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6 Attorneys for Plaintiff and Counterdefendant,
 7 THAMBIAH SUNDARAM

8
 9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

DONAHUE & HORROW, LLP

11
 12 THAMBIAH SUNDARAM, an
 13 individual,

Plaintiff,

v.

15 GENWORTH LIFE INSURANCE
 16 COMPANY, a Delaware entity, and
 17 DOES 1 TO 100,

Defendants.

Case No.: 2:16-cv-06218-BRO-AFM

**STIPULATED PROTECTIVE
 ORDER**

18 GENWORTH LIFE INSURANCE
 19 COMPANY, a Delaware entity,

Counterclaimant,

v.

23 THAMBIAH SUNDARAM,
 24 an individual,

Counterdefendant,

Complaint Filed: June 20, 2016
 Trial Date: Oct. 10, 2017

1 TO THE HONORABLE ALEXANDER F. MacKINNON AND HIS COURT
2 CLERK:

3 WHEREAS, Plaintiff and Counterdefendant Thambiah Sundaram (“Dr.
4 Sundaram” or “Plaintiff”), per the Court’s Standing Order, is prepared to produce
5 confidential and proprietary documents to Defendant and Counterclaimant Genworth
6 Life Insurance Company (“Genworth” or “Defendant”) in the above-captioned action;

7 NOW TEHREFORE, IT IS HEREBY STIPULATED AND AGREED as
8 follows:

9
10 1. A. PURPOSES AND LIMITATIONS

11 Discovery in this action is likely to involve production of confidential,
12 proprietary or private information for which special protection from public disclosure
13 and from use for any purpose other than prosecuting this litigation may be warranted.
14 Accordingly, the parties hereby stipulate to and petition the Court to enter the
15 following Stipulated Protective Order. The parties acknowledge that this Order does
16 not confer blanket protections on all disclosures or responses to discovery and that the
17 protection it affords from public disclosure and use extends only to the limited
18 information or items that are entitled to confidential treatment under the applicable
19 legal principles.

20
21 B. GOOD CAUSE STATEMENT

22 This action is likely to involve financial, trade secrets, commercial, technical
23 and/or proprietary information for which special protection from public disclosure and
24 from use for any purpose other than prosecution of this action is warranted. Such
25 confidential and proprietary materials and information consist of, among other things,
26 confidential business and financial information, information regarding confidential
27 business practices, or other confidential research, development, or commercial
28 information (including information implicating privacy rights of third parties),

1 information otherwise generally unavailable to the public, or which may be privileged
2 or otherwise protected from disclosure under state or federal statutes, court rules, case
3 decisions, or common law. Accordingly, to expedite the flow of information, to
4 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
5 to adequately protect information the parties are entitled to keep confidential, to
6 ensure that the parties are permitted reasonable necessary uses of such material in
7 preparation for and in the conduct of trial, to address their handling at the end of the
8 litigation, and serve the ends of justice, a protective order for such information is
9 justified in this matter. It is the intent of the parties that information will not be
10 designated as confidential for tactical reasons and that nothing be so designated
11 without a good faith belief that it has been maintained in a confidential, non-public
12 manner, and there is a good cause why it should not be part of the public record of this
13 case.

14
15 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

16 The parties further acknowledge, as set forth in Section 12.3, below, that this
17 Stipulated Protective Order does not entitle them to file confidential information under
18 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
19 standards that will be applied when a party seeks permission from the court to file
20 material under seal.

21 There is a strong presumption that the public has a right of access to judicial
22 proceedings and records in civil cases. In connection with non-dispositive motions,
23 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
24 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
25 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics,*
26 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
27 good cause showing), and a specific showing of good cause or compelling reasons
28 with proper evidentiary support and legal justification, must be made with respect to

1 Protected Material that a party seeks to file under seal. The parties’ mere designation
2 of Disclosure or Discovery Material as CONFIDENTIAL does not— without the
3 submission of competent evidence by declaration, establishing that the material sought
4 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
5 constitute good cause.

6 Further, if a party requests sealing related to a dispositive motion or trial, then
7 compelling reasons, not only good cause, for the sealing must be shown, and the relief
8 sought shall be narrowly tailored to serve the specific interest to be protected.

9 *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
10 item or type of information, document, or thing sought to be filed or introduced under
11 seal in connection with a dispositive motion or trial, the party seeking protection must
12 articulate compelling reasons, supported by specific facts and legal justification, for
13 the requested sealing order. Again, competent evidence supporting the application to
14 file documents under seal must be provided by declaration.

15 Any document that is not confidential, privileged, or otherwise protectable in its
16 entirety will not be filed under seal if the confidential portions can be redacted.

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

21 22 2. DEFINITIONS

23 2.1 Action: this pending federal lawsuit.

24 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
25 information or items under this Order.

26 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
27 is generated, stored or maintained) or tangible things that qualify for protection under
28 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause

1 Statement.

2 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
3 support staff).

4 2.5 Designating Party: a Party or Non-Party that designates information or
5 items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL.”

7 2.6 Disclosure or Discovery Material: all items or information, regardless of the
8 medium or manner in which it is generated, stored, or maintained (including, among
9 other things, testimony, transcripts, and tangible things), that are produced or
10 generated in disclosures or responses to discovery in this matter.

11 2.7 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
13 expert witness or as a consultant in this Action.

14 2.8 House Counsel: attorneys who are employees of a party to this Action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association or other
18 legal entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
20 this Action but are retained to represent or advise a party to this Action and have
21 appeared in this Action on behalf of that party or are affiliated with a law firm that has
22 appeared on behalf of that party, and includes support staff.

23 2.11 Party: any party to this Action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

28

1 2.13 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.14 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL.”

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery
8 Material from a Producing Party.

9
10 3. SCOPE

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

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

18
19 4. DURATION

20 Once a case proceeds to trial, information that was designated as
21 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
22 as an exhibit at trial becomes public and will be presumptively available to all
23 members of the public, including the press, unless compelling reasons supported by
24 specific factual findings to proceed otherwise are made to the trial judge in advance of
25 the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing
26 for sealing documents produced in discovery from “compelling reasons” standard
27 when merits-related documents are part of court record). Accordingly, the terms of
28 this protective order do not extend beyond the commencement of the trial.

1 If either party wishes to use the CONFIDENTIAL Information, or any portion
2 thereof, during trial of this action, the Parties will, in advance, confer in good faith to
3 agree upon a method to protect such CONFIDENTIAL Information. Either party may
4 apply to the Court for a mechanism for maintaining the confidentiality of material
5 designated as CONFIDENTIAL Information.

6
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
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. The Designating Party must designate for
12 protection only those parts of material, documents, items or oral or written
13 communications that qualify so that other portions of the material, documents, items
14 or communications for which protection is not warranted are not swept unjustifiably
15 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 the case development process or to impose
19 unnecessary expenses and burdens on other parties) may expose the Designating
20 Party to sanctions.

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

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
26 or ordered, Disclosure or Discovery Material that qualifies for protection under this
27 Order must be clearly so designated before the material is disclosed or produced.
28

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix at a minimum, the legend
5 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
6 contains protected material. If only a portion of the material on a page qualifies for
7 protection, the Producing Party also must clearly identify the protected portion(s)
8 (e.g., by making appropriate markings in the margins).

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

20 (b) for testimony given in depositions that the Designating Party
21 identifies the Disclosure or Discovery Material on the record, before the close of the
22 deposition all protected testimony.

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

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items does not, standing alone, waive the
3 Designating Party's right to secure protection under this Order for such material.
4 Upon timely correction of a designation, the Receiving Party must make reasonable
5 efforts to assure that the material is treated in accordance with the provisions of this
6 Order.

7
8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
10 of confidentiality at any time that is consistent with the Court's Scheduling Order.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
12 process under Local Rule 37-1 et seq.

13 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint
14 stipulation pursuant to Local Rule 37-2.

15 6.4 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges, and those made for an improper purpose
17 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
18 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
19 withdrawn the confidentiality designation, all parties shall continue to afford the
20 material in question the level of protection to which it is entitled under the Producing
21 Party's designation until the Court rules on the challenge.

22
23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this
26 Action only for prosecuting, defending or attempting to settle this Action. Such
27 Protected Material may be disclosed only to the categories of persons and under the
28 conditions described in this Order. When the Action has been terminated, a Receiving

1 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

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

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

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) The court and its personnel;

17 (e) Court reporters and their staff;

18 (f) Professional jury or trial consultants, mock jurors, and Professional
19 Vendors to whom disclosure is reasonably necessary for this Action and who have
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) The author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information;

23 (h) During their depositions, witnesses, and attorneys for witnesses, in
24 the Action to whom disclosure is reasonably necessary provided they will not be
25 permitted to keep any confidential information unless they sign the “Acknowledgment
26 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
27 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
28 depositions that reveal Protected Material may be separately bound by the court

1 reporter and may not be disclosed to anyone except as permitted under this Stipulated
2 Protective Order; and

3 (i) Any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions.

5
6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

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

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

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

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

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

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

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

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

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

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

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

20 (c) If the Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party’s confidential information responsive to the discovery request.
23 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
24 any information in its possession or control that is subject to the confidentiality
25 agreement with the Non-Party before a determination by the court. Absent a court
26 order to the contrary, the Non-Party shall bear the burden and expense of seeking
27 protection in this court of its Protected Material.
28

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

10
11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

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

23
24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order, no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information in
9 the public record unless otherwise instructed by the court.

10
11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within 60
13 days, each Receiving Party must return all Protected Material to the Producing Party
14 or destroy such material. As used in this subdivision, "all Protected Material" includes
15 all copies, abstracts, compilations, summaries, and any other format reproducing or
16 capturing any of the Protected Material. Whether the Protected Material is returned or
17 destroyed, the Receiving Party must submit a written certification to the Producing
18 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
19 deadline that (1) identifies (by category, where appropriate) all the Protected Material
20 that was returned or destroyed and (2) affirms that the Receiving Party has not
21 retained any copies, abstracts, compilations, summaries or any other format
22 reproducing or capturing any of the Protected Material. Notwithstanding this
23 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
24 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
25 deposition and trial exhibits, expert reports, attorney work product, and consultant and
26 expert 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).

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14. VIOLATION

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

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 19, 2017

/s/ Donna Puyot

Michael B. Horrow
Donna Puyot
Attorneys for Plaintiff

DATED: April 19, 2017

/s/ Joshua Kroot

Ronald D. Kent
Joshua Kroot
Attorneys for Defendant

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: 4/21/2017



ALEXANDER F. MacKINNON
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that

I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of *Thambiah Sundaram v. Genworth Life Insurance Company*, Case No. 2:16-cv-06218-BRO-AFM. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____