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14 UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

15 MARLENE K. SALIB, DDS,)	CASE NO. 2:17-cv-00085-DMG-RAO
Plaintiff,)	
vs.)	STIPULATED PROTECTIVE
)	ORDER¹
17 BERKSHIRE LIFE INSURANCE)	
18 COMPANY OF AMERICA,)	
GUARDIAN LIFE INSURANCE)	
COMPANY OF AMERICA, and DOES)	
19 1-10,)	
Defendants.	}	

21 ¹This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Rozella A. Oliver’s Procedures.

1 1. A. PURPOSES AND LIMITATIONS

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

10 B. GOOD CAUSE STATEMENT

11 This action is likely to involve trade secrets and other valuable research,
12 development, commercial, financial, technical and/or proprietary information for which
13 special protection from public disclosure and from use for any purpose other than
14 prosecution of this action is warranted. Such confidential and proprietary materials and
15 information consist of, among other things, confidential business or financial information,
16 information regarding confidential or proprietary business practices, or other confidential
17 research, development, or commercial information (including information implicating
18 privacy rights of third parties), information otherwise generally unavailable to the public, or
19 which may be privileged or otherwise protected from disclosure under state or federal
20 statutes, court rules, case decision, or common law. Accordingly, to expedite the flow of
21 information, to facilitate the prompt resolution of disputes over confidentiality of discovery

1 materials, to adequately protect information the parties are entitled to keep confidential, to
2 ensure that the parties are permitted reasonable necessary uses of such material in
3 preparation for and in the conduct of trial, to address their handling at the end of the
4 litigation, and serve the ends of justice, a protective order for such information is justified in
5 this matter. It is the intent of the parties that information will not be designated as
6 confidential for tactical reasons and that nothing be so designated without a good faith
7 belief that it has been maintained in a confidential, non-public manner, and there is good
8 cause why it should not be part of the public record of this case.

9 C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING UNDER SEAL

10 The parties further acknowledge, as set forth in Section 12.3, below, that this
11 Stipulated Protective Order does not entitle them to file confidential information under seal;
12 Local Civil Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.
14 There is a strong presumption that the public has a right of access to judicial proceedings
15 and records in civil cases. In connection with non-dispositive motions, good cause must be
16 shown to support a filing under seal. *See Kamakana v. City and County of Honolulu*, 447
17 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11
18 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis.
19 1999) (even stipulated protective orders require good cause showing), and a specific
20 showing of good cause or compelling reasons with proper evidentiary support and legal
21 justification, must be made with respect to Protected Material that a party seeks to file under

1 seal. The parties' mere designation of Disclosure or Discovery Material as
2 CONFIDENTIAL does not—without the submission of competent evidence by declaration,
3 establishing that the material sought to be filed under seal qualifies as confidential,
4 privileged, or otherwise protectable—constitute good cause. Further, if a party requests
5 sealing related to a dispositive motion or trial, then compelling reasons, not only good
6 cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to
7 serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d
8 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing
9 sought to be filed or introduced under seal in connection with a dispositive motion or trial,
10 the party seeking protection must articulate compelling reasons, supported by specific facts
11 and legal justification, for the requested sealing order. Again, competent evidence
12 supporting the application to file documents under seal must be provided by declaration.

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

19 2. DEFINITIONS

20 2.1 Action: *Marlene K. Salib, DDS v. Berkshire Life Insurance Company of America,*
21 *Guardian Life Insurance Company of America, and Does 1-10*, 2:17-cv-00085-DMG-RAO

1 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
4 generated, stored or maintained) or tangible things that qualify for protection under Federal
5 Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

6 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
7 staff).

8 2.5 Designating Party: a Party or Non-Party that designates information or items that
9 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

14 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
15 to the litigation who has been retained by a Party or its counsel to serve as an expert witness
16 or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a party to this Action. House
18 Counsel does not include Outside Counsel of Record or any other outside counsel.

19 2.9 Non-Party: any natural person, partnership, corporation, association or other legal
20 entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this

1 Action but are retained to represent or advise a party to this Action and have appeared in
2 this Action on behalf of that party or are affiliated with a law firm that has appeared on
3 behalf of that party, and includes support staff.

4 2.11 Party: any party to this Action, including all of its officers, directors, employees,
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
7 Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation support services
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
10 organizing, storing, or retrieving data in any form or medium) and their employees and
11 subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
13 “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 3. SCOPE

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

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

3 4. DURATION

4 Once a case proceeds to trial, information that was designated as CONFIDENTIAL
5 or maintained pursuant to this protective order used or introduced as an exhibit at trial
6 becomes public and will be presumptively available to all members of the public, including
7 the press, unless compelling reasons supported by specific factual findings to proceed
8 otherwise are made to the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at
9 1180-81 (distinguishing “good cause” showing for sealing documents produced in
10 discovery from “compelling reasons” standard when merits-related documents are part of
11 court record). Accordingly, the terms of this protective order do not extend beyond the
12 commencement of the trial.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
15 Party or Non-Party that designates information or items for protection under this Order must
16 take care to limit any such designation to specific material that qualifies under the
17 appropriate standards. The Designating Party must designate for protection only those parts
18 of material, documents, items or oral or written communications that qualify so that other
19 portions of the material, documents, items or communications for which protection is not
20 warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate or routinized designations are prohibited. Designations that are

1 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
2 unnecessarily encumber the case development process or to impose unnecessary expenses
3 and burdens on other parties) may expose the Designating Party to sanctions.

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

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this
8 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
9 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
10 must be clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents, but
13 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
14 Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
15 legend"), to each page that contains protected material. If only a portion of the material on a
16 page qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

18 A Party or Non-Party that makes original documents available for inspection need
19 not designate them for protection until after the inspecting Party has indicated which
20 documents it would like copied and produced. During the inspection and before the
21 designation, all of the material made available for inspection shall be deemed

1 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
2 copied and produced, the Producing Party must determine which documents, or portions
3 thereof, qualify for protection under this Order. Then, before producing the specified
4 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
5 that contains Protected Material. If only a portion of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
7 making appropriate markings in the margins).

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

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

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
17 designate qualified information or items does not, standing alone, waive the Designating
18 Party’s right to secure protection under this Order for such material. Upon timely correction
19 of a designation, the Receiving Party must make reasonable efforts to assure that the
20 material is treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATION

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time that is consistent with the Court’s Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process under Local Rule 37.1 et seq.

6 6.3 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
8 harass or impose unnecessary expenses and burdens on other parties) may expose the
9 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
10 confidentiality designation, all parties shall continue to afford the material in question the
11 level of protection to which it is entitled under the Producing Party’s designation until the
12 Court rules on the challenge.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this Action
16 only for prosecuting, defending or attempting to settle this Action. Such Protected Material
17 may be disclosed only to the categories of persons and under the conditions described in
18 this Order. When the Action has been terminated, a Receiving Party must comply with the
19 provisions of section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location
21 and in a secure manner that ensures that access is limited to the persons authorized under

1 this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
3 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
4 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

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

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

20 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
21 whom disclosure is reasonably necessary provided: (1) the deposing party requests that the

1 witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to
2 keep any confidential information unless they sign the “Acknowledgment and Agreement to
3 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
4 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
5 Protected Material may be separately bound by the court reporter and may not be disclosed
6 to anyone except as permitted under this Stipulated Protective Order; and

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

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION

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

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

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

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

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

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

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

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

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

21 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in

1 this Action, the relevant discovery request(s), and a reasonably specific description of the
2 information requested; and

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

5 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
6 receiving the notice and accompanying information, the Receiving Party may produce the
7 Non-Party's confidential information responsive to the discovery request. If the Non-Party
8 timely seeks a protective order, the Receiving Party shall not produce any information in its
9 possession or control that is subject to the confidentiality agreement with the Non-Party
10 before a determination by the court. Absent a court order to the contrary, the Non-Party
11 shall bear the burden and expense of seeking protection in this court of its Protected
12 Material.

13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this Stipulated
16 Protective Order, the Receiving Party must immediately (a) notify in writing the
17 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
18 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
19 unauthorized disclosures were made of all the terms of this Order, and (d) request such
20 person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
21 attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
14 to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order, no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Stipulated Protective
18 Order. Similarly, no Party waives any right to object on any ground to use in evidence of
19 any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
21 Material must comply with Local Civil Rule 79-5. Protected Material may only be filed

1 under seal pursuant to a court order authorizing the sealing of the specific Protected
2 Material at issue. If a Party's request to file Protected Material under seal is denied by the
3 court, then the Receiving Party may file the information in the public record unless
4 otherwise instructed by the court.

5 13. FINAL DISPOSITION

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

1 (DURATION).

2 14. VIOLATION

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

5 ///

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: April 21, 2017

8 By /s/ Michael B. Horrow
Michael Horrow
9 Attorneys for Plaintiff Marlene K. Salib, DDS

10 DATED: April 21, 2017

11 By /s/ Linda B. Oliver
Linda B. Oliver
12 Attorneys for Defendants Berkshire Life Insurance Company of America
and The Guardian Life Insurance Company of America
13

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15 DATED: April 24, 2017

16 Rozella A. Oliver

17 United States Magistrate Judge Rozella A. Oliver
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EXHIBIT A
ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

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2 I, _____ [print or type full name], of
3 _____ [print or type full address], declare under
4 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
5 Order that was issued by the United States District Court for the Central District of
6 California on [date] in the case of *Marlene K. Salib, DDS v. Berkshire Life Insurance*
7 *Company of America, Guardian Life Insurance Company of America, and Does 1-10,*
8 *2:17-cv-00085-DMG-RAO*. I agree to comply with and to be bound by all the terms of
9 this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.
14

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for enforcing the terms of this Stipulated Protective
17 Order, even if such enforcement proceedings occur after termination of this action. I
18 hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action or
21 any proceedings related to enforcement of this Stipulated Protective Order.

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____

4 Signature: _____

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