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23 Midland National Life Insurance Company

24 UNITED STATES DISTRICT COURT  
 25 CENTRAL DISTRICT OF CALIFORNIA

19	ROSALIE VACCARINO, on behalf of	)	No.: 2:11-CV-05858-CAS (MANx)
20	herself and all others similarly situated;	)	
21	Plaintiff,	)	<b>PROTECTIVE ORDER ENTERED</b>
22		)	<b>PURSUANT TO THE PARTIES'</b>
23	vs.	)	<b>STIPULATION</b>
24	MIDLAND NATIONAL LIFE	)	
25	INSURANCE COMPANY; and DOES 1-	)	Compl. Filed: June 17, 2011
26	100, Inclusive,	)	Compl. Removed: July 15, 2011
27	Defendant.	)	Trial Date: None Set
28		)	Honorable Christina A. Snyder

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the  
2 parties' Stipulated Protective Order Regarding Confidential and Trade Secret  
3 Information ("Stipulation") filed on September 1, 2011, the terms of the protective  
4 order to which the parties have agreed are adopted as a protective order of this Court  
5 (which generally shall govern the pretrial phase of this action) except to the extent, as  
6 set forth below, that those terms have been substantively modified by the Court's  
7 amendment of Paragraphs 1, 8, 12, 13, 15, and 17 of, and Exhibit A to, the  
8 Stipulation.

9 The parties are expressly cautioned that the designation of any information,  
10 document, or thing as "CONFIDENTIAL," "Confidential Information," or other  
11 designation(s) used by the parties, does not, in and of itself, create any entitlement to  
12 file such information, document, or thing, in whole or in part, under seal.  
13 Accordingly, reference to this Protective Order or to the parties' designation of any  
14 information, document, or thing as "CONFIDENTIAL," "Confidential Information,"  
15 or other designation(s) used by the parties, is wholly insufficient to warrant a filing  
16 under seal.

17 There is a strong presumption that the public has a right of access to judicial  
18 proceedings and records in civil cases. In connection with non-dispositive motions,  
19 good cause must be shown to support a filing under seal. The parties apparently have  
20 endeavored, through the good cause statement set forth in their Stipulation, to make a  
21 prospective showing of good cause. The Court has stricken their good cause  
22 statement, because a specific showing of good cause or compelling reasons (see  
23 below) for filing under seal, **with proper evidentiary support and legal**  
24 **justification**, must be made with respect to each document or item designated as  
25 "CONFIDENTIAL," "Confidential Information," or other designation(s) used by the  
26 parties, which a party seeks to have filed under seal. The parties mere designation of  
27 any information, document, or thing as "CONFIDENTIAL," "Confidential  
28 Information," or other designation(s) used by the parties, does not -- **without the**

1 **submission of competent evidence, in the form of a declaration or declarations,**  
2 **establishing that the material sought to be filed under seal qualifies as**  
3 **confidential, privileged, or otherwise protectable** -- constitute good cause.

4 Further, if sealing is requested in connection with a dispositive motion or trial,  
5 then compelling reasons, as opposed to good cause, for the sealing must be shown,  
6 and the relief sought shall be narrowly tailored to serve the specific interest to be  
7 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.  
8 2010). For each item or type of information, document, or thing sought to be filed or  
9 introduced under seal in connection with a dispositive motion or trial, the party  
10 seeking protection must articulate compelling reasons, supported by specific facts and  
11 legal justification, for the requested sealing order. **Again, competent evidence**  
12 **supporting the application to file documents under seal must be provided by**  
13 **declaration.**

14 Any document that is not confidential, privileged, or otherwise protectable in its  
15 entirety will not be filed under seal if the confidential portions can be redacted. If  
16 documents can be redacted, then a redacted version for public viewing, omitting only  
17 the confidential, privileged, or otherwise protectable portions of the document, shall  
18 be filed. Any application that seeks to file documents under seal in their entirety  
19 should include an explanation of why redaction is not feasible.

20 Notwithstanding any other provision of this Protective Order, in the event that  
21 this case proceeds to trial, all information, documents, and things discussed or  
22 introduced into evidence at trial will become public and available to all members of  
23 the public, including the press, unless sufficient cause is shown in advance of trial to  
24 proceed otherwise.

25  
26 **TERMS OF THE PROTECTIVE ORDER**

27  
28 **1. [OMITTED BY THE COURT]**

1 **2. DEFINITION OF “CONFIDENTIAL INFORMATION”**

2 For purposes of this Protective Order, “Confidential Information” shall mean  
3 the following types of documents and information:

4 (a) information that constitutes a trade secret including, without limitation,  
5 information, materials, and/or other documents reflecting non-public business or  
6 financial strategies, and/or confidential competitive information which, if disclosed,  
7 could result in prejudice or harm to the disclosing party;

8 (b) non-public financial or actuarial projections, analyses, or studies;

9 (c) non-public communications with regulators, Departments of Insurance,  
10 or other governmental bodies that are intended to be kept confidential and/or are  
11 protected from disclosure by statute or regulation; and

12 (d) policyholder-specific information.

13 2.1 Any copies or reproductions, excerpts, summaries, or other documents or  
14 media that contain or incorporate Confidential Information as defined above shall also  
15 be treated as Confidential Information pursuant to this Protective Order.

16 2.2 Nothing in this Protective Order shall be construed as requiring Midland  
17 to produce any personal or identifying information regarding any individual, nor any  
18 other policyholder information that is protected from disclosure under applicable state  
19 or federal law.

20 **3. MARKING DOCUMENTS “CONFIDENTIAL”**

21 The Designating Party shall designate Confidential Information by stamping  
22 any document or material produced to a Party with the legend “CONFIDENTIAL” or  
23 by informing the Parties of the designation in writing at the time of production. Any  
24 such stamp or designation shall not, in any manner, cover up, overlap upon, obscure or  
25 otherwise conceal any text, picture, drawing, graph, or other communication or  
26 depiction in the document. As reasonably practicable, to the extent that a document or  
27 other material contains both Confidential Information and non-confidential  
28 information, the Designating Party shall clearly delineate the particular portions that

1 constitute Confidential Information and the remaining portions of the document or  
2 material shall be deemed not to be Confidential Information.

3 **4. DESIGNATING DEPOSITIONS “CONFIDENTIAL”**

4 With respect to any deposition, confidential treatment may be invoked by  
5 designating testimony as “Confidential” on the record at the deposition, or by serving  
6 such designations within 30 days after receipt of the final transcript of the deposition.  
7 All deposition transcripts shall be treated as Confidential Information for 30 days  
8 following receipt of the final transcript, unless the Parties otherwise agree.

9 **5. USE OF “CONFIDENTIAL” MATERIAL**

10 Material designated by a Party or non-party, or by counsel for a Party or non-  
11 party, as Confidential Information under this Protective Order shall be used by  
12 persons receiving it only for the purposes of the litigation or settlement of this Action.  
13 Any person in possession of Confidential Information must exercise reasonable care  
14 with regard to its storage, custody and use to ensure that the confidential nature of the  
15 same is maintained.

16 **6. INADVERTENT PRODUCTION OF CONFIDENTIAL MATERIAL:  
17 NO WAIVER**

18 If at any time prior to the trial of this Action, a Party or non-party realizes that  
19 previously undesignated documents or other material should be designated as  
20 Confidential Information, the Party or non-party may so designate by advising the  
21 Parties in writing. The designated documents or material will thereafter be treated as  
22 Confidential Information pursuant to this Protective Order. Upon receipt of such  
23 designation in writing, the Parties and all other persons subject to this Protective  
24 Order shall take reasonable and appropriate action to notify any and all recipients of  
25 the material about the protected status of the newly designated Confidential  
26 Information and to retrieve the newly designated Confidential Information from any  
27 person who is not permitted by this Protective Order to have Confidential Information.

28 ///

1 **7. “QUALIFIED PERSONS”**

2 Confidential Information may be disclosed only to the following “Qualified  
3 Persons”:

4 (a) the Court, including attorneys, employees, judges, secretaries, special  
5 masters, stenographic reporters, staff, transcribers, and all other personnel necessary to  
6 assist the Court in its function and whose duties require access to Confidential  
7 Information;

8 (b) the Parties and counsel of record for the Parties, including all partners  
9 and associate attorneys of such counsel’s law firms who are assisting in the conduct of  
10 the Action, as well as any other counsel and support personnel of such counsel who  
11 are assisting counsel of record for the Parties in connection with the Action, and all  
12 clerks, employees, independent contractors, consultants, investigators, paralegals,  
13 assistants, secretaries, staff and stenographic, computer, audio-visual, and clerical  
14 employees, and agents thereof, operating under the supervision of such partners or  
15 associate attorneys in connection with the Action;

16 (c) litigation support services personnel, including outside copying services,  
17 court reporters, stenographers, or companies engaged in the business of supporting  
18 computerized or electronic discovery or trial preparation, retained by a Party or its  
19 counsel in connection with the Action;

20 (d) consulting or testifying experts, including associated personnel necessary  
21 to assist experts in the Action, provided that such expert or consultant is not employed  
22 by, or a consultant to, a competitor of the Party or non-party whose Confidential  
23 Information is to be disclosed;

24 (e) any person who created or authored such Confidential Information and  
25 any persons to whom the Confidential Information has been previously disclosed;

26 (f) auditors and insurers of the Parties;

27 (g) any mediators or arbitrators, including their necessary staff, engaged by  
28 the Parties for settlement purposes in the Action; and

1 (h) Witnesses at depositions or other proceedings in the Action, where  
2 counsel for the examining Party believes in good faith that disclosure is necessary to  
3 develop the testimony of such witnesses.

4 **8. DESIGNATIONS TO BE MADE IN GOOD FAITH**

5 The Parties agree to limit their designation of Confidential Information solely to  
6 **documents, information, and things** that they, in good faith, believe **qualify** for such  
7 designation under this Protective Order. No Party receiving Confidential Information  
8 shall be under any obligation to object to the designation of any document at the time  
9 such designation is made or at any time thereafter. No Party shall, by failure to object,  
10 be found to have acquiesced or agreed to such designation or be barred from objecting  
11 to such designation at any time.

12 **9. EXECUTING THE NON-DISCLOSURE AGREEMENT**

13 Each person to whom Confidential Information is disclosed, except the persons  
14 identified in ¶¶ 7 (a), (b), (c) (e), and (g) above, shall execute a non-disclosure  
15 agreement in the form annexed hereto as Exhibit A before receiving Confidential  
16 Information. Copies of the executed Exhibit A shall be retained by any Party  
17 disclosing Confidential Information to such person, and counsel for any Party to the  
18 Action that receives Confidential Information from a Designating Party shall obtain  
19 and retain a copy of all such executed agreements pertaining to any such persons who  
20 obtain Confidential Information directly or indirectly from such Party to the Action.  
21 Counsel for the receiving Party shall be responsible for ensuring compliance with the  
22 non-disclosure agreement by all persons to whom it provides Confidential Information  
23 directly or indirectly.

24 **10. CHALLENGING “CONFIDENTIAL” DESIGNATIONS**

25 A Party objecting to the designation of any material as Confidential Information  
26 shall give written notice to the Designating Party. Within 14 days of receipt of the  
27 written objection, the Designating Party shall serve a letter on the objecting Party, in  
28 accordance with Local Rule 37-1, responding to the objection and requesting a

1 conference to meet and confer in good faith to attempt to resolve the dispute without  
2 resort to Court intervention. If, after complying with the procedures set forth in Local  
3 Rule 37-1, the objecting Party and the Designating Party cannot resolve their dispute,  
4 the Designating Party, within 21 days after the good faith conference, or such other  
5 time period as may be agreed to by the Parties, must file a motion with the Court to  
6 continue the designation of the material as Confidential Information. The Designating  
7 Party has the burden of establishing that the document is entitled to protection.  
8 Provided that the Designating Party makes an application to the Court within the time  
9 period set forth above, any material so designated shall remain Confidential  
10 Information, and shall be subject to all of the restrictions on its disclosure and use set  
11 forth in this Protective Order until such time as the Court determines otherwise.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHER**  
13 **PROTECTED INFORMATION**

14 Inadvertent production or other disclosure of documents or information subject  
15 to work-product immunity, the attorney-client privilege, or other legal privilege that  
16 protects information from discovery shall not constitute a waiver of the immunity,  
17 privilege, or other protection, provided that the producing Party or non-party notifies  
18 each receiving Party in writing in a reasonably prompt manner after it confirms such  
19 inadvertent production. The written notice shall identify the inadvertently produced  
20 document(s), and describe the basis for requesting the return or destruction of each  
21 inadvertently produced document. Upon receipt of the written notice, each receiving  
22 Party and non-party shall promptly comply with the request and return or destroy such  
23 documents. If the producing and receiving parties do not agree that the document is  
24 entitled to protection, they shall follow the procedures in the paragraph above for  
25 challenging “Confidential” designations. Any Party or non-party having received  
26 privileged or protected information produced inadvertently is expected to comply with  
27 the requirements of this paragraph as soon as it is known or should be known that the  
28 document and information contained therein is privileged and/or protected. The



1 Parties and any non-parties shall have the benefit of all limitations on waiver afforded  
2 by Federal Rule of Evidence 502 and Federal Rule of Civil Procedure 26(b)(5)(B).

3 Any inadvertent disclosure of privileged information shall not operate as a waiver in  
4 any other federal or state proceeding, and the Parties' agreement regarding the effect  
5 of inadvertent disclosure of privileged information shall be binding on non-parties.

## 6 **12. SUBPOENA FOR CONFIDENTIAL INFORMATION**

7 If any Party has obtained Confidential Information under the terms of this  
8 Protective Order and receives a request to produce such Confidential Information by  
9 subpoena or other compulsory process commanding the production of such  
10 Confidential Information, such Party shall promptly (within 3 business days) notify  
11 the Designating Party, including in such notice the date set for the production of such  
12 subpoenaed information and, unless prohibited by applicable law, enclosing a copy of  
13 the subpoena (or other form of process), and shall object to the process or subpoena  
14 and not produce or disclose the Confidential Information until any dispute between the  
15 requesting party and the Designating Party is resolved **by the parties or a court**  
16 **order has been entered that requires such production or disclosure. Nothing in**  
17 **these provisions should be construed as authorizing or encouraging a party to**  
18 **disobey a lawful directive from another court.**

## 19 **13. FILING CONFIDENTIAL INFORMATION**

20 All documents or things filed with the Court that comprise or contain  
21 Confidential Information, or that refer to or in any way disclose Confidential  
22 Information (including pleadings, motions, or other submissions), shall be **submitted**  
23 **for filing** under seal in accordance with the Local Rules, particularly Local Rule 79-  
24 5.1.

## 25 **14. NO LIMITATION ON USE OF OWN INFORMATION**

26 Nothing herein shall impose any restriction on the use or disclosure by a Party  
27 of its own information or of information that lawfully came into the possession of the  
28 Party independent of any disclosure of information in this litigation. Nothing

1 contained in this Protective Order shall be construed as preventing any Party or non-  
2 party from seeking greater protections or confidentiality for particular Confidential  
3 Information.

4 **15. USE OF CONFIDENTIAL INFORMATION AT TRIAL**

5 The Parties shall disclose any exhibits containing Confidential Information that  
6 they intend to introduce at trial, and the Parties shall be prepared at the Final Pretrial  
7 Conference to **address with the Court** how such exhibits shall be used at trial and  
8 what protection, **if any**, from disclosure is warranted.

9 **16. ORDER SURVIVES TRIAL**

10 This Order shall be binding throughout and after final adjudication of this  
11 action, including, but not limited to, final adjudication of any appeals and petitions for  
12 extraordinary writs. Nothing in this Protective Order shall be construed to contradict  
13 any provision of law.

14 **17. FINAL TERMINATION**

15 Upon final termination of this Action, including any and all appeals, counsel for  
16 each Party shall, upon request of the Designating Party, return all Confidential  
17 Information to the party that produced the information, including any copies, excerpts  
18 and summaries thereof, including all copies provided to Qualified Persons, **except**  
19 **those persons described in ¶ 7(a)**, or shall destroy the same at the option of the  
20 receiving Party, and shall purge all such information from all machine-readable media  
21 on which it resides, including with respect to Qualified Persons. Notwithstanding the  
22 foregoing, counsel for each Party may retain all pleadings, briefs, memoranda,  
23 discovery responses, deposition transcripts, deposition exhibits, expert reports,  
24 motions, and other documents filed with the Court that refer to or incorporate  
25 Confidential Information, and will continue to be bound by this Protective Order with  
26 respect to all such retained information. Further, attorney work-product materials that  
27 contain Confidential Information need not be destroyed, but, if they are not destroyed,  
28 the person in possession of the attorney work-product will continue to be bound by

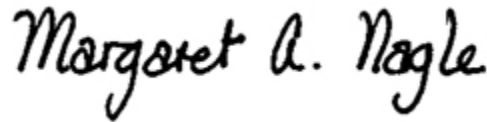
1 this Protective Order with respect to all such retained information.

2 **18. MODIFYING THIS ORDER**

3 Nothing in this Protective Order shall be construed to prohibit the Parties from  
4 agreeing to modify any provision of this Protective Order or seeking relief from the  
5 Court. Nor shall anything in this Protective Order or any Party's compliance herewith  
6 be construed as a waiver of any Party's rights under applicable law.

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8 **IT IS SO ORDERED.**

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10 Dated: September 23, 2011



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MARGARET A. NAGLE  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROSALIE VACCARINO, on behalf of  
herself and all others similarly situated;

Plaintiff,

vs.

MIDLAND NATIONAL LIFE  
INSURANCE COMPANY; and DOES  
1-100, Inclusive,

Defendant.

No.: 2:11-CV-05858-CAS (MANx)

**AGREEMENT TO BE BOUND BY  
PROTECTIVE ORDER ENTERED  
PURSUANT TO THE PARTIES'  
STIPULATION**

Compl. Filed: June 17, 2011  
Compl. Removed: July 15, 2011  
Trial Date: None Set

Honorable Christina A. Snyder

I, the undersigned, hereby declare that I have read the attached Protective Order Entered Pursuant to the Parties' Stipulation entered in the above-captioned Action. I understand the terms of, will comply with, and agree to be bound by all of the provisions of the Protective Order Entered Pursuant to the Parties' Stipulation.

DATED:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name