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7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10 ADA SHENON,
 11 Plaintiff,
 12 v.
 13 NEW YORK LIFE INSURANCE
 COMPANY AND DOES 1
 14 THROUGH 10,
 15 Defendants.

Case No. 2:18-cv-00240 CAS (AGRx)

STIPULATED PROTECTIVE ORDER

16
 17 1. A. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential,
 19 proprietary, or private information for which special protection from public
 20 disclosure and from use for any purpose other than prosecuting this litigation may
 21 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 22 enter the following Stipulated Protective Order. The parties acknowledge that this
 23 Order does not confer blanket protections on all disclosures or responses to
 24 discovery and that the protection it affords from public disclosure and use extends
 25 only to the limited information or items that are entitled to confidential treatment
 26 under the applicable legal principles. The parties further acknowledge, as set forth
 27 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
 28 file confidential information under seal; Civil Local Rule 79-5 sets forth the

1 procedures that must be followed and the standards that will be applied when a
2 party seeks permission from the court to file material under seal.

3 B. GOOD CAUSE STATEMENT

4 Disclosure and discovery activity in this action are likely to involve
5 production of confidential, proprietary, or private information for which special
6 protection from public disclosure and from use for any purpose other than
7 prosecuting this litigation may be warranted. It is expected that the discovery will
8 include Plaintiff's medical and financial information and may include confidential
9 and proprietary information from Defendant. Accordingly, the parties hereby
10 stipulate to and petition the court to enter the following Stipulated Protective Order.
11 The parties acknowledge that this Order does not confer blanket protections on all
12 disclosures or responses to discovery and that the protection it affords from public
13 disclosure and use extends only to the limited information or items that are entitled
14 to confidential treatment under the applicable legal principles.

15
16 2. DEFINITION

17 2.1 Action: the above captioned pending federal law suit.

18 2.2 Challenging Party: a Party or Non-Party that challenges the
19 designation of information or items under this Order.

20 2.3 "CONFIDENTIAL" Information or Items: Information (regardless of
21 how it is generated, stored or maintained) or tangible things that qualify for
22 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
23 the Good Cause Statement.

24 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
25 their support staff).

26 2.5 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 "CONFIDENTIAL."

1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this Action.

8 2.8 House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.9 Non-Party: any natural person, partnership, corporation, association,
12 or other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: attorneys who are not employees of a
14 party to this Action but are retained to represent or advise a party to this Action and
15 have appeared in this Action on behalf of that party or are affiliated with a law firm
16 that has appeared on behalf of that party, including support staff.

17 2.11 Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 2.13 Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL.”

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1 2.15 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

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4 3. SCOPE

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

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

12
13 4. DURATION

14 Once a case proceeds to trial, all of the information that was designated as
15 confidential or maintained pursuant to this protective order becomes public and will
16 be presumptively available to all members of the public, including the press, unless
17 compelling reasons supported by specific factual findings to proceed otherwise are
18 made to the trial judge in advance of the trial. See Kamakana v. City and County of
19 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
20 showing for sealing documents produced in discovery from “compelling reasons”
21 standard when merits-related documents are part of court record). Accordingly, the
22 terms of this protective order do not extend beyond the commencement of the trial.

23
24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.
26 Each Party or Non-Party that designates information or items for protection under
27 this Order must take care to limit any such designation to specific material that
28 qualifies under the appropriate standards. The Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written
2 communications that qualify so that other portions of the material, documents,
3 items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (e.g., to unnecessarily encumber the case development process or to
8 impose unnecessary expenses and burdens on other parties) may expose the
9 Designating Party to sanctions.

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

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
15 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
16 under this Order must be clearly so designated before the material is disclosed or
17 produced.

18 Designation in conformity with this Order requires:

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

26 A Party or Non-Party that makes original documents available for inspection
27 need not designate them for protection until after the inspecting Party has indicated
28 which documents it would like copied and produced. During the inspection and

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

10 (b) for testimony given in depositions that the Designating Party
11 identify the Disclosure or Discovery Material on the record, before the close of the
12 deposition.

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

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

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

15
16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

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

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

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

14 (d) the Court and its personnel;

15 (e) court reporters and their staff;

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

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

22 (h) during their depositions, witnesses, and attorneys for witnesses,
23 in the Action to whom disclosure is reasonably necessary provided: (1) the
24 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
25 and (2) they will not be permitted to keep any confidential information unless they
26 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
27 otherwise agreed by the Designating Party or ordered by the Court. Pages of
28 transcribed deposition testimony or exhibits to depositions that reveal Protected

1 Material may be separately bound by the court reporter and may not be disclosed to
2 anyone except as permitted under this Stipulated Protective Order; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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
6 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
7 person or persons to whom unauthorized disclosures were made of all the terms of
8 this Order, and (d) request such person or persons to execute the “Acknowledgment
9 and 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
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement in the stipulated
22 protective order submitted to 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
2 this Stipulated Protective Order. Similarly, no Party waives any right to object on
3 any ground to use in evidence of any of the material covered by this Protective
4 Order.

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

11
12 13. FINAL DISPOSITION

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

1 copies that contain or constitute Protected Material remain subject to this Protective
2 Order as set forth in Section 4 (DURATION).

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

7
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: December 7, 2018


11
12 By: /s/ Scott E. Calvert
13 Michael B. Horrow
14 Scott E. Calvert
Attorneys for Plaintiff

15
16 DATED: December 7, 2018

17
18 By: /s/ Karen T. Tsui
19 Daniel W. Maguire
20 Edith S. Shea
21 Karen T. Tsui
Attorneys for Defendant New York
22 Life Insurance Company

23
24 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

25 DATED: 12/13/2018



Honorable Alicia G. Rosenberg
United States District Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full
5 address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California on _____ [date] in the
8 case of *Ana Shenon v. New York Life Insurance Company, and Does 1 through 10,*
9 *Inclusive*, United States District Court, Central District of California, Case No. .
10 2:18-cv-00240 CAS (AGR_x). I agree to comply with and to be bound by all the
11 terms of this Stipulated Protective Order and I understand and acknowledge that
12 failure to so comply could expose me to sanctions and punishment in the nature of
13 contempt. I solemnly promise that I will not disclose in any manner any
14 information or item that is subject to this Stipulated Protective Order to any person
15 or entity except in strict compliance with the provisions of this Order.

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

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27
28 Signature: _____