

1 Michael B. Horrow (SBN 162917)
 E-mail: mhorrow@donahuehorow.com
 2 Scott E. Calvert (SBN 210787)
 E-mail: scalvert@donahuehorow.com
 3 DONAHUE & HORROW, LLP
 1960 E. Grand Ave., Suite 1215
 4 El Segundo, CA 90245
 Tel: 310.322.0300 Fax: 310.322.0302

5 Attorneys for Plaintiff Saeid Nosrati, M.D.

6 Daniel W. Maguire (SBN 120002)
 E-mail: dmaguire@bwslaw.com
 7 Karen T. Tsui (SBN 305869)
 E-mail: ktsui@bwslaw.com
 8 BURKE, WILLIAMS & SORENSEN, LLP
 444 South Flower Street, Suite 2400
 9 Los Angeles, CA 90071-2953
 10 Tel: 213.236.0600 Fax: 213.236.2700

11 Attorneys for Defendant Provident Life and
 Accident Insurance Company

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15 SAEID NOSRATI, M.D.,

16 Plaintiff,

17 v.

18 PROVIDENT LIFE AND ACCIDENT
 INSURANCE COMPANY AND
 19 DOES 1 THROUGH 10,

20 Defendant.

Case No. 2:17-cv-05159 TJH (KSx)

**STIPULATED CONFIDENTIALITY
 AGREEMENT AND PROTECTIVE
 ORDER**

21 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based
 22 on the parties' Joint Stipulation for Protective Order ("Stipulation") filed on
 23 August 12, 2019, the terms of the protective order to which the parties have
 24 agreed are adopted as a protective order of this Court (which generally shall
 25 govern the pretrial phase of this action) except to the extent, as set forth below,
 26 that those terms have been modified by the Court's amendment of paragraphs
 27 2, 7(b), 7(f), 7(g), 13(b), 14, 18 of the Stipulation.

1
2 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND**
3 **MODIFIED BY THE COURT**¹

4 IT IS HEREBY STIPULATED AND AGREED, by and among the parties to
5 this action, Plaintiff Saeid Nosrati (“Plaintiff”) and Defendant Provident Life and
6 Accident Insurance Company (“PLA”) (collectively referred to herein as “the
7 parties”) that certain documents, materials or information produced in discovery,
8 shall be subject to the following Agreement with respect to confidentiality and
9 privacy, subject to the approval of the Court.

10 1. Good Cause Statement

11 This action arises out of Plaintiff’s claim for benefits under a policy of
12 disability insurance issued by Defendant to Plaintiff. Plaintiff seeks discovery of
13 company guidelines, policies, procedures and marketing materials relating to
14 Plaintiff’s claim for disability benefits. This material contains or may contain
15 information protected as proprietary trade information and/or subject to other
16 privileges and protections. Should the information be disclosed publicly, and be
17 thereby made available to competitors, potential harm to Defendant’s business and
18 its shareholders’ interests could result, as well as harm to third parties.

19 The parties do not wish unreasonably to impede or burden the discovery
20 process but, at the same time, recognize an obligation to take reasonable steps to
21 safeguard legitimate privacy concerns. The parties believe that issuance of a
22 protective order, upon stipulated terms and conditions, balances Plaintiff’s right and
23 need for reasonable discovery with Defendant’s business and competitive interests.

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 paragraph 6. ~~through the entirety of this litigation,~~

27 ¹ The Court’s additions to the agreed terms of the Protective Order are generally indicated in bold
28 typeface, and the Court’s deletions are indicated by lines through the text being deleted.

1 ~~through any trial or appeal.~~ The parties will cooperate in establishing procedures
2 acceptable to the Court with respect to the protection of information designated as
3 “CONFIDENTIAL” pursuant to this Protective Order. ~~both at trial and upon any~~
4 ~~appeal of this case.~~ **Any use of Protected Material at trial shall be governed by**
5 **the orders of the trial judge. This Order does not govern the use of Protected**
6 **Material at trial.**

7
8 3. For purposes of this Protective Order, “Discovery Materials” shall
9 include documents produced pursuant to the voluntary disclosure requirements of
10 Rule 26 of the Federal Rules of Civil Procedure, documents produced pursuant to
11 Rule 34 of the Federal Rules of Civil Procedure, interrogatory answers, deposition
12 testimony, and all other information that may be disclosed in the course of
13 discovery in this action, as well as compilations or excerpts of such materials.

14 4. This Protective Order shall not abrogate or diminish any privilege or
15 any contractual, statutory or other legal obligation or right of any party with respect
16 to Discovery Materials.

17 5. Each party shall keep confidential and not use or disseminate outside
18 the boundaries of this litigation any records that any other party designates as
19 “CONFIDENTIAL” except as provided in paragraphs 7, 10, and 12 below.

20 6. Any party may designate any Discovery Materials it deems to be
21 confidential by designating such Discovery Materials as “CONFIDENTIAL.”

22 7. Except as provided in paragraphs 10-12, access to Discovery Materials
23 designated “CONFIDENTIAL” shall be restricted in accordance with the following
24 provisions:

25 (a) Discovery Materials, and any information extracted from
26 them, which have been designated “CONFIDENTIAL” shall be used
27 solely for the purposes of prosecuting or defending this action, and for
28 no other purposes;

1 (b) "CONFIDENTIAL" designated Discovery Materials shall
2 only be disseminated to or shown to: (1) attorneys who are members or
3 associates of the law firms listed on the pleadings in this action, and
4 who have appeared or filed a motion or application to appear pro hac
5 vice ("Counsel of Record"), and to supporting personnel employed by
6 Counsel of Record, such as other attorneys at the firm, paralegals,
7 legal secretaries, data entry clerks, legal clerks and/or private data
8 entry, document management and photocopying services; (2) named
9 individual parties, which includes employees of any company,
10 assisting in the defense of the action; (3) actual or prospective experts
11 and consultants retained or consulted by a party or a party's counsel in
12 the course of this action, (4) any professional vendors or other persons
13 or entities that provide litigation support services (e.g., photocopying;
14 videotaping; translating; preparing exhibits or demonstrations;
15 organizing, storing, retrieving data in any form or medium and their
16 employees and subcontractors); (5) any private mediator or other ADR
17 professional retained or selected by the parties to assist in the
18 resolution of the matter; and (6) the court and court personnel, ~~in~~
19 ~~accordance with the terms specified below in paragraph 7(e).~~ These
20 persons shall not disclose, discuss or reveal the contents or existence
21 of the Protected Information or the actual Protected Information itself
22 to any other person or entity not specifically described in this
23 paragraph. There shall be no other permissible dissemination of
24 "CONFIDENTIAL" Discovery Materials. If a party produces any
25 Discovery Materials that mention or reference any other party to this
26 litigation, or such other party's employees or agents (past or present),
27 such Discovery Materials shall be designated as "CONFIDENTIAL,"
28 unless express written consent of that other party is obtained.

1 (c) No copies, extracts or summaries of any document
2 designated “CONFIDENTIAL” shall be made except by or on behalf
3 of Counsel of Record; and such copies, extracts or summaries shall
4 also be designated and treated as “CONFIDENTIAL” Discovery
5 Materials and shall not be delivered or exhibited to any persons except
6 as provided in this Protective Order.

7 (d) Counsel of Record may allow access to Discovery
8 Material designated “CONFIDENTIAL” to their retained consultants,
9 provided that any such consultant who is to receive such material shall
10 be provided with a copy of this Protective Order and shall execute an
11 undertaking in the form annexed hereto as Exhibit 1. Consultants shall
12 be specifically advised that the portion of their written work product,
13 which contains or discloses the substance of Discovery Material
14 designated as “CONFIDENTIAL” is subject to all the provisions of
15 this Protective Order. Counsel of Record disclosing such material to
16 consultants shall be responsible for obtaining the executed
17 undertakings in advance of such disclosure and also shall retain the
18 original executed copy of said undertakings. No “CONFIDENTIAL”
19 Discovery Material may be disclosed to a Consultant prior to
20 execution of the form attached as Exhibit 1.

21 (e) During depositions, Counsel of Record may question any
22 witness about any Discovery Material designated “CONFIDENTIAL.”
23 However, where the witness or deponent testifies about such
24 designated Discovery Material, the party who marked the material
25 “CONFIDENTIAL” may instruct the Court Reporter to mark and seal
26 such testimony as separate from the public record. Any
27 “CONFIDENTIAL” document so referred to may be marked as an
28 exhibit, but no such “CONFIDENTIAL” document, or any portion

1 thereof, shall be attached to any publicly-available deposition or other
2 transcript without the written consent of the party that designated the
3 document as “CONFIDENTIAL” absent a Court Order. Portions of
4 deposition transcripts designated “CONFIDENTIAL” shall be so
5 marked and “CONFIDENTIAL” portions, including exhibits
6 consisting of “CONFIDENTIAL” documents, shall be bound
7 separately by the Court Reporter, kept under seal, and maintained
8 separately by the Court Reporter and the parties from the non-
9 confidential portions of the transcript, including exhibits, except as
10 otherwise stipulated by the Parties or Ordered by the Court.

11 (f) In the event that any “CONFIDENTIAL” Discovery
12 Materials are attached to, or quoted or summarized in, any pleadings,
13 motion papers or other papers filed with this Court or any other court
14 and said “CONFIDENTIAL” Discovery Materials would be disclosed
15 in any way therein, such Discovery Materials, and portions of
16 pleadings or papers that contain the "CONFIDENTIAL" discovery
17 materials ~~shall be filed under seal in accordance with this Court's~~
18 ~~Local Rules.~~ Copies of such documents containing information
19 subject to this Protective Order that are served on counsel for the
20 parties shall be similarly identified and shall be maintained as
21 “CONFIDENTIAL,” as described herein.

22 (g) **The parties further acknowledge that this Stipulated**
23 **Protective Order does not entitle them to file confidential**
24 **information under seal; Civil Local Rule 79-5 sets forth the**
25 **procedures that must be followed and the standards that will be**
26 **applied when a party seeks permission from the court to file**
27 **material under seal.**

1 8. In the event that a party makes documents available for inspection,
2 rather than delivering copies to another party, no marking need be made in advance
3 of the initial inspection. For purposes of the initial inspection, all documents
4 produced shall be considered as marked “CONFIDENTIAL.” Thereafter, upon the
5 inspecting party’s selection of documents for copying, the party producing the
6 documents may mark the copies “CONFIDENTIAL,” pursuant to paragraph 6,
7 above.

8 9. At the request of any designating party, made in writing or on the
9 record or during the course of a deposition, the deposition testimony and all copies
10 of any transcript of the deposition of any current or former agent, officer, director,
11 employee or consultant of the designating party shall initially be considered, as a
12 whole, to constitute “CONFIDENTIAL” information subject to the protective
13 order, and the original and all copies of such deposition transcripts shall be marked
14 accordingly as “CONFIDENTIAL” by the reporter. Upon the written demand of a
15 receiving party made after receipt of transcript, the designating party shall have
16 thirty (30) days after receipt of the deposition transcript to designate in writing to
17 the other parties and the court reporter, those portions of the testimony in the
18 transcript that the designating party claims constitute “CONFIDENTIAL”
19 Information. If no such designation is made within thirty (30) days after receipt of
20 the deposition transcript, the receiving party shall submit a second written demand
21 by facsimile to the designating party notifying the designating party that it has three
22 (3) business days from the date of the second written demand in which to designate
23 in writing to the other parties and the court reporter, those portions of the testimony
24 in the transcript that the designating party claims constitute “CONFIDENTIAL”
25 Information. If, at the expiration of the three business day period, the designating
26 party fails to provide written notice of its intent to designate the information as
27 “CONFIDENTIAL,” then the “CONFIDENTIAL” designation of the deposition
28 transcript shall be deemed waived. Each party and the Court Reporter shall attach a

1 copy of such written designation notice to the transcript and each copy thereof in its
2 possession, custody or control, and the portions designated in such notice shall
3 thereafter be treated in accordance with the Protective Order.

4 10. Nothing in this Order shall be deemed to preclude any party or third
5 party from seeking or obtaining, on the appropriate showing, additional protection
6 with respect to the confidentiality of documents or information. Nor shall any
7 provision of this order be deemed to preclude any party from challenging the
8 validity of the confidentiality of any materials so designated, or from requesting the
9 Court to amend or modify this Order with respect to any particular matter.

10 11. The disclosure of any Discovery Materials pursuant to the terms of this
11 Protective Order is not intended to be and shall not be construed as a waiver of any
12 right or a relinquishment of any confidentiality claim as to said Discovery Materials
13 or as a waiver of any claim that the information disclosed is a trade secret or is
14 proprietary.

15 12. If any dispute arises concerning whether information designated as
16 “CONFIDENTIAL” should in fact be considered as “CONFIDENTIAL”
17 information for purposes of this Protective Order, the parties shall comply with
18 Local Rule 37. Prior to the determination of any such motion, the disputed
19 information shall be treated by the parties as “CONFIDENTIAL.”

20 13. Upon final resolution of this litigation, including any appellate
21 proceedings or expiration of the time allowed therefore, and within 60 days thereof.

22 (a) Unless otherwise agreed, counsel for each party shall
23 return or destroy all Discovery Materials marked “CONFIDENTIAL”
24 received hereunder, including all copies thereof, to counsel for the
25 party that produced said materials. Counsel for each party shall also
26 destroy all extracts or summaries of “CONFIDENTIAL” Discovery
27 Materials or documents containing such material. Certification of such
28 destruction, under penalty of perjury, is to be made in writing to

1 counsel for the party who produced such “CONFIDENTIAL”
2 Discovery Materials within ten (10) business days of destruction; and

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

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

20 15. Pursuant to Fed. R. Civ. Proc. Rule 26, the parties hereby stipulate to
21 the following treatment of any privileged or work product materials inadvertently
22 disclosed in this action. The parties agree that disclosure of information protected
23 by any privilege in this litigation shall not constitute a waiver of any otherwise
24 valid claim of privilege, and failure to assert a privilege in this litigation as to one
25 document or communication shall not be deemed to constitute a waiver of the
26 privilege as to any other document or communication allegedly so protected, even
27 involving the same subject matter. The parties agree that any inadvertent inclusion
28 of any privileged or work product material in a production in this action shall not

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

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

15 17. Nothing in this Protective Order affects in any way, the admissibility
16 of any documents, testimony or other evidence at trial.

17 18. This Protective Order shall remain in effect for the duration of the
18 action unless terminated by stipulation executed by the Counsel of Record or
19 pursuant to Court Order. Insofar as they restrict the communication, treatment and
20 use of information subject to this Protective Order, the provisions of this Protective
21 Order shall continue to be binding after the termination of this action, unless the
22 Court orders otherwise. **As noted in paragraph 2 above, this Order does not**
23 **govern the use of Protected Material at trial.**

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25 IT IS SO STIPULATED.
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DATED: August 12, 2019

DONAHUE & HORROW, LLP
MICHAEL B. HORROW
SCOTT E. CALVERT

By: /s/ Scott E. Calvert

MICHAEL B. HORROW
SCOTT E. CALVERT

Attorneys for Plaintiff Saeid Nosrati, M.D.

DATED: August 12, 2019

Burke, Williams & Sorensen, LLP
DANIEL W. MAGUIRE
KAREN T. TSUI

By: /s/ Karen T. Tsui

DANIEL W. MAGUIRE
KAREN T. TSUI

Attorneys for Defendant Provident Life and
Accident Insurance Company

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 Scott E. Calvert, counsel for Plaintiff Saeid Nosrati, M.D., and that I have obtained Mr. Calvert's authorization to affix his electronic signature to this document.

By: /s/ Karen T. Tsui

DANIEL W. MAGUIRE
KAREN T. TSUI

Attorneys for Defendant Provident Life
and Accident Insurance Company

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: August 13, 2019

Karen L. Stevenson

KAREN L. STEVENSON
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT 1

AGREEMENT FOR CONFIDENTIALITY OF INFORMATION

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

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

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

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

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

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

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

Dated: _____

Signature