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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GAIL THOMPSON, individually and on behalf of herself and all others similarly situated,

Plaintiff,

v.

TRANSAMERICA LIFE INSURANCE COMPANY,

Defendant.

Case No. 2:18-cv-05422-CAS-GJSx

CLASS ACTION

**[PROPOSED] ORDER GRANTING
STIPULATED PROTECTIVE
ORDER**

[Discovery matter referred to Magistrate Judge Gail Standish]

Complaint Filed: June 18, 2018

1 **A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential and
3 proprietary actuarial, business, technical, and financial information of Defendant
4 Transamerica Life Insurance Company (“TLIC”) as well as private information of
5 Plaintiffs Gail Thompson, individually and as Power of Attorney for Lois
6 Thompson (“Plaintiffs”) for which special protection from public disclosure and
7 from use for any purpose other than prosecuting this litigation may be warranted.
8 Accordingly, Plaintiffs and TLIC hereby stipulate to and petition the Court to enter
9 the following Stipulated Protective Order (“Order”). The parties acknowledge that
10 this Order does not confer blanket protections on all disclosures or responses to
11 discovery and that the protection it affords from public disclosure and use extends
12 only to the limited information or items that are entitled to confidential treatment
13 under the applicable legal principles.

14 **B. GOOD CAUSE STATEMENT**

15 This action is likely to involve trade secrets, customer and pricing lists and
16 other valuable research, development, commercial, financial, technical and/or
17 proprietary information for which special protection from public disclosure and
18 from use for any purpose other than prosecution of this action is warranted. Such
19 confidential and proprietary materials and information consist of, among other
20 things, confidential business or financial information, information regarding
21 confidential business practices, or other confidential research, development, or
22 commercial information (including information implicating privacy rights of third
23 parties), information otherwise generally unavailable to the public, or which may be
24 privileged or otherwise protected from disclosure under state or federal statutes,
25 court rules, case decisions, or common law. Accordingly, to expedite the flow of
26 information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the parties are entitled to
28 keep confidential, to ensure that the parties are permitted reasonable necessary uses

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

8 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
9 **SEAL**

10 The parties further acknowledge, as set forth in Section 12.3 (Filing
11 Protected Material), below, that this Protective Order does not entitle them to file
12 confidential information under seal; Local Civil Rule 79-5 and the Court's Guide to
13 Electronically Filing Under Seal Documents in Civil Cases set forth the procedures
14 that must be followed and the standards that will be applied when a party seeks
15 permission from the Court to file material under seal.

16 There is a strong presumption that the public has a right of access to judicial
17 proceedings and records in civil cases. In connection with non-dispositive motions,
18 good cause must be shown to support a filing under seal. *See Kamakana v. City*
19 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
20 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
21 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
22 orders require good cause showing), and a specific showing of good cause or
23 compelling reasons with proper evidentiary support and legal justification, must be
24 made with respect to Protected Material that a party seeks to file under seal. The
25 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL
26 or HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY does not—without
27 the submission of competent evidence by declaration, establishing that the material
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1 sought to be filed under seal qualifies as confidential, privileged, or otherwise
2 protectable—constitute good cause.

3 Further, if a party requests sealing related to a dispositive motion or trial,
4 then compelling reasons, not only good cause, for the sealing must be shown, and
5 the relief sought shall be narrowly tailored to serve the specific interest to be
6 protected. *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79 (9th Cir.
7 2010). For each item or type of information, document, or thing sought to be filed
8 or introduced under seal in connection with a dispositive motion or trial, the party
9 seeking protection must articulate compelling reasons, supported by specific facts
10 and legal justification, for the requested sealing order. Again, competent evidence
11 supporting the application to file documents under seal must be provided by
12 declaration.

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

19 **2. DEFINITIONS**

20 2.1 Acknowledgment: the “Acknowledgment and Agreement to be
21 Bound” form attached as Exhibit A to this Order.

22 2.2 Action: *Gail Thompson, individually and as Power of Attorney for*
23 *Lois Thompson, on behalf of themselves and all others similarly situated v.*
24 *Transamerica Life Insurance Company*, Case No. 2:18-05422-CAS-GJSx.

25 2.3 Challenging Party: A Party or Non-Party that challenges the
26 designation of information or items under this Order.

27 2.4 “CONFIDENTIAL” Information or Items: Confidential proprietary or
28 commercially sensitive business and financial information, trade secrets, and

1 personal information which is not generally known or publicly available and which
2 the Designating Party would not normally reveal to third parties or information that
3 otherwise meets the standard for protection set forth in Rule 26(c) of the Federal
4 Rules of Civil Procedure. It is the intent of the parties that information will not be
5 designated as confidential for tactical reasons and that nothing be so designated
6 without a good faith belief that it has been maintained in a confidential non-public
7 manner, and there is good cause why it should not be part of the public record of
8 this Action.

9 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
10 their support staff).

11 2.6 Designating Party: A Party or Non-Party that designates information or
12 items that it produces or that are produced in disclosures or in response to discovery
13 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
14 ONLY.”

15 2.7 Disclosure or Discovery Material: All items or information, regardless
16 of the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 2.8 Expert: A person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as
21 an expert witness or as a consultant in this Action and who is not a past or current
22 employee of a Party or a current employee of a Party’s competitor and who, at the
23 time of retention, is not anticipated to become an employee of a Party or a
24 competitor of a Party. This definition includes a professional jury or trial
25 consultant retained in connection with this litigation.

26 2.9 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
27 Information or Items: Extremely sensitive “Confidential Information or Items,”
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1 disclosure of which to another Party or Non-Party would create a substantial risk of
2 serious harm that could not be avoided by less restrictive means.

3 2.10 House Counsel: Attorneys who are employees for a Party. House
4 Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.11 Non-Party: Any natural person, partnership, corporation, association,
6 or other legal entity not named as a Party to this action.

7 2.12 Outside Counsel of Record: Attorneys who are not employees of a
8 party to this Action but are retained to represent or advise a party to this Action and
9 have appeared in this Action on behalf of that party or are affiliated with a law firm
10 that has appeared on behalf of that party, and includes support staff.

11 2.13 Party: Any party to this Action, including its House Counsel, officers,
12 directors, employees, consultants, and retained experts.

13 2.14 Producing Party: A Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.15 Professional Vendors: Persons or entities that provide litigation
16 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.16 Protected Material: Any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
21 EYES ONLY.”

22 2.17 Receiving Party: A Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 **3. SCOPE**

25 The protections conferred by this Order cover not only Protected Material (as
26 defined above), but also (1) any information copied or extracted from Protected
27 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
28 and (3) any testimony, conversations, or presentations by Parties or their Counsel or

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

4 **4. DURATION**

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

15 **5. DESIGNATING PROTECTED MATERIAL**

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under
18 this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. To the extent it is practical to do so, the
20 Designating Party must designate for protection only those parts of material,
21 documents, items or oral or written communications that qualify so that other
22 portions of the material, documents, items or communications for which protection
23 is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

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

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

3 (b) any Party may designate as Protected Material testimony given in a
4 deposition or in other pretrial or trial proceedings by informing the reporter during
5 the deposition or by sending a letter to all Outside Counsel of Record and to the
6 deposition reporter designating by page and line any portions of the transcript to be
7 so restricted, or the entire transcript if applicable, within thirty (30) days after
8 receiving the deposition transcript and specifying the level of protection being
9 asserted.

10 During this 30-day period, a transcript will be treated as if it had been
11 designated “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” in its
12 entirety unless otherwise agreed. After the expiration of that period, the transcript
13 shall be treated only as actually designated.

14 When deposition testimony is designated Protected Material by informing the
15 reporter during the deposition, the transcript containing Protected Material shall
16 have an obvious legend on the title page that the transcript contains Protected
17 Material, and the title page shall be followed by a list of all pages (including line
18 numbers) that have been designated as Protected Material and the level of
19 protection being asserted by the Designating Party. The Designating Party shall
20 inform the court reporter of these requirements.

21 Parties shall give the other parties notice if they reasonably expect a
22 deposition, hearing, or other proceeding to include Protected Material so that the
23 other parties can ensure that only authorized individuals who have signed the
24 Acknowledgment are present at those proceedings. The use of a document as an
25 exhibit at a deposition shall not in any way affect its designation as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
27 ONLY.”

1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on
3 the exterior of the container or containers in which the information is stored the
4 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
5 EYES ONLY.” If only a portion or portions of the information warrants protection,
6 the Producing Party, to the extent practicable, shall identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive
9 the Designating Party’s right to secure protection under this Order for such
10 material. Upon timely correction of a designation, the Receiving Party must make
11 reasonable efforts to assure that the material is treated in accordance with the
12 provisions of this Order.

13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order. Unless a prompt challenge to a Designating Party’s
17 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
18 unnecessary economic burdens, or a significant disruption or delay of the litigation,
19 a Party does not waive its right to challenge a confidentiality designation by
20 electing not to mount a challenge promptly after the original designation is
21 disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37-1. In conferring, the Challenging Party
24 must explain the basis for its belief that the confidentiality designation was not
25 proper and must give the Designating Party an opportunity to review the designated
26 material, to reconsider the circumstances, and, if no change in designation is
27 offered, to explain the basis for the chosen designation.

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

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 Action only for prosecuting, defending or attempting to settle this Action. Such
13 Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in this Order. When the Action has been terminated, a
15 Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION). Protected Material must be stored and maintained by a Receiving
17 Party at a location and in a secure manner that ensures that access is limited to the
18 persons authorized under this Order.

19 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
20 otherwise ordered by the Court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 “CONFIDENTIAL” only to:

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

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

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action and who have signed the
3 Acknowledgment;

4 (d) the Court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional
7 Vendors to whom disclosure is reasonably necessary for this Action;

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

10 (h) during their depositions, witnesses, and attorneys for witnesses, in
11 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
12 party requests that the witness sign the Acknowledgment; and (2) they will not be
13 permitted to keep any confidential information unless they sign the
14 Acknowledgment, unless otherwise agreed by the Designating Party or ordered by
15 the Court; and

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

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
20 ONLY Information or Items. Unless otherwise ordered by the Court or permitted
21 in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated “HIGHLY CONFIDENTIAL-ATTORNEYS’
23 EYES ONLY” only to:

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

27 (b) Experts (as defined in this Order) of the Receiving Party to whom
28 disclosure is reasonably necessary for this Action and who have signed the

1 Acknowledgment;

2 (c) the Court and its personnel;

3 (d) court reporters and their staff;

4 (e) professional jury or trial consultants, mock jurors, and Professional
5 Vendors to whom disclosure is reasonably necessary for this Action;

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

8 (g) during their depositions, witnesses, and attorneys for witnesses, in
9 the Action to whom disclosure is reasonably necessary provided the witness signs
10 the Acknowledgment; and

11 (h) any mediator or settlement officer, and their supporting personnel,
12 mutually agreed upon by any of the parties engaged in settlement discussions and
13 who have signed the Acknowledgment.

14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
15 **PRODUCED IN OTHER LITIGATION**

16 If a Party is served with a subpoena or a court order issued in other litigation
17 that compels disclosure of any information or items designated in this Action as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
19 ONLY” that Party must:

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

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

26 (c) cooperate with respect to all reasonable procedures sought to be pursued
27 by the Designating Party whose Protected Material may be affected.
28

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

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

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

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

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

25 (2) promptly provide the Non-Party with a copy of the Order in this
26 Action, the relevant discovery request(s), and a reasonably specific description of
27 the information requested; and
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1 (3) make the information requested available for inspection by the
2 Non-Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this court within 21
4 days of receiving the notice and accompanying information, the Receiving Party
5 may produce the Non-Party's confidential information responsive to the discovery
6 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
7 not produce any information in its possession or control that is subject to the
8 confidentiality agreement with the Non-Party before a determination by the court.
9 Absent a court order to the contrary, the Non-Party shall bear the burden and
10 expense of seeking protection in this court of its Protected Material.

11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
13 Protected Material to any person or in any circumstance not authorized under this
14 Order, the Receiving Party must immediately (a) notify in writing the Designating
15 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
16 unauthorized copies of the Protected Material, (c) inform the person or persons to
17 whom unauthorized disclosures were made of all the terms of this Order, and (d)
18 request such person or persons to execute the Acknowledgment.

19 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 When a Producing Party gives notice to Receiving Parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection
23 (*e.g.*, work product immunity), the obligations of the Receiving Parties are those set
24 forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
25 to modify whatever procedure may be established in an e-discovery order that
26 provides for production without prior privilege review. Pursuant to Federal Rule of
27 Evidence 502(d) and (e), the parties agree that the inadvertent or unintentional
28 disclosure by the Producing Party of material that is privileged or subject to other

1 protection shall not be deemed a waiver in whole or in part of the claim of privilege
2 or other protection, either as to the specific information disclosed or as to any other
3 information relating thereto on the same or related subject matter.

4 Upon learning of an inadvertent or unintentional disclosure of privileged
5 information (“I.D. Protected Material”), the Producing Party shall provide written
6 notice to the parties who have received the I.D. Protected Material, identifying the
7 I.D. Protected Material by Bates number and the privilege protection relied upon.
8 Within ten business days of the date of that written notice, the Receiving Party shall
9 sequester, destroy or return the I.D. Protected Material so identified and all copies
10 thereof, and in the same time frame, shall sequester or destroy any notes or other
11 writing or recordings that copy, summarize, reflect, or discuss the content of the
12 documents or materials (collectively the “I.D.P.M. Notes”). Upon request of the
13 Producing Party, the Receiving Party shall provide written notice of any
14 sequestration or destruction of the I.D. Protected Material and I.D.P.M. Notes.
15 Other than in connection with proceedings contemplated by the last paragraph of
16 Section 11 of this Order, no use shall be made of I.D. Protected Material or
17 I.D.P.M. Notes during deposition or at trial and the Receiving Party, its employees,
18 Outside Counsel of Record and Experts shall not provide I.D. Protected Material to
19 anyone who did not already have access to them prior to the request by the
20 Producing Party that they be returned.

21 If the Receiving Party intends to challenge the assertion of privilege, it must
22 provide written notice within this ten-day period, explaining the grounds for its
23 challenge. The Receiving Party shall initiate the dispute resolution process under
24 Local Rule 37.1 within ten business days of the date of service of the Receiving
25 Party’s notice disputing a claim of inadvertent production.

26 If the Parties cannot resolve a challenge without court intervention, the
27 Receiving Party may move the Court for an order compelling production of any
28 inadvertently produced or disclosed document or material in compliance with Local

1 Rule 37, but the motion shall not assert as a ground for production the fact of the
2 inadvertent production or disclosure. Pending the Court's ruling, the Receiving
3 Party challenging the assertion of privilege shall continue to sequester the I.D.
4 Protected Material and I.D.P.M. Notes and shall not make any use of such
5 information.

6 **12. MISCELLANEOUS**

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Order, no Party waives any right it otherwise would have to object to disclosing or
11 producing any information or item on any ground not addressed in this Order.
12 Similarly, no Party waives any right to object on any ground to use in evidence of
13 any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Local Civil Rule 79-5. Protected Material
16 may only be filed under seal pursuant to a court order authorizing the sealing of the
17 specific Protected Material at issue. If a Party's request to file Protected Material
18 under seal is denied by the court, then the Receiving Party may file the information
19 in the public record unless otherwise instructed by the court.

20 **13. FINAL DISPOSITION**

21 After the final disposition of this Action, as defined in Section 4
22 (DURATION), within 60 days of a written request by the Designating Party, each
23 Receiving Party must return all Protected Material to the Producing Party or destroy
24 such material. As used in this subdivision, "all Protected Material" includes all
25 copies, abstracts, compilations, summaries, and any other format reproducing or
26 capturing any of the Protected Material. Whether the Protected Material is returned
27 or destroyed, the Receiving Party must submit a written certification to the
28 Producing Party (and, if not the same person or entity, to the Designating Party) by

1 the 60 day deadline that (1) identifies (by category, where appropriate) all the
2 Protected Material that was returned or destroyed and (2) affirms that the Receiving
3 Party has not retained any copies, abstracts, compilations, summaries or any other
4 format reproducing or capturing any of the Protected Material. Notwithstanding
5 this provision, Counsel are entitled to retain an archival copy of all pleadings,
6 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
7 correspondence, deposition and trial exhibits, expert reports, attorney work product,
8 and consultant and expert work product, even if such materials contain Protected
9 Material. Any such archival copies that contain or constitute Protected Material
10 remain subject to this Protective Order as set forth in Section 4 (DURATION).

11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

12 Dated: May 2, 2019

THOMAS F.A. HETHERINGTON
JARRETT E. GANER
HUTSON B. SMELLEY
ERIN E. BENNETT

McDOWELL HETHERINGTON LLP

16 By: /s/ Erin E. Bennett
17 HUTSON B. SMELLEY

18 - and -

19 HINSHAW & CULBERTSON LLP

20 Attorneys for Defendant Transamerica Life
21 Insurance Company
22
23
24
25
26
27
28

1 Dated: May 2, 2019 _____

ANDREW S. FRIEDMAN
FRANCIS J. BALINT, JR.

2

BONNETT FAIRBOURN FRIEDMAN &
BALINT, PC

3

4

By: /s/ Andrew S. Friedman
Andrew S. Friedman

5

-and-

6

HARVEY ROSENFELD
JERRY FLANAGAN

7

8

CONSUMER WATCHDOG

9

-and-

10

ADAM M. MOSKOWITZ
HOWARD BUSHMAN

11

12

THE MOSKOWITZ LAW FIRM

13

Attorneys for Plaintiff

14

15

ECF ATTESTATION

16

I, Erin E. Bennett, am the ECF user whose ID and password are being used to
17 file this [PROPOSED] STIPULATED PROTECTIVE ORDER. In accordance
18 with Local Rule 5-4.3.4, I attest that Andrew S. Friedman concurs in this filing's
19 content and has authorized the filing.

20

21

Dated: May 2, 2019 _____

/s/ Erin E. Bennett
Erin E. Bennett

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: June 5, 2019

GAIL J. STANDISH
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 on _____ [date] in the case of *Gail Thompson et al. v. Transamerica Life*
8 *Insurance Company*, Case No. 2:18-05422-CAS-GJSx. I agree to comply with and
9 to be bound by all the terms of this Stipulated Protective Order and I understand
10 and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Stipulated Protective Order. I further agree to submit to the jurisdiction of the
15 United States District Court for the Central District of California for enforcing the
16 terms of this Stipulated Protective Order, even if such enforcement proceedings
17 occur after termination of this action. I hereby appoint
18 _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

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