
4 returned or destroyed, the Receiving Party must submit a written certification to the
5 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60
6 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
7 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any
8 copies, abstracts, compilations, summaries or any other format reproducing or capturing
9 any of the Protected Material. Producing Party shall provide said written certification for
10 execution to the Receiving Party. Notwithstanding this provision, counsel are entitled to
11 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
12 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
13 attorney work product, and consultant and expert work product, even if such materials
14 contain Protected Material. Any such archival copies that contain or constitute Protected
15 Material remain subject to this Protective Order as set forth in Section 5 (DURATION).

16 14.2 Any violation of this Order may be punished by any and all appropriate
17 measures including, without limitation, contempt proceedings and/or monetary sanctions.

18 14.3 Any action by the Court must be preceded by an ex parte motion for an order
19 authorizing the return of all Confidential and Attorneys’ Eyes Only Material to the party
20 that produced the information or the destruction thereof.

21 **15. PROVISIONS PURSUANT TO JUDGE SKOMAL’S CHAMBERS**

22 **RULES**

23 Pursuant to Hon. Judge Skomal’s Chambers Rules, it is further ordered as follows:

24 15.1 What the Court shall do with confidential or sealed documents after the case
25 is closed: see Section 14. Pursuant to Section 14.3, any action by the Court must be
26 preceded by an ex parte motion for an order authorizing the return of all Confidential and
27 Attorneys’ Eyes Only Material to the party that produced the information or the destruction
28 thereof.

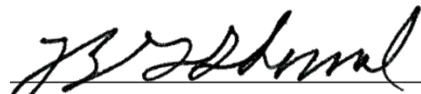
1 15.2 Modification of the Protective Order by the Court. The Court may modify the
2 terms and conditions of this Order for good cause, or in the interest of justice, or on its own
3 order at any time in these proceedings.

4 15.3 Relation to any court or local rules. This Order and the Parties' Stipulation
5 do not change, amend, or circumvent any court rule or local rule.

6 15.4 Filing documents under seal. No document shall be filed under seal unless
7 counsel secures a court order allowing the filing of a document under seal. An application
8 to file a document under seal shall be served on opposing counsel, and on the person or
9 entity that has custody and control of the document, if different from opposing counsel. If
10 opposing counsel, or the person or entity who has custody and control of the document,
11 wishes to oppose the application, he/she must contact the chambers of the judge who will
12 rule on the application, to notify the judge's staff that an opposition to the application will
13 be filed.

14 **IT IS SO ORDERED.**

15 Dated: July 17, 2017

16 
17 Hon. Bernard G. Skomal
18 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare
6 under penalty of perjury that I have read in its entirety and understand the Stipulated
7 Protective Order that was issued by the United States District Court for the Southern
8 District of California on July 17, 2017 in the case of WAWGD, Inc. v. Sentinel Ins. Co.,
9 Ltd., S.D. Cal., Case No. 3:16-cv-02917-CAB-BGS. I agree to comply with and to be
10 bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment in the
12 nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person or entity
14 except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Southern District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for services of process in connection with this
21 action or any proceedings related to enforcement of this Stipulated Protective Order.

22
23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed Name: _____

27 Signature _____

28