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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GREAT AMERICAN ALLIANCE  
INSURANCE COMPANY,  
  
Plaintiff,  
  
v.  
  
CONTINENTAL CASUALTY  
COMPANY,  
  
Defendant.

Case No.: 23-cv-01796-BAS-JLB

**ORDER GRANTING JOINT  
MOTION FOR ENTRY OF  
PROTECTIVE ORDER**

[ECF No. 13]

Before the Court is the parties’ Joint Motion for Entry of Protective Order. (ECF No. 13.) Good cause appearing, the parties Joint Motion is **GRANTED**, and the following stipulated Protective Order is entered:

**PROTECTIVE ORDER**

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

1 The materials to be exchanged throughout the course of the litigation between the  
2 parties may contain trade secret or other confidential research, technical, cost, price,  
3 marketing or other commercial information, as is contemplated by Federal Rule of Civil  
4 Procedure 26(c)(1)(G). The parties also agree that any information that may be subject to  
5 attorney-client privilege, attorney work product, or any other basis for privilege in the  
6 lawsuit entitled *Eric Lovato, an individual v. Windward Community Association, a*  
7 *corporation, Curtis Management Company, a corporation, and Does 1 to 10* in the  
8 Superior Court of California, County of San Diego, under Case No. 37-2020-00024751-  
9 CU-PO-NC (the “Underlying Litigation”), shall be subject this Order. The purpose of this  
10 Order is to protect the confidentiality of such materials as much as practical during the  
11 litigation. THEREFORE:

#### 12 DEFINITIONS

13 1. The term “confidential information” will mean and include information  
14 contained or disclosed in any materials, including documents, portions of documents,  
15 answers to interrogatories and requests for admissions, trial testimony, deposition  
16 testimony, and transcripts of trial testimony and depositions, including data, summaries,  
17 and compilations derived therefrom that is deemed to be confidential information by any  
18 party to which it belongs.

19 2. The term “materials” will include, but will not be limited to: documents;  
20 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other  
21 material that identify customers or potential customers; price lists or schedules or other  
22 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;  
23 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk  
24 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;  
25 compilations from which information can be obtained and translated into reasonably usable  
26 form through detection devices; sketches; drawings; notes (including laboratory notebooks  
27 and records); reports; instructions; disclosures; other writings; models, prototypes, and  
28 other physical objects.



1 trade secret or other confidential research, development, financial or other  
2 commercial information.

3 5. In the event the producing party elects to produce materials for inspection, no  
4 marking need be made by the producing party in advance of the initial inspection. For  
5 purposes of the initial inspection, all materials produced will be considered as  
6 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to  
7 the terms of this Order. Thereafter, upon selection of specified materials for copying by  
8 the inspecting party, the producing party must, within a reasonable time prior to producing  
9 those materials to the inspecting party, mark the copies of those materials that contain  
10 confidential information with the appropriate confidentiality marking.

11 6. Whenever a deposition taken on behalf of any party involves a disclosure of  
12 confidential information of any party:

13 a. the deposition or portions of the deposition must be designated as  
14 containing confidential information subject to the provisions of this Order; such  
15 designation must be made on the record whenever possible, but a party may  
16 designate portions of depositions as containing confidential information after  
17 transcription of the proceedings; a party will have until 14 calendar days after receipt  
18 of the deposition transcript to inform the other party or parties to the action of the  
19 portions of the transcript to be designated “CONFIDENTIAL” or  
20 “CONFIDENTIAL – FOR COUNSEL ONLY.”

21 b. the disclosing party will have the right to exclude from attendance at  
22 the deposition, during such time as the confidential information is to be disclosed,  
23 any person other than the deponent, counsel (including their staff and associates),  
24 the court reporter, and the person(s) agreed upon pursuant to Paragraph 9 below; and

25 c. the originals of the deposition transcripts and all copies of the  
26 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR  
27 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately  
28 presented to a court for filing must not be filed unless it can be accomplished under

1 seal, identified as being subject to this Order, and protected from being opened  
2 except by order of the Court.

3 7. All confidential information designated as “CONFIDENTIAL” or  
4 “CONFIDENTIAL – FOR COUNSEL ONLY” must not be disclosed by the receiving  
5 party to anyone other than those persons designated within this Order (including in-house  
6 counsel as designated by the Parties in Paragraph 3) and must be handled in the manner set  
7 forth below and, in any event, must not be used for any purpose other than in connection  
8 with this litigation, unless and until such designation is removed either by agreement of the  
9 parties or by order of the Court.

10 8. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” must  
11 be viewed only by counsel (as defined in Paragraph 3) of the receiving party, and by  
12 independent experts under the conditions set forth in this Paragraph. The right of any  
13 independent expert to receive any confidential information will be subject to the advance  
14 approval of such expert by the producing party or by permission of the Court. The party  
15 seeking approval of an independent expert must provide the producing party with the name  
16 and curriculum vitae of the proposed independent expert, and an executed copy of the form  
17 attached hereto as Exhibit A, in advance of providing any confidential information of the  
18 producing party to the expert. Any objection by the producing party to an independent  
19 expert receiving confidential information must be made in writing within 14 calendar days  
20 following receipt of the identification of the proposed expert. Confidential information  
21 may be disclosed to an independent expert if the fourteen-day period has passed and no  
22 objection has been made. The approval of independent experts must not be unreasonably  
23 withheld.

24 9. Information designated “confidential” must be viewed only by counsel (as  
25 defined in Paragraph 3) of the receiving party, by independent experts (pursuant to the  
26 terms of Paragraph 8), by court personnel, and by the additional individuals listed below,  
27 provided each such individual has read this Order in advance of disclosure and has  
28 executed a copy of the form attached hereto as Exhibit A:

1           a. Executives who are required to participate in policy decisions with  
2 reference to this action;

3           b. Technical personnel of the parties with whom counsel for the parties  
4 find it necessary to consult, in the discretion of such counsel, in preparation for trial  
5 of this action; and

6           c. Stenographic and clerical employees associated with the individuals  
7 identified above.

8           10. With respect to material designated “CONFIDENTIAL” or  
9 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the  
10 document to be its originator, author, or a recipient of a copy of the document, may be  
11 shown the same.

12           11. All information which has been designated as “CONFIDENTIAL” or  
13 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and  
14 any and all reproductions of that information, must be retained in the custody of the counsel  
15 for the receiving party identified in Paragraph 3, except that independent experts authorized  
16 to view such information under the terms of this Order may retain custody of copies such  
17 as are necessary for their participation in this litigation.

18           12. Before any materials produced in discovery, answers to interrogatories or  
19 requests for admissions, deposition transcripts, or other documents which are designated  
20 as confidential information are filed with the Court for any purpose, the party seeking to  
21 file such material must seek permission of the Court to file the material under seal. An  
22 application to file a document under seal shall be served on opposing counsel, and on the  
23 person or entity that has custody and control of the document, if different from opposing  
24 counsel. If the application to file a document designated as confidential under seal is being  
25 made by the non-designating party, then, upon request, the designating party must promptly  
26 provide the applicant with a legal basis for the confidential designation to include in the  
27 application. If opposing counsel, or the person or entity that has custody and control of the  
28 document, wishes to oppose the application, he/she must contact the chambers of the judge

1 who will rule on the application, to notify the judge's staff that an opposition to the  
2 application will be filed.

3 13. At any stage of these proceedings, any party may object to a designation of  
4 materials as confidential information. The party objecting to confidentiality must notify,  
5 in writing, counsel for the designating party of the objected-to materials and the grounds  
6 for the objection. If the dispute is not resolved consensually between the parties after  
7 meeting and conferring within 14 calendar days of receipt of such a notice of objections,  
8 the parties may jointly request the Court's assistance with the dispute, in accordance with  
9 Judge Burkhardt's Civil Chambers Rules. The materials at issue must be treated as  
10 confidential information, as designated by the designating party, until the Court has ruled  
11 on the objection or the matter has been otherwise resolved.

12 14. All confidential information must be held in confidence by those inspecting  
13 or receiving it and must be used only for purposes of this action. Counsel for each party,  
14 and each person receiving confidential information, must take reasonable precautions to  
15 prevent the unauthorized or inadvertent disclosure of such information. If confidential  
16 information is disclosed to any person other than a person authorized by this Order, the  
17 party responsible for the unauthorized disclosure must immediately bring all pertinent facts  
18 relating to the unauthorized disclosure to the attention of the other parties and, without  
19 prejudice to any rights and remedies of the other parties, make every effort to prevent  
20 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

21 15. No party will be responsible to another party for disclosure of confidential  
22 information under this Order if the information in question is not labeled or otherwise  
23 identified as such in accordance with this Order.

24 16. If a party, through inadvertence, produces any confidential information  
25 without labeling or marking or otherwise designating it as such in accordance with this  
26 Order, the designating party may give written notice to the receiving party that the  
27 document or thing produced is deemed confidential information, and that the document or  
28 thing produced should be treated as such in accordance with that designation under this

1 Order. The receiving party must treat the materials as confidential, once the designating  
2 party so notifies the receiving party. If the receiving party has disclosed the materials  
3 before receiving the designation, the receiving party must notify the designating party in  
4 writing of each such disclosure.

5 17. Nothing within this Order will prejudice the right of any party to object to the  
6 production of any discovery material on the grounds that the material is protected as  
7 privileged or as attorney work product.

8 18. Nothing in this Order will bar counsel from rendering advice to their clients  
9 with respect to this litigation and, in the course thereof, relying upon any information  
10 designated as confidential information, provided that the contents of the information must  
11 not be disclosed.

12 19. This Order will be without prejudice to the right of any party to oppose  
13 production of any information for lack of relevance or any other ground other than the mere  
14 presence of confidential information. The existence of this Order must not be used by  
15 either party as a basis for discovery that is otherwise improper under the Federal Rules of  
16 Civil Procedure.

17 20. Nothing within this Order will be construed to prevent disclosure of  
18 confidential information if such disclosure is required by law or by order of the Court.

19 21. Upon final termination of this action, including any and all appeals, counsel  
20 for each party must, upon request of the producing party, return all confidential information  
21 to the party that produced the information, including any copies, excerpts, and summaries  
22 of that information, or must destroy same at the option of the receiving party, and must  
23 purge all such information from all machine-readable media on which it resides.  
24 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,  
25 memoranda, motions, and other documents filed with the Court that refer to or incorporate  
26 confidential information, and will continue to be bound by this Order with respect to all  
27 such retained information. Further, attorney work product materials that contain  
28 confidential information need not be destroyed, but, if they are not destroyed, the person



1 in possession of the attorney work product will continue to be bound by this Order with  
2 respect to all such retained information.

3 22. Absent an *ex parte* motion made within 10 calendar days of the termination  
4 of the case, the parties understand that the Court will destroy any confidential documents  
5 in its possession.

6 23. The restrictions and obligations set forth within this Order will not apply to  
7 any information that:

- 8 a. the parties agree should not be designated confidential information;
- 9 b. the parties agree, or the Court rules, is already public knowledge;
- 10 c. the parties agree, or the Court rules, has become public knowledge other  
11 than as a result of disclosure by the receiving party, its employees, or its agents in  
12 violation of this Order; or
- 13 d. has come or will come into the receiving party's legitimate knowledge  
14 independently of the production by the designating party. Prior knowledge must be  
15 established by pre-production documentation.

16 24. The restrictions and obligations within this Order will not be deemed to  
17 prohibit discussions of any confidential information with anyone if that person already has  
18 or obtains legitimate possession of that information.

19 25. Transmission by e-mail or some other currently utilized method of  
20 transmission is acceptable for all notification purposes within this Order.

21 26. This Order may be modified by agreement of the parties, subject to approval  
22 by the Court.

23 27. The Court may modify the terms and conditions of this Order for good cause,  
24 or in the interest of justice, or on its own order at any time in these proceedings.

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