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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES F. SWEENEY,
Plaintiff,
vs.
THE PAUL REVERE LIFE
INSURANCE COMPANY; UNUM
GROUP AND THE GREAT WEST
LIFE ASSURANCE COMPANY,
Defendants.

CASE NO: 2:18-cv-01947-RGK-KS
~~PROPOSED~~ ORDER RE ENTRY
OF STIPULATED PROTECTIVE
ORDER
Discovery C/O: February 15, 2019
Motion C/O: March 1, 2019
Trial: May 14, 2019
Complaint Filed: March 8, 2018

The Court, having considered the Stipulated Protective Order submitted by the parties hereto, and good causing appearing therefor, hereby orders as follows:

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth
3 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
4 file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a
6 party seeks permission from the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 Designation of documents and information as “CONFIDENTIAL” under this
9 order is to be made for the purposes of protecting sensitive, confidential, trade
10 secret, private and/or proprietary medical, financial or business information relating
11 to the parties and/or others. Protected Material (defined below) may also include
12 sensitive, confidential, private and personal information that relates to or concerns
13 third parties. Protected Material is information that has not been made public and
14 has been and is the subject of efforts that are reasonable under the circumstances to
15 maintain its secrecy, or information that may be privileged or otherwise protected
16 from disclosure under state or federal statutes, court rules, case decisions, or
17 common law. Accordingly, disclosure of such information to the public would
18 cause harm to the party to whom the information relates. To expedite the flow of
19 information, to facilitate the prompt resolution of disputes over confidentiality of
20 discovery materials, to adequately protect information the parties are entitled to
21 keep confidential, to ensure that the parties are permitted reasonable necessary uses
22 of such material in preparation for and in the conduct of trial, to address their
23 handling at the end of the litigation, and serve the ends of justice, a protective order
24 for such information is justified in this matter. It is the intent of the parties that
25 information will not be designated as confidential for tactical reasons and that
26 nothing be so designated without a good faith belief that it has been maintained in a
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1 confidential, non-public manner, and there is good cause why it should not be part
2 of the public record of this case.

3 2. DEFINITIONS

4 2.1 Action: the action entitled *JAMES SWEENEY, Plaintiff V THE PAUL*
5 *REVERE LIFE INSURANCE COMPANY, UNUM GROUP, ET. AL.*, Defendants,
6 Case no. 2:18-cv-1947-RGK-KS.

7 2.2 Challenging Party: a Party or Non-Party that challenges the
8 designation of information or items under this Order.

9 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for
11 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
12 the Good Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 2.6 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced
21 or generated in disclosures or responses to discovery in this matter.

22 2.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this Action.

25 2.8 House Counsel: attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.
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1 2.9 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a
4 party to this Action but are retained to represent or advise a party to this Action and
5 have appeared in this Action on behalf of that party or are affiliated with a law firm
6 which has appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, and Outside Counsel of Record (and their support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

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

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery
18 Material from a Producing Party.

19 3. SCOPE

20 The protections conferred by this Stipulated Protective Order cover not only
21 Protected Material (as defined above), but also (1) any information copied or
22 extracted from Protected Material; (2) all copies, excerpts, summaries, or
23 compilations of Protected Material; and (3) any testimony, conversations, or
24 presentations by Parties or their Counsel that might reveal Protected Material.
25 Any use of Protected Material at trial shall be governed by the orders of the trial
26 judge. This Order does not govern the use of Protected Material at trial.

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1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
6 with or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (e.g., to unnecessarily encumber the case development process or to impose
22 unnecessary expenses and burdens on other parties) may expose the Designating
23 Party to sanctions. If it comes to a Designating Party's attention that information or
24 items that it designated for protection do not qualify for protection, that Designating
25 Party must promptly notify all other Parties that it is withdrawing the inapplicable
26 designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in depositions that the Designating Party
2 identify all protected testimony, in writing, within 14 days after the Designating
3 Party's receipt of the transcript of the deposition.

4 (c) for information produced in some form other than documentary
5 and for any other tangible items, that the Producing Party affix in a prominent place
6 on the exterior of the container or containers in which the information is stored the
7 legend "CONFIDENTIAL." If only a portion or portions of the information
8 warrants protection, the Producing Party, to the extent practicable, shall identify the
9 protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the Designating Party's right to secure protection under this Order for such material.
13 Upon timely correction of a designation, the Receiving Party must make reasonable
14 efforts to assure that the material is treated in accordance with the provisions of this
15 Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
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1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party’s designation until the Court rules on the
3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending, or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the Action has been terminated, a
10 Receiving Party must comply with the provisions of section 13 below (FINAL
11 DISPOSITION).

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

15 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 “CONFIDENTIAL” only to:

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

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

24 (c) Experts (as defined in this Order) of the Receiving Party to
25 whom disclosure is reasonably necessary for this Action and who have signed the
26 “Acknowledgment and Agreement to be Bound (Exhibit A).

27 (d) the court and its personnel;

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1 (e) court reporters and their staff;
2 (f) professional trial consultants, mock jurors, and Professional
3 Vendors to whom disclosure is reasonably necessary for this Action and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

7 (h) during their depositions, witnesses, and attorneys for witnesses,
8 in the Action to whom disclosure is reasonably necessary provided: (1) the
9 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
10 and (2) they will not be permitted to keep any confidential information unless they
11 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
12 otherwise agreed by the Designating Party or ordered by the court. Pages of
13 transcribed deposition testimony or exhibits to depositions that reveal Protected
14 Material may be separately bound by the court reporter and may not be disclosed to
15 anyone except as permitted under this Stipulated Protective Order; and

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

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
20 IN OTHER LITIGATION

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

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

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

4 (c) cooperate with respect to all reasonable procedures sought to be
5 pursued by the Designating Party whose Protected Material may be affected. If the
6 Designating Party timely seeks a protective order, the Party served with the
7 subpoena or court order shall not produce any information designated in this action
8 as “CONFIDENTIAL” before a determination by the court from which the
9 subpoena or order issued, unless the Party has obtained the Designating Party’s
10 permission. The Designating Party shall bear the burden and expense of seeking
11 protection in that court of its confidential material and nothing in these provisions
12 should be construed as authorizing or encouraging a Receiving Party in this Action
13 to disobey a lawful directive from another court.

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

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

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

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

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

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

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

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

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

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 If a Receiving Party intends to file with the court any Protected Material, the
23 Receiving Party shall provide sufficient notice of such intent to the Designating
24 Party to allow the Designating Party time to request the court to seal the Protected
25 Material, and the Receiving Party shall cooperate with the Designating Party's
26 request for sealing.

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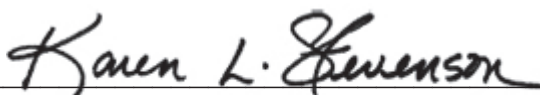
1 13. FINAL DISPOSITION

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

20 14. Any violation of this Order may be punished by any and all appropriate
21 measures including, without limitation, contempt proceedings and/or monetary
22 sanctions.

23
24 IT IS SO ORDERED.

25
26 Date: November 9, 2018


KAREN L. STEVENSON
UNITED STATES 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 address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 in the case entitled *James Sweeney Plaintiff, vs. Paul Revere Life Insurance*
8 *Company, Unum Group, et. al., Defendants, Case no. 2:18-cv-01947 RGK-KS,*
9 *Central District of California.* I agree to comply with and to be bound by all the
10 terms of this Stipulated Protective Order and I understand and acknowledge that
11 failure to so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any information
13 or item that is subject to this Stipulated Protective Order to any person or entity
14 except in strict compliance with the provisions of this Order.

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

23 Executed this ___ day of _____, 201__ in _____
24 by _____.

25 Signature: _____
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