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27 **UNITED STATES DISTRICT COURT**
 28 **CENTRAL DISTRICT OF CALIFORNIA**

29 Felanice L. Yancy,
 30 Plaintiff,
 31 vs.
 32 United Of Omaha Life Insurance Company,
 33 Defendant.

Case No. 2:14-CV-09803-
 PSG(PJWx)

**STIPULATED
 CONFIDENTIALITY
 AGREEMENT AND
 PROTECTIVE ORDER**

Complaint Filed: 12/23/14

1 **1. INTRODUCTION**

2 1.1 Purposes and Limitations.

3 Disclosure and discovery activity in this action are likely to involve
4 production of confidential, proprietary, or private information for which special
5 protection from public disclosure and from use for any purpose other than
6 prosecuting this litigation would be warranted. Accordingly, the parties hereby
7 jointly move the Court to enter the following Protective Order. The parties
8 acknowledge that this Order does not confer blanket protections on all disclosures or
9 responses to discovery and that the protection it affords extends only to the limited
10 information or items that are entitled under the applicable legal principles to
11 treatment as confidential. The parties further acknowledge, as set forth in Section
12 10, below, that this Stipulated Protective Order creates no entitlement to file
13 confidential information under seal; and Local Rule 79- 5.1 sets forth the procedures
14 that must be followed when a party seeks permission from the court to file material
15 under seal.

16 Nothing in this stipulation or Protective Order shall be construed as an
17 admission by either party that discovery outside of the Administrative Record in this
18 ERISA-governed action is appropriate or that any information/documents obtained
19 through any such discovery, including but not limited to reports and testimony of
20 experts, is admissible at trial. The parties hereby specifically reserve their right to
21 object to the taking of discovery outside of the Administrative Record and/or move
22 for a protective order to prevent the same. The parties also reserve their right to
23 object to the admissibility at trial of any information, documents or testimony that is
24 not within the Administrative Record.

25 1.2 Good Cause Statement.

26 This action is likely to involve confidential and/or private information of third
27 parties, trade secrets and other valuable research, development, commercial,
28 financial, technical and/or proprietary information for which special protection from

1 public disclosure and from use for any purpose other than prosecution of this action
2 is warranted. Such confidential and proprietary materials and information consist
3 of, among other things, confidential business or financial information, information
4 regarding confidential business practices, or other confidential research,
5 development, or commercial information (including information implicating privacy
6 rights of third parties), information otherwise generally unavailable to the public, or
7 which may be privileged or otherwise protected from disclosure under state or
8 federal statutes, court rules, case decisions, or common law. Accordingly, to
9 expedite the flow of information, to facilitate the prompt resolution of disputes over
10 confidentiality of discovery materials, to adequately protect information the parties
11 are entitled to keep confidential, to ensure that the parties are permitted reasonable
12 necessary uses of such material in preparation for and in the conduct of trial, to
13 address their handling at the end of the litigation, and serve the ends of justice, a
14 protective order for such information is justified in this matter. It is the intent of the
15 parties that information will not be designated as confidential for tactical reasons
16 and that nothing be so designated without a good faith belief that it has been
17 maintained in a confidential, non-public manner, and there is good cause why it
18 should not be part of the public record of this case.

19 **2. DEFINITIONS**

20 2.1 Party: any party to this action, including all of its officers, directors,
21 employees, consultants, retained experts, and outside counsel (and their support
22 staff).

23 2.2 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner generated, stored, or maintained (including, among other
25 things, testimony, transcripts, or tangible things) that are produced or generated in
26 disclosures or responses to discovery in this matter.

27 2.3 “Confidential” Information or Items: information (regardless of how
28 generated, stored or maintained) or tangible things that qualify for protection under

1 standards developed under Rule 26 of the Federal Rules of Civil Procedure
2 (“FRCP”).

3 2.4 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 2.5 Producing Party: a Party or non-party that produces Disclosure or
6 Discovery Material in this action.

7 2.6 Designating Party: a Party or non-party that designates information or
8 items that it produces in disclosures or in responses to discovery as “Confidential.”

9 2.7 Protected Material: any Disclosure or Discovery Material that is
10 designated as “Confidential.”

11 2.8 Outside Counsel: attorneys who are not employees of a Party but who
12 are retained to represent or advise a Party in this action.

13 2.9 House Counsel: attorneys who are employees of a Party.

14 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as
15 well as their support staffs).

16 2.11 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as
18 an expert witness or as a consultant in this action and who is not a past or a current
19 employee or of a competitor of a Party’s and who, at the time of retention, is not
20 anticipated to become an employee of a Party or a competitor of a Party’s.

21 2.12 Professional Vendors: persons or entities that provide litigation
22 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
23 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
24 and their employees and subcontractors.

25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also any information copied or extracted
28 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus

1 testimony, conversations, or presentations by parties or counsel to or in court or in
2 other settings that might reveal Protected Material.

3 **4. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs.

7 **5. DESIGNATING PROTECTED MATERIAL**

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or non-party that designates information or items for protection under
10 this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. A Designating Party must take care to
12 designate for protection only those parts of material, documents, items, or oral or
13 written communications that qualify — so that other portions of the material,
14 documents, items, or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this Order.

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

21 If it comes to a Party's or a non-party's attention that information or items
22 that it designated for protection do not qualify for protection at all, or do not qualify
23 for the level of protection initially asserted, that Party or non-party must promptly
24 notify all other parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
27 stipulated or ordered, material that qualifies for protection under this Order must be
28 clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts of
3 depositions or other pretrial or trial proceedings), that the Producing Party affix the
4 Legend “CONFIDENTIAL” at the top or bottom of each page that contains
5 protected material. If only a portion or portions of the material on a page qualifies
6 for protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins).

8 A Party or non-party that makes original documents or materials
9 available for inspection need not designate them for protection until after the
10 inspecting Party has indicated which material it would like copied and produced.
11 After the inspecting Party has identified the documents it wants copied and
12 produced, the Producing Party must determine which documents, or portions
13 thereof, qualify for protection under this Order, then, before producing the specified
14 documents, the Producing Party must affix the appropriate legend
15 (“CONFIDENTIAL”) at the top or bottom of each page that contains protected
16 Material. If only a portion or portions of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s)
18 (e.g., by making appropriate markings in the margins).

19 (b) for testimony given in deposition or in other pretrial or trial
20 proceedings, that the Party or non-party offering or sponsoring the testimony
21 identify on the record, before the close of the deposition, hearing, or other
22 proceeding, all protected testimony. When it is impractical to identify separately
23 each portion of testimony that is entitled to protection, and when it appears that
24 substantial portions of the testimony may qualify for protection, the Party or non-
25 party that sponsors, offers, or gives the testimony may invoke on the record (before
26 the deposition or proceeding is concluded) a right to have up to 20 days after receipt
27 of transcripts from the court reporter to identify the specific portions of the
28 testimony as to which protection is sought. Only those portions of the testimony that

1 are appropriately designated for protection within the 20 days shall be covered by
2 the provisions of this Stipulated Protective Order.

3 Transcript pages containing Protected Material must be separately
4 bound by the court reporter, who must affix to the top of each such page the legend
5 “CONFIDENTIAL” as instructed by the Party or nonparty offering or sponsoring
6 the witness or presenting the testimony.

7 (c) for information produced in some form other than documentary,
8 and for any other tangible items, that the Producing Party affix in a prominent place
9 on the exterior of the container or containers in which the information or item is
10 stored the legend “CONFIDENTIAL.” If only portions of the information or item
11 warrant protection, the Producing Party, to the extent practicable, shall identify the
12 protected portions as “Confidential.”

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items as “Confidential” does not,
15 standing alone, waive the Designating Party’s right to secure protection under this
16 Order for such material. If material is appropriately designated as “Confidential”
17 after the material was initially produced, the Receiving Party, on timely notification
18 of the designation, must make reasonable efforts to assure that the material is treated
19 in accordance with the provisions of this Order.

20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
22 Party’s confidentiality designation is necessary to avoid foreseeable substantial
23 unfairness, unnecessary economic burdens, or a later significant disruption or delay
24 of the litigation, a Party does not waive its right to challenge a confidentiality
25 designation by electing not to mount a challenge promptly after the original
26 designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
28 Designating Party’s confidentiality designation must do so in good faith and must

1 begin the process by conferring directly (in voice to voice dialogue; other forms of
2 communication are not sufficient) with counsel for the Designating Party. In
3 conferring, the challenging Party must explain the basis for its belief that the
4 confidentiality designation was not proper and must give the Designating Party an
5 opportunity to review the designated material, to reconsider the circumstances, and,
6 if no change in designation is offered, to explain the basis for the chosen
7 designation. A challenging Party may proceed to the next stage of the challenge
8 process only if it has engaged in this meet and confer process first.

9 6.3 Judicial Intervention. A Party that elects to press a challenge to a
10 confidentiality designation after considering the justification offered by the
11 Designating Party may file and serve a motion that identifies the challenged material
12 and sets forth in detail the basis for the challenge. Each such motion must be
13 accompanied by a competent declaration that affirms that the movant has complied
14 with the meet and confer requirements imposed in the preceding paragraph and that
15 sets forth with specificity the justification for the confidentiality designation that
16 was given by the Designating Party in the meet and confer dialogue.

17 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Until the court rules on the challenge, all parties shall continue to
19 afford the material in question the level of protection to which it is entitled under the
20 Producing Party's designation.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a non-party in connection with this
24 case only for prosecuting, defending, or attempting to settle this litigation. Such
25 Protected Material may be disclosed only to the categories of persons and under the
26 conditions described in this Order. When the litigation has been terminated, a
27 Receiving Party must comply with the provisions of section 11, below (FINAL
28 DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated CONFIDENTIAL
7 only to:

8 (a) the Receiving Party’s Outside Counsel of record in this action, as
9 well as employees of said Counsel to whom it is reasonably necessary to disclose
10 the information for this litigation;

11 (b) the officers, directors, and employees (including House Counsel)
12 of the Receiving Party to whom disclosure is reasonably necessary for this litigation
13 and;

14 (c) experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 “Agreement to Be Bound by Protective Order” (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters, their staffs, and professional vendors to whom
19 disclosure is reasonably necessary for this litigation;

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the “Agreement to Be
22 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony
23 or exhibits to depositions that reveal Protected Material must be separately bound by
24 the court reporter and may not be disclosed to anyone except as permitted under this
25 Stipulated Protective Order.

26 (g) the author of the document or the original source of the information.
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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Receiving Party is served with a subpoena or an order issued in other
4 litigation that would compel disclosure of any information or items designated in
5 this action as “CONFIDENTIAL,” the Receiving Party must so notify the
6 Designating Party, in writing (by fax or electronic mail, if possible) immediately and
7 in no event more than three court days after receiving the subpoena or order. Such
8 notification must include a copy of the subpoena or court order. The Receiving
9 Party also must immediately inform in writing the Party who caused the subpoena or
10 order to issue in the other litigation that some or all the material covered by the
11 subpoena or order is the subject of this Protective Order. In addition, the Receiving
12 Party must deliver a copy of this Protective Order promptly to the Party in the other
13 action that caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the
15 existence of this Protective Order and to afford the Designating Party in this case an
16 opportunity to try to protect its confidentiality interests in the court from which the
17 subpoena or order issued. The Designating Party shall bear the burdens and the
18 expenses of seeking protection in that court of its confidential material — and
19 nothing in these provisions should be construed as authorizing or encouraging a
20 Receiving Party in this action to disobey a lawful directive from another court.

21 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

3 **10. FILING PROTECTED MATERIAL**

4 Documents designated “CONFIDENTIAL” and all information contained
5 therein or derived therefrom, may be discussed or referred to in pleadings, motions,
6 affidavits, briefs and other papers filed with the Court, or attached as exhibits
7 thereto, provided that such “confidential” documents and information, and any
8 portion of any paper filed with the Court that discusses or refers to them, are
9 stamped “confidential” and separately filed provisionally under seal with the Clerk
10 of the Court. Applicable law, including Civil Local Rule 79-5.1, govern the filing of
11 documents under seal with the District Court.

12 **11. FINAL DISPOSITION**

13 Unless otherwise ordered or agreed in writing by the Producing Party, within
14 sixty days after the final termination of this action, each Receiving Party must return
15 all Protected Material to the Producing Party. As used in this subdivision, “all
16 Protected Material” includes all copies, abstracts, compilations, summaries or any
17 other form of reproducing or capturing any of the Protected Material. Alternatively,
18 the Receiving Party may destroy some or all of the Protected Material instead of
19 returning it. Whether the Protected Material is returned or destroyed, the Receiving
20 Party must submit a written certification to the Producing Party (and, if not the same
21 person or entity, to the Designating Party) by the sixty day deadline that affirms that
22 the Receiving Party has not retained any copies, abstracts, compilations, summaries
23 or other forms of reproducing or capturing any of the Protected Material.

24 Notwithstanding this provision, Counsel are entitled to retain an archival copy
25 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
26 attorney work product, even if such materials contain Protected Material. Any such
27 archival copies that contain or constitute Protected Material remain subject to this
28 Protective Order as set forth in Section 4 (DURATION), above.

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

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1 **IT IS SO STIPULATED.**

2 DATED: June 26, 2015

HINSHAW & CULBERTSON LLP

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4 By: /s/ Jenny H. Wang

Martin E. Rosen

Jenny H. Wang

Attorneys for Defendant United of
Omaha Life Insurance Company

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8 DATED: June 26, 2015

KANTOR & KANTOR LLP

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10 By: /s/ Corinne Chandler

Corinne Chandler

Glenn R. Kantor

Attorneys for Plaintiff Felanice L.
Yancy

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*Filer's Attestation: Pursuant to Local Rule 5-4.3.4(a)(2)(i) regarding signatures,
Corinne Chandler hereby attests that concurrence in the filing of this document and
its content has been obtained by all signatories listed.*

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EXHIBIT "A"

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

BY PROTECTIVE ORDER

I, _____, declare as follows:

1. My address is _____
_____.

2. My present employer is _____
_____.

3. My present occupation or job description is _____
_____.

I received a copy of the Confidentiality Agreement and Protective Order for the matter of *Felanice L. Yancy v. United of Omaha Life Insurance Company*, United States District Court, Central District of California, Case No. 2:14-CV-09803-PSG-RZx ("Protective Order").

4. I have carefully read this Protective Order and certify that I understand its provisions.

5. I agree to comply with all the provisions of this Protective Order.

6. Subject to the terms of the Protective Order, I will hold in confidence and will not disclose to anyone not qualified under the Protective Order, any information contained in the Protected Material that is disclosed to me in this case.

7. Subject to the terms of the Protective Order, I will use such information that is disclosed to me only for purposes of this case.

8. Upon request, I will return and deliver all Protected Material that comes into my possession, and all documents or things that I have prepared relating thereto, to my counsel in this action, or to counsel for the Party by whom I am employed or retained or from whom I received the Protective Material.

9. I hereby submit to the jurisdiction of this Court for the purpose of enforcing the Protective Order in this case.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this ____ day of _____, 20____, at _____[City], _____ [State].

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PROTECTIVE ORDER

Upon consideration of the attached Stipulated Confidentiality Agreement and Protective Order between the parties in *Felanice L. Yancy v. United Of Omaha Life Insurance Company*, Case No. 2:14-CV-09803-PSG(PJWx), the Court hereby approves of said Agreement and orders the parties to comply with its terms. Designated “CONFIDENTIAL” Discovery Materials to be produced by any of the parties shall be subject to this Stipulated Protective Order.

IT IS SO ORDERED.



Dated: July 1, 2015

HON. PATRICK J. WALSH
Magistrate Judge, District Court