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 Insurance Company, and Unum Group

12
 13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15
 16 RONALD A. DiNICOLA,

17 Plaintiff,

18 v.

19 UNUM LIFE INSURANCE
 COMPANY OF AMERICA;
 20 PROVIDENT LIFE AND ACCIDENT
 INSURANCE COMPANY;
 21 UNUMPROVIDENT
 CORPORATION; and DOES 1
 22 through 10, inclusive,

23 Defendants.

Case No. 2:17-cv-1437 SVW (AJWx)

**STIPULATED CONFIDENTIALITY
 AGREEMENT AND PROTECTIVE
 ORDER**

24
 25
 26 IT IS HEREBY STIPULATED AND AGREED, by and among the parties to
 27 this action, Plaintiff Ronald A. DiNicola (“Plaintiff”) and Defendants Unum Life
 28 Insurance Company of America (“Unum Life”), Provident Life and Accident

1 Insurance Company (“PLA”) and Unum Group (erroneously sued as
2 UnumProvident Corporation) (“Unum”) (collectively referred to herein as “the
3 parties”) that certain documents or information produced in the process of
4 Plaintiff’s pending disability claim and/or discovery shall be subject to the
5 following Agreement with respect to confidentiality and privacy to expedite the
6 flow of information between the parties, and facilitate the prompt resolution of
7 disputes over confidentiality, subject to the approval of the Court.

8 1. The parties contend that certain discovery and information to be
9 exchanged in this case, specifically Plaintiff’s billing records, Defendants’
10 interrogatory answers and documents produced, will contain confidential non-
11 public information of a personal or privileged nature which may constitute
12 confidential information pertaining to a non-party. The parties do not wish
13 unreasonably to impede or burden the investigation or discovery process but, have
14 entered into this agreement to facilitate investigation and discovery. The parties
15 contend that materials designated as “CONFIDENTIAL” pursuant to the
16 procedures below should be protected by a Court order rather than by a private
17 agreement because the entry of a protective order would carry the weight of the
18 Court’s imprimatur and authorize the exercise of its contempt power over any
19 potential violations of this protective order. A private agreement between the
20 parties would not serve to fully protect the confidential nature of the
21 “CONFIDENTIAL” materials from unwarranted disclosure, as it would not provide
22 sufficient remedies in the event of disclosure and would therefore not be as strong
23 of a deterrent against such disclosure.

24 2. Upon entry of an Order by this Court, this Protective Order shall
25 govern the production and disclosure of all information designated as
26 “CONFIDENTIAL” pursuant to this Stipulated Confidentiality Agreement and
27 Protective Order, throughout the entirety of this litigation, any trial or appeal. The
28 parties will cooperate in establishing procedures acceptable to the Court with

1 respect to the protection of information designated as “CONFIDENTIAL” pursuant
2 to this Protective Order both at trial and upon any appeal of this case.

3 3. For purposes of this Protective Order, the term “CONFIDENTIAL” as
4 used in this Agreement means any type or classification of information which
5 contains confidential and proprietary information, including financial information
6 pertaining to Plaintiff, Defendants and/or any third party, documents or
7 information subject to the attorney-client privilege and/or attorney work product
8 doctrine, Plaintiff’s billing records¹, or such other information which any of the
9 parties to this action consider confidential or proprietary. Such information shall be
10 designated as “CONFIDENTIAL” by the supplying party, whether it be a
11 document, information revealed in an interrogatory answer or otherwise. In
12 designating information as “CONFIDENTIAL” the supplying party will make such
13 designation only as to that information which the supplying party in good faith
14 believes contains confidential or proprietary information.

15 4. For purposes of this Protective Order, the phrase “Discovery
16 Materials” refers to Plaintiff’s billing records and to Defendants’ responses to
17 interrogatories and documents produced by Defendants in discovery.

18 5. This Protective Order shall not abrogate or diminish any privilege or
19 any contractual, statutory or other legal obligation or right of any party with respect
20 to Discovery Materials.

21 6. The special treatment accorded the Discovery Materials designated
22 “Confidential” under this Order shall reach:

23 (a) All Discovery Materials designated “Confidential” under the
24 terms of this Order;

25 (b) All copies of such Discovery Materials;

26
27 _____
28 ¹ Defendants have agreed to accept billing records from Plaintiff which redact his
clients’ names and other proper names.

1 (c) Any deposition transcript or exhibit, or portion thereof, that
2 discusses such Discovery Materials;

3 (d) Any portion of any discovery answer or response, affidavit,
4 declaration, brief or other paper, filed with the Court, or as an exhibit to such
5 paper that discusses such Discovery Materials.

6 (e) Any deposition transcript or portion thereof that is designated
7 “Confidential” under the terms of this Order; and

8 (f) All information contained in such Discovery Materials or
9 depositions.

10 7. Each party shall keep confidential and not use or disseminate outside
11 the boundaries of this litigation any Discovery Materials that any other party
12 designates as “CONFIDENTIAL” except as provided in paragraphs 8-10 below.

13 8. Except as provided in paragraphs 8-10, access to Discovery Materials
14 designated “CONFIDENTIAL” shall be restricted in accordance with the following
15 provisions:

16 (a) Discovery Materials, and any information extracted from them,
17 which have been designated “CONFIDENTIAL” shall be used solely for the
18 purposes of processing Plaintiff’s claim for disability benefits, and
19 prosecuting or defending this action, and for no other purposes, including
20 business, governmental or commercial, or in any other administrative,
21 arbitration or judicial proceedings or actions.

22 (b) “CONFIDENTIAL” designated Discovery Materials shall only
23 be disseminated to or shown to: (1) attorneys who are members or associates
24 of the law firms listed on the pleadings in this action, and who have appeared
25 or filed a motion or application to appear pro hac vice (“Counsel of Record”),
26 and to supporting personnel employed by Counsel of Record, such as other
27 attorneys at the firm, paralegals, legal secretaries, data entry clerks, legal
28 clerks and/or private data entry, document management and photocopying

1 services; (2) named individual parties, which includes employees of any
2 company, assisting in the defense of the action; (3) the court and court
3 personnel, in accordance with the terms specified below in paragraphs 9-10;
4 (4) actual or prospective deposition or trial witnesses to testify concerning
5 the suit; (5) individuals adjudicating, processing, and/or reviewing Plaintiff's
6 claim for disability benefits, including medical and vocational personnel of
7 Defendants; (6) actual or prospective experts and consultants retained or
8 consulted by a party or a party's counsel in the course of this action; (7) any
9 private mediator or other ADR professional retained or selected by the
10 parties to assist in the resolution of the matter; and (8) Federal and state tax
11 authorities and entities with which the parties have contractual and/or
12 reporting obligations including the California Department of Insurance or
13 any other governmental body or agency or any proceedings in connection
14 with the same, or any other agency or department working in conjunction
15 with or at the direction of any state Department of Insurance or any
16 governmental agency or body, and then only to the extent necessary. These
17 persons shall not disclose, discuss or reveal the contents or existence of the
18 Protected Information or the actual Protected Information itself to any other
19 person or entity not specifically described in this paragraph. There shall be
20 no other permissible dissemination of "CONFIDENTIAL" Discovery
21 Materials.

22 (c) If a party produces any Discovery Materials that mention or
23 reference any other party to this litigation, or such other party's employees,
24 consultants, vendors or agents (past or present), such Discovery Materials
25 shall be designated as "CONFIDENTIAL," unless express written consent of
26 that other party is obtained.

27 (d) No copies, extracts or summaries of any document designated
28 "CONFIDENTIAL" shall be made except by or on behalf of Counsel of

1 Record; and such copies, extracts or summaries shall also be designated and
2 treated as “CONFIDENTIAL” Discovery Materials and shall not be
3 delivered or exhibited to any persons except as provided in this Protective
4 Order.

5 (e) No person authorized to receive access to “CONFIDENTIAL”
6 Discovery Materials under the terms of this Order (except for those persons
7 identified in paragraphs 8(b)(1)-(3) of this Order) shall be granted access to
8 them until such person has read this Order and agreed in writing to be bound
9 by it pursuant to the Certification of Compliance form attached hereto as
10 Exhibit 1. Consultants shall be specifically advised that the portion of their
11 written work product, which contains or discloses the substance of Discovery
12 Materials designated as “CONFIDENTIAL” is subject to all the provisions of
13 this Protective Order. Counsel of Record disclosing such material to the
14 persons identified in paragraphs 8(b)(4)-(6) shall be responsible for obtaining
15 the executed Certification of Compliance in advance of such disclosure and
16 also shall retain the original executed copy of said Certifications of
17 Compliance. No “CONFIDENTIAL” Discovery Material may be disclosed
18 to any person identified in paragraphs 8(b)(4)-(6) prior to execution of the
19 form attached as Exhibit 1.

20 9. Materials designated “CONFIDENTIAL,” and all information in them,
21 may be discussed or referred to in pleadings, motions, affidavits, briefs or other
22 papers filed with the Court, or attached as exhibits to them, provided that such
23 “CONFIDENTIAL” materials and information, and any portion of any paper filed
24 with the Court that discusses or refers to them, are stamped “CONFIDENTIAL”
25 and separately filed in accordance with paragraphs 10 and 11 of this Order.

26 10. Materials designated “CONFIDENTIAL,” and all information in them
27 or derived from them, may be used or offered into evidence at the trial of this suit,
28 or at any hearing in this litigation, provided that when using “CONFIDENTIAL”

1 materials in Court, counsel for the party using the “CONFIDENTIAL” materials
2 shall take steps to insure against inadvertent disclosure of the “CONFIDENTIAL”
3 materials to persons not subject to this Order.

4 11. Any “CONFIDENTIAL” materials marked as deposition exhibits shall
5 be sealed separately from the remainder of the deposition transcript and exhibits.
6 When a party uses or refers to “CONFIDENTIAL” materials at a deposition, at the
7 request of the party asserting confidentiality, the portion of the deposition transcript
8 that relates to such documents or information shall be stamped “CONFIDENTIAL”
9 and sealed separately from the remainder of the transcript, and shall be treated as
10 “CONFIDENTIAL” under the provisions of this Order.

11 12. Any party may, within thirty (30) days after receiving a deposition
12 transcript, designate portions of the transcript, or exhibits to it, as being
13 “CONFIDENTIAL.” Confidential deposition testimony or exhibits may be
14 designated by stamping the exhibits “CONFIDENTIAL,” or by underlining the
15 portions of the pages that are confidential and stamping such pages
16 “CONFIDENTIAL.” Until expiration of the 30-day period, the entire deposition
17 transcript, and all exhibits to it, will be treated as confidential under the provisions
18 of this Order. If no party timely designates testimony or exhibits from a deposition
19 as being “CONFIDENTIAL,” none of the deposition testimony or exhibits will be
20 treated as confidential. If a timely “CONFIDENTIAL” designation is made, the
21 confidential portions and exhibits shall be sealed separately from the remaining
22 portions of the deposition, subject to the right of any party to challenge such
23 designation under paragraph 20.

24 13. Materials designated “CONFIDENTIAL,” and all information in them,
25 may be discussed or referred to in pleadings, motions, affidavits, briefs or other
26 papers filed with the Court, or attached as exhibits to them, provided that such
27 “CONFIDENTIAL” materials and information, and any portion of any paper filed
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1 with the Court that discusses or refers to them, are stamped “CONFIDENTIAL”
2 and separately filed in accordance with paragraph 14 of this Order.

3 14. Materials designated “CONFIDENTIAL,” and all information in them
4 or derived from them, may be used or offered into evidence at the trial of this suit,
5 or at any hearing in this litigation, provided that when using “CONFIDENTIAL”
6 materials in Court, counsel for the party using the “CONFIDENTIAL” materials
7 shall take steps to insure against inadvertent disclosure of the “CONFIDENTIAL”
8 materials to persons not subject to this Order.

9 If any party desire that materials, which are or contain confidential
10 information be filed with the Court, that party shall give opposing counsel ten (10)
11 days notice. Thereafter, any party objecting to said filing may file a motion
12 requesting that the papers be filed under seal and shall submit these papers to the
13 undersigned Judge in chambers. The Court will review the materials *in camera* in
14 order to determine if they meet the criteria for ordering them sealed. In the event
15 the Court determines that the papers may not be sealed, they will be returned to the
16 party filing the motion. If the papers are sealed, they will be maintained by the
17 Clerk under seal for thirty (30) days after the final conclusion of this litigation,
18 including all appeals, at which time they will be unsealed unless the proper party
19 requests their return prior to that time. In that event, the papers will be returned to
20 that party.

21 15. “CONFIDENTIAL” materials produced by any party in response to
22 discovery requests served after the filing of the complaint in this suit and prior to
23 the entry of this Order by the Court shall be subject to the provisions of this Order
24 to the same extent as if this Order has been entered by the Court, unless the Court
25 directs otherwise.

26 16. If any party desires that materials, which are or contain confidential
27 information be filed with the Court, that party shall ensure that any confidential
28 information is redacted from briefs which are filed electronically with the Court and

1 subject to public access. The parties will then provide the Court's chambers with
2 their briefs which contain the confidential information.

3 17. Any written Order or Opinion issued from this Court when referencing
4 information contained within the Discovery Materials marked "CONFIDENTIAL,"
5 the Court will take steps to insure that the identity of persons within the
6 "CONFIDENTIAL" materials and any confidential, proprietary and/or financial
7 information meant to be protected by this ORDER, are not revealed through direct
8 reference or contextual reference within the Order/Opinion.

9 18. In the event that a party makes documents available for inspection,
10 rather than delivering copies to another party, no marking need be made in advance
11 of the initial inspection. For purposes of the initial inspection, all documents
12 produced shall be considered as marked "CONFIDENTIAL." Thereafter, upon the
13 inspecting party's selection of documents for copying, the party producing the
14 documents may mark the copies "CONFIDENTIAL," pursuant to paragraph 6,
15 above.

16 19. The disclosure of any Discovery Materials pursuant to the terms of this
17 Protective Order is not intended to be and shall not be construed as a waiver of any
18 right or a relinquishment of any confidentiality claim as to said Discovery Materials
19 or as a waiver of any claim that the information disclosed is a trade secret or is
20 proprietary.

21 20. If any dispute arises concerning whether information designated as
22 "CONFIDENTIAL" should in fact be considered as "CONFIDENTIAL"
23 information for purposes of this Protective Order, the parties shall comply with
24 Local Rule 37. Prior to the determination of any such motion, the disputed
25 information shall be treated by the parties as "CONFIDENTIAL."

26 21. Upon final resolution of this litigation, including any appellate
27 proceedings or expiration of the time allowed therefore, and within sixty (60) days
28 thereof, unless otherwise agreed, counsel for each party shall return or destroy all

1 Discovery Materials marked “CONFIDENTIAL” received hereunder, including all
2 copies thereof, to counsel for the party that produced said materials. Counsel for
3 each party shall also destroy all extracts or summaries of “CONFIDENTIAL”
4 Discovery Materials or documents containing such material. Certification of such
5 destruction, under penalty of perjury, is to be made in writing to counsel for the
6 party who produced such “CONFIDENTIAL” Discovery Materials within ten (10)
7 business days of destruction.

8 22. The Clerk of the Court shall, upon request of a party that produced any
9 “CONFIDENTIAL” Discovery Materials, return to such party all documents and
10 things containing or referring to such Discovery Materials that were filed under seal
11 pursuant to this Protective Order. As to those documents or things containing such
12 information which cannot be so returned, they shall continue to be kept under seal
13 and shall not be examined by any person without a prior Court order, after due
14 notice to Counsel of Record, or the written stipulation of each of Counsel of
15 Record.

16 23. Nothing contained in this Protective Order shall result in a waiver of
17 rights, nor shall any of its terms preclude a party from seeking and obtaining, upon
18 an appropriate showing, additional protection with respect to personal, financial, or
19 confidential information or any other discovery material, including, but not limited
20 to, restrictions on disclosure. Nothing contained herein relieves any party of its
21 obligation to respond to discovery properly initiated pursuant to the Discovery
22 Order.

23 24. Pursuant to Fed. R. Civ. Proc. Rule 26, the parties hereby stipulate to
24 the following treatment of any privileged or work product materials inadvertently
25 disclosed in this action. The parties agree that disclosure of information protected
26 by any privilege in this litigation shall not constitute a waiver of any otherwise
27 valid claim of privilege, and failure to assert a privilege in this litigation as to one
28 document or communication shall not be deemed to constitute a waiver of the

1 privilege as to any other document or communication allegedly so protected, even
2 involving the same subject matter. The parties agree that any inadvertent inclusion
3 of any privileged or work product material in a production in this action shall not
4 result in the waiver of any associated privilege or protective doctrine nor result in a
5 subject matter waiver of any kind. If any such material is inadvertently produced,
6 the recipient of the document agrees that, upon request from the producing party, it
7 will promptly return all copies of the document in its possession, delete any
8 versions of the documents on any database it maintains, and make no use of the
9 information contained in the document, provided, however, that the party returning
10 such document shall thereafter have the right to apply to the Court for an order that
11 such document was not protected (prior to the inadvertent disclosure) from
12 disclosure by any privilege or doctrine. The parties acknowledge and stipulate that
13 diligent steps have been taken to protect privileged/protected documents from
14 disclosure, and that any production of privileged material or material protected by
15 the work product doctrine is deemed inadvertent and does not amount to a waiver.

16 25. The Court may modify this Protective Order at any time or consider
17 any dispute which may arise hereunder upon motion of any of the parties.

18 26. Nothing in this Protective Order affects in any way, the admissibility
19 of any documents, testimony or other evidence at trial.

20 27. This Protective Order shall remain in effect for the duration of the
21 action unless terminated by stipulation executed by the Counsel of Record or
22 pursuant to Court Order. Insofar as they restrict the communication, treatment and
23 use of information subject to this Protective Order, the provisions of this Protective
24 Order shall continue to be binding after the termination of this action, unless the
25 Court orders otherwise.

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IT IS SO STIPULATED.

DATED: May 16, 2017

PHILIP D. DAPEER,
A LAW CORPORATION

By: s/ Philip D. Dapeer
PHILIP D. DAPEER
Attorney for Plaintiff Ronald A. DiNicola

DATED: May 16, 2017

BURKE, WILLIAMS & SORENSEN, LLP

By: s/ Daniel W. Maguire
DANIEL W. MAGUIRE
CINDY MEKARI
Attorneys for Defendants Unum Life
Insurance Company of America,
Provident Life and Accident Insurance
Company, and Unum Group

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby certify that the content of this document is acceptable to Philip D. Dapeer, counsel for Plaintiff Ronald A. DiNicola, and that I have obtained Mr. Dapeer’s authorization to affix his electronic signature to this document.

By: s/ Daniel W. Maguire
DANIEL W. MAGUIRE
CINDY MEKARI
Attorneys for Defendants Unum Life
Insurance Company of America,
Provident Life and Accident Insurance
Company, and Unum Group

1 **EXHIBIT 1**

2

3 **AGREEMENT FOR CONFIDENTIALITY OF INFORMATION**

4

5 In consideration of the disclosure to me of certain information which is
6 subject to an Agreement for Confidentiality of Information (“Agreement”), I state
7 as follows:

8 1. That I reside at _____,
9 in the City and County of _____ and the State of _____.

10 2. That I have read and understand the Agreement for Confidentiality of
11 Information dated _____.

12 3. That I agree to comply with and be bound by the provisions of the
13 Agreement.

14 4. That I will not divulge to persons other than those specifically
15 authorized by paragraph 3 of the Agreement, and will not copy or use, except solely
16 for the purposes of this assignment, any confidential document or information as
17 defined by the Agreement, except as provided herein.

18 5. That I understand that if I violate the terms of the Agreement, I may be
19 subject to civil action and/or an enforcement proceeding before the Court, including
20 an application to have me held in contempt if this claim is in litigation.

21 6. That I agree to submit myself to the personal jurisdiction of a
22 California state or federal court in connection with any proceedings seeking
23 enforcement of the Agreement.

24

25 Dated: _____

26 _____
Signature

27

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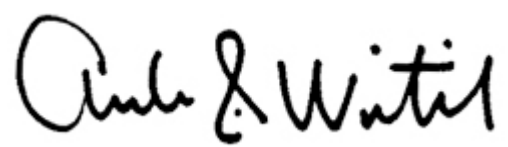
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PROTECTIVE ORDER

Upon consideration of the Stipulated Confidentiality Agreement and Protective Order between the parties in *Ronald A. DiNicola v. Unum Life Insurance Company of America; Provident Life and Accident Insurance Company; UnumProvident Corporation; and Does 1 through 10, inclusive*, Case No. 2:17-cv-1437 SVW (AJWx), 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: May 19, 2017



HON. ANDREW J. WISTRICH
UNITED STATES MAGISTRATE JUDGE