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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NATIONAL CASUALTY COMPANY,
Plaintiff,
vs.
NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION,
Defendant.

NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION,
Counterclaimant,
vs.
NATIONAL CASUALTY COMPANY,
Cross-Defendant.

CASE NO.: 18-CV-1292 JLS-KSC
Hon. Janis L. Sammartino

PROTECTIVE ORDER

Action Filed: June 14, 2018
Trial Date: Not Set

Please take notice that Plaintiff/Counter-Defendant National Casualty Company (“National Casualty”) and Defendant/Counterclaimant National Strength and Conditioning Association (“NSCA”) jointly stipulate and move the Court to enter a Protective Order in this insurance coverage litigation (the “Coverage Lawsuit”) based

1 on the following grounds:

2 WHEREAS, in the course of this action, disclosure may be sought and made of
3 information that National Casualty or NSCA regards as being of a confidential,
4 personal, private, privileged, trade secret, proprietary, technical, commercial, or
5 financial nature (hereinafter collectively referred to as “Confidential Information”), or,
6 solely with respect to documents produced by CrossFit, Inc. (“CrossFit”) in the
7 underlying lawsuit entitled (1) *CrossFit, Inc. v. National Strength and Conditioning*
8 *Association*, United States District Court, Southern District of California, Case No.
9 3:14-cv-01191-HKS-KCS (the “Federal Lawsuit”); and (2) the now-dismissed
10 underlying lawsuit entitled *National Strength and Conditioning Association v.*
11 *Glassman, et al.*, San Diego Superior Court, Case No. 37-2016-00014339-CU-DF-
12 CTL (the “State Lawsuit”), Confidential Information that has been designated by
13 CrossFit in the underlying actions as so highly sensitive that the actual parties
14 themselves (*i.e.*, National Casualty and NSCA) should not be permitted to view, use
15 or know about such highly sensitive Confidential Information (herein collectively
16 referred to as “Counsel Only Information”). The parties agree that, except for
17 documents designated by CrossFit as “Counsel Only” in the underlying lawsuits, they
18 will not designate any other documents as “Counsel Only” in this action. For
19 purposes of this Protective Order, Counsel Only Information is included in the term
20 Confidential Information except were specifically noted;

21 WHEREAS, National Casualty and NSCA desire to protect against the
22 unauthorized disclosure, use or publication of Confidential Information, especially
23 privileged or protected communications between NSCA, its counsel and insurers
24 (including National Casualty) in this Coverage Lawsuit and as it relates to the (1) the
25 Federal Lawsuit; (2) the State Lawsuit; or (3) NSCA’s claims against appointed
26 defense panel counsel Manning & Kass, Ellrod, Ramirez, Trester LLP (“Manning &
27 Kass”) regarding the Federal and State Lawsuits;

28 WHEREAS, this Protective Order is meant to encompass all forms of

1 disclosure that may contain Confidential Information, including any discovery
2 request, discovery response, document production, pleading, motion, exhibit,
3 declaration, affidavit, deposition transcript, inspection and all other tangible items
4 (electronic or digital media, photographs, video, etc.);

5 WHEREAS, National Casualty and NSCA agree that good cause exists under
6 Rule 26(c) of the Federal Rules of Civil Procedure for entry of this Protective Order
7 because, while at this stage of this Coverage Lawsuit National Casualty and NSCA are
8 not necessarily able to anticipate every item that may be used, requested, produced or
9 ordered to be produced in discovery in this Coverage Lawsuit, National Casualty and
10 NSCA presently anticipate that one or more of them will seek to disclose, discover or
11 use information that is private, privileged, or confidential and that in the interests of
12 justice should remain so;

13 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between National
14 Casualty and NSCA, through their respective counsel of record, that the following
15 Protective Order shall govern the use and disclosure of Confidential Information in
16 this Coverage Lawsuit:

17 1. Any party to this Coverage Lawsuit and any third party shall have the
18 right to designate as "Confidential" and subject to this Protective Order any
19 information, document or thing, or portion of any document or thing, that: (a)
20 contains trade secrets, competitively sensitive technical, marketing, financial, sales or
21 other confidential business information, (b) contains private or confidential personal
22 information, (c) contains information received in confidence from third parties, (d) the
23 producing party otherwise believes in good faith to be entitled to protection under
24 Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, or (e) privileged or
25 protected communications concerning the Federal or State Lawsuits. Any party to this
26 Coverage Lawsuit or any third party covered by this Protective Order that produces or
27 discloses any Confidential Information (*but not Counsel Only Information*),
28 including, without limitation, any information, document, thing, interrogatory answer,

1 admission, pleading or testimony, shall mark the same with the foregoing or similar
2 legend: "CONFIDENTIAL" or "CONFIDENTIAL — SUBJECT TO DISCOVERY
3 CONFIDENTIALITY/PROTECTIVE ORDER" (hereinafter "Confidential"). Any
4 party that receives from another party or third-party information or documents that the
5 receiving party believes should be designated Confidential is entitled under this
6 Protective Order to designate such information or documents as Confidential. This
7 paragraph applies equally to Counsel Only Information but such material shall be
8 marked with the foregoing or similar legend: "CONFIDENTIAL – COUNSEL
9 ONLY" or "CONFIDENTIAL – COUNSEL ONLY – SUBJECT TO DISCOVERY
10 CONFIDENTIALITY/PROTECTIVE ORDER".

11 2. The use or production of Confidential Information in this Coverage
12 Lawsuit in any manner shall not constitute a waiver of any claims of privilege, work-
13 product immunity or protections otherwise afforded such Confidential Information
14 vis-à-vis third persons or entities not parties in this Coverage Lawsuit.

15 3. All Confidential Information used, disclosed or produced in this
16 Coverage Lawsuit shall be used by the parties solely for purposes of the prosecution
17 or defense of this Coverage Lawsuit. Further, to the extent such Confidential
18 Information would otherwise be discoverable, it can be used (1) as part of NSCA's
19 defense of the Federal Lawsuit; (2) as part of NSCA's defense of any claim or
20 litigation made by CrossFit (and its related persons or entities) concerning the State
21 Lawsuit; or (3) in connection with NSCA's claims against Manning & Kass. Except
22 to the extent permitted by this Protective Order, Confidential Information used,
23 disclosed or produced in this Coverage Lawsuit shall not be used by any party for any
24 business, commercial, competitive, personal or other purpose not authorized herein,
25 and shall not be disclosed by any party to anyone other than those individuals and
26 entities set forth in Paragraph 3 of this Protective Order, unless and until the
27 restrictions herein are removed either by written agreement of counsel for the parties
28 or by order of the Court. It is, however, understood that counsel for a party may give

1 advice and opinions to his or her client and that client's other counsel based on his or
2 her evaluation of Confidential Information.

3 4. Confidential Information (*but not Counsel Only Information*) may be
4 disclosed only to the following individuals and entities under the following
5 conditions:

- 6 a. The parties (with respect to parties that are corporations or other
7 business entities, "party" shall mean past and current company
8 executives, past and current employees who participate or are
9 contacted to assist in this Coverage Lawsuit, or any third party
10 professionals assisting with this Coverage Lawsuit and facts related
11 thereto);
- 12 b. Outside counsel (herein defined as any attorney, paralegal or
13 employee of the parties' outside law firms) and in-house counsel for
14 the parties, whether employed or serving as such;
- 15 c. Outside experts or consultants retained or used by a party or outside
16 counsel for purposes of this Coverage Lawsuit, provided they have
17 reviewed this Protective Order and have signed a non-disclosure
18 agreement in the form attached hereto as Exhibit A;
- 19 d. Secretarial, paralegal, clerical, duplicating and data processing
20 personnel of the foregoing;
- 21 e. The Court and its personnel;
- 22 f. Any witness in this Coverage Lawsuit, provided they have reviewed
23 this Protective Order and have signed a non-disclosure agreement in
24 the form attached hereto as Exhibit A ; and
- 25 g. Vendors retained by or for the parties to assist in preparing for
26 pretrial discovery, trial and/or hearings, including, but not limited to,
27 court reporters, litigation support personnel, jury consultants,
28 creators of demonstrative and audiovisual aids for use in the

1 courtroom or in depositions or mock jury sessions, as well as their
2 staff, stenographic and clerical employees whose duties and
3 responsibilities require access to such materials.

4 5. Counsel Only Information may be disclosed only to the following
5 individuals and entities under the following conditions:

- 6 a. The parties' outside counsel (herein defined as any attorney,
7 paralegal or employee of the parties' outside law firms) and in-
8 house counsel for the parties, whether employed or serving as such;
- 9 b. Outside experts or consultants retained or used by a party or outside
10 counsel for purposes of this Coverage Lawsuit, provided they have
11 reviewed this Protective Order and have signed a non-disclosure
12 agreement in the form attached hereto as Exhibit B;
- 13 c. Secretarial, paralegal, clerical, duplicating and data processing
14 personnel of the foregoing;
- 15 d. The Court and its personnel; and
- 16 e. Vendors retained by or for the parties to assist in preparing for
17 pretrial discovery, trial and/or hearings, including, but not limited
18 to, court reporters, litigation support personnel, jury consultants,
19 creators of demonstrative and audiovisual aids for use in the
20 courtroom or in depositions or mock jury sessions, as well as their
21 staff, stenographic and clerical employees whose duties and
22 responsibilities require access to such materials.

23 6. Confidential Information shall be used only by individuals or entities
24 permitted access to it under Paragraph 4 of this Protective Order. Confidential
25 Information, copies thereof and the information contained therein, shall not be
26 disclosed by the other party in any manner to any other individual or entity, until and
27 unless (a) a party or outside counsel for the party asserting confidentiality waives the
28 claim of confidentiality, or (b) the Court orders such disclosure.

1 7. Counsel Only Information shall be viewed and used only by individuals
2 or entities permitted access to it under Paragraph 5 of this Protective Order. Counsel
3 Only Information, copies thereof and the information contained therein, shall not be
4 disclosed in any manner to any individual or entity, until and unless (a) a party or
5 outside counsel for the party asserting confidentiality waives the claim of
6 confidentiality, or (b) the Court orders such disclosure.

7 8. With respect to any depositions that involve the use or disclosure of
8 Confidential Information, a party shall use best efforts to designate the portions of the
9 transcript as confidential at the time of use or within thirty (30) days after receipt of
10 the final deposition transcript by which to inform all other parties and the court
11 reporter that certain portions of the transcript are to be designated Confidential, which
12 period may be extended by agreement of the parties. No portion of a deposition
13 transcript that has been designated Confidential shall be disclosed other than to the
14 individuals and entities described in Paragraph 4 above and the deponent during the
15 thirty (30) day period described herein, and no individual attending such a deposition
16 shall disclose the contents of the Confidential portion of the deposition to any
17 individual or entity other than those described in Paragraph 4 above during said thirty
18 (30) days. Upon being informed that certain portions of a deposition are to be
19 designated as Confidential, all parties shall immediately cause each copy or draft of
20 the transcript in its custody or control to be appropriately marked and limit disclosure
21 of the Confidential portion of that transcript in accordance with Paragraphs 3-5 above.

22 9. If counsel for a party receiving documents or information designated as
23 Confidential hereunder objects to such designation of any or all of such items, the
24 following procedure shall apply:

- 25 a. Counsel for the objecting party shall serve on the designating party a
26 written objection to such designation, which objection shall describe
27 with particularity the documents or information in question and shall
28 state the grounds for objection (the "Objection"). Counsel for the

1 designating party or third party shall respond in writing to the
2 Objection within twenty one (21) days, unless extended by agreement,
3 and shall state with particularity the grounds for asserting that the
4 document or information is Confidential (the "Response to
5 Objection"). If no timely Response to Objection is made to the
6 Objection, the documents containing the challenged designation can
7 be used in the Coverage Lawsuit, subject to a party's right to seek
8 protection from the court. If the designating party makes a timely
9 Response to Objection, counsel shall then confer in good faith in an
10 effort to resolve the dispute within fourteen (14) days of the Response
11 to the Objection.

12 b. If a dispute as to a Confidential designation of a document or item of
13 information cannot be resolved by agreement, the proponent of the
14 designation may file a motion in the Court requesting that the disputed
15 Confidential designation receive the protections provided by this
16 Protective Order. Until the parties or the Court resolves a challenge
17 under this paragraph, all parties shall treat the information as
18 "Confidential". In connection with any motion under this paragraph,
19 the producing party shall bear the burden of establishing that that the
20 disputed information should be treated as "Confidential" under this
21 Protective Order.

22 10. Nothing shall be filed under seal, and the Court shall not be required to
23 take any action, without a separate order by the Judge before whom the hearing or
24 proceeding will take place, after application by the affected party with appropriate
25 notice to opposing counsel. To the extent a party wishes to file a document designated
26 as Confidential, the party shall follow and abide by applicable law with respect to
27 seeking an order sealing documents, including local rules, if any. Nothing in the
28 Protective Order shall preclude a party from submitting a document designated as

1 Confidential for filing under seal or lodging a proposed document designated as
2 Confidential to be filed under seal with a concurrently filed motion to file under seal.
3 If a party files a motion seeking an order sealing a document designated as
4 Confidential (or Counsel Only) by the other party, the party seeking the order shall
5 include in its motion a statements to the effect that the other party has designated the
6 document as Confidential pursuant to this Protective Order (or CrossFit has
7 designated it Counsel Only pursuant to a Protective Order in the underlying Federal or
8 State Lawsuits) and that the other party contends that such document (1) contains
9 Confidential Information and (2) should be sealed.

10 11. To the extent the Court denies a motion to file under seal with prejudice,
11 the parties will not be restricted in their subsequent use of the materials/documents in
12 connection with filings with the Court or presentation of evidence at trial or any other
13 proceedings in this Coverage Lawsuit, unless the Court's denial is the subject of a
14 stay, motion for reconsideration or immediate appeal.

15 12. To the extent possible, only those portions of a filing with the Court that
16 contain material designated as Confidential shall be filed under seal. To the extent
17 that materials/documents are only partially designated as Confidential, such partial
18 designation will not restrict the Parties' use of any non-confidential portions of those
19 materials/documents not designated as Confidential. Accordingly, a party's reference
20 to, or quotation from, such non-confidential portions of partially designated
21 materials/documents in a pleading, motion, brief, affidavit or exhibit filed with the
22 Court shall not, on its own, obligate that party to seek to file such pleading, motion,
23 brief, affidavit or exhibit under seal.

24 13. If the need arises during trial or at any hearing before the Court for any
25 party to disclose Confidential Information, it may do so only after giving notice to the
26 producing party and as directed by the Court.

27 14. To the extent consistent with applicable law, the inadvertent or
28 unintentional disclosure of Confidential Information that one of the parties believes

1 should have been designated Confidential, regardless of whether the information,
2 document or thing was so designated at the time of disclosure, shall not be deemed a
3 waiver in whole or in part of a party's claim of confidentiality, either as to the specific
4 information, document or thing disclosed or as to any other material or information
5 concerning the same or related subject matter. Such inadvertent or unintentional
6 disclosure may be rectified by notifying in writing counsel for all parties to whom the
7 material was disclosed that the material should have been designated Confidential
8 within a reasonable time after disclosure. Such notice shall constitute a designation of
9 the information, document or thing as Confidential under this Protective Order.

10 15. When the inadvertent or mistaken disclosure of any information,
11 document or thing protected by privilege or work-product immunity is discovered by
12 the producing party and is brought to the attention of the receiving party, the receiving
13 party's treatment of such material shall be in accordance with Federal Rule of Civil
14 Procedure 26(b)(5)(B). Such inadvertent or mistaken disclosure of information,
15 documents or things shall not, by itself, constitute a waiver by the disclosing party of
16 any claims of privilege or work-product immunity. However, nothing herein restricts
17 the right of the receiving party to challenge in this Coverage Lawsuit the producing
18 party's claim of privilege within a reasonable time after receiving notice of the
19 inadvertent or mistaken disclosure.

20 16. No information that is in the public domain or that is already known by
21 the receiving party through proper outside sources or that is or becomes available to a
22 party from a source other than the party asserting confidentiality, rightfully in
23 possession of such information on a non-confidential basis, shall be deemed or
24 considered to be Confidential Information under this Protective Order. This
25 paragraph, however, does not pertain to Confidential Information the parties agree
26 should be designated Confidential under this Protective Order, or Confidential
27 Information that should be designated Confidential because of the nature of the
28 relationship of the parties (*i.e.*, insurer and insured) and their relationship vis-à-vis the

1 parties' counsel in the Federal and State Lawsuits. Additionally, to the extent a party
2 contends that documents should be designated as Confidential, the procedures in this
3 Protective Order still apply.


4 17. This Protective Order shall not deprive any party of its right to object to
5 discovery by any other party or on any otherwise permitted ground. This Protective
6 Order does not obligate any party to disclose any confidential or privileged
7 information, subject to the other party's right to object to such non-production.
8 Further, this Protective Order does not permit a party intentionally to fail to designate
9 Confidential Information as Confidential and such non-designation shall not constitute
10 a waiver of any privileges, protections provided by law or this Protective Order.
11 Confidential Information produced by a party that has not been designated as
12 Confidential may be designated as Confidential by the receiving party. This
13 Protective Order is being entered without prejudice to the right of any party to move
14 the Court for modification or for relief from any of its terms.

15 18. This Protective Order shall survive the termination of this Coverage
16 Lawsuit and shall remain in full force and effect unless modified by an order of this
17 Court or by the written stipulation of the parties filed with the Court.

18 19. The Court may modify the Protective Order in the interests of justice or
19 for public policy reasons.

20 IT IS SO ORDERED.

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23 DATED: 9/11/19

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25 HONORABLE KAREN S. CRAWFORD
26 U.S. MAGISTRATE JUDGE
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1 **EXHIBIT A**

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 NATIONAL CASUALTY COMPANY,

12 Plaintiff,

13 v.

14 NATIONAL STRENGTH AND
15 CONDITIONING ASSOCIATION,

16 Defendant.

Case No. 3:18-CV-01292-JLS-KSC

AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER
(CONFIDENTIAL INFORMATION)

Complaint: June 14, 2018
Counterclaim: July 12, 2018
Trial Date: None

17
18 NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION

19 Counterclaimant,

20 v.

21 NATIONAL CASUALTY COMPANY

22 Counter-Defendant.
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1
2 I, _____, affirm that:

3 1. My address is _____.

4 2. My present employer is _____

5 and the address of my present employment is _____

6 _____.

7 3. My present occupation or job description is _____

8 _____.

9 4. I have carefully read and understood the provisions of the Protective
10 Order in this Coverage Lawsuit signed by the Court, attached hereto as Exhibit A, and
11 I will comply with all provisions of the Protective Order.

12 5. I will hold in confidence and not disclose to anyone not qualified under
13 the Protective Order any documents or information designated Confidential or any
14 words, summaries, abstracts, or indices of Confidential Information in this Coverage
15 Lawsuit that are disclosed to me.

16 6. I will limit use of Confidential Information disclosed to me solely for the
17 purpose of this Coverage Action or as otherwise permitted by the Protective Order.

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

19 Executed in _____, _____.

20 [City] [State]

21 Dated: _____

22 [Name]

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EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL CASUALTY COMPANY,

Plaintiff,

v.

NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION,

Defendant.

Case No. 3:18-CV-01292-JLS-KSC

AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER (COUNSEL
ONLY INFORMATION)

Complaint: June 14, 2018
Counterclaim: July 12, 2018
Trial Date: None

NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION

Counterclaimant,

v.

NATIONAL CASUALTY COMPANY

Counter-Defendant.

1
2 I, _____, affirm that:

3 1. My address is _____.

4 2. My present employer is _____

5 and the address of my present employment is _____

6 _____.

7 3. My present occupation or job description is _____

8 _____.

9 4. I have carefully read and understood the provisions of the Protective
10 Order in this Coverage Lawsuit signed by the Court, attached hereto as Exhibit A, and
11 I will comply with all provisions of the Protective Order.

12 5. I will hold in confidence and not disclose to anyone not qualified under
13 the Protective Order any documents or information designated Counsel Only
14 Information or any words, summaries, abstracts, or indices of Counsel Only
15 Information in this Coverage Lawsuit that are disclosed to me.

16 6. I will limit use of Counsel Only Information disclosed to me solely for
17 the purpose of this Coverage Action or as otherwise permitted by the Protective Order.

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

19 Executed in _____, _____.

20 [City] [State]

21 Dated: _____

22 [Name]

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 10, 2019, I caused the foregoing document to
3 be electronically e-mailed to efile_sammartino@casd.uscourts and efile-
4 __crawford@casd.uscourts.gov.

5 I also hereby certify that on September 10, 2019, I caused the foregoing
6 document to be electronically e-mailed to counsel for National Casualty Company:
7

8 Lisa M. Lampkin (llampkin@selmanlaw.com)

9 Kelsey C. Starn (kstarn@selmanlaw.com)

10 SELMAN BREITMAN LLP

11 11766 Wilshire Blvd., Sixth Floor

12 Los Angeles, CA 90025-6538

13
14 Michelle R. Bernard (mbernard@grsm.com)

15 Jessica L. Meyer (jlmeyer@grsm.com)

16 GORDON REES SCULLY MANSUKHANI, LLP

17 101 W. Broadway, Suite 2000

18 San Diego, CA 92101

19
20 DATED: August 5, 2019

KILPATRICK TOWNSEND & STOCKTON, LLP

21
22 By: /s/ Daniel H. Rylaarsdam

23 Mary Craig Calkins

24 Daniel H. Rylaarsdam

25 Nancy L. Stagg

26 Attorneys for Defendant/
27 Counterclaimant

28

NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION